

FILED
COURT OF APPEALS
DIVISION III

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NO. 40220-3-II

STATE OF WASHINGTON

BY *[Signature]*
DEPUTY

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

MARIJO RIDDLE, Appellant

v.

GARY INGRAM, Respondent

REPLY BRIEF OF APPELLANT

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01-6-1-1117

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A. INTRODUCTION

Marijo replies to the Brief of Respondent, with respect to Gary's factual and legal allegations, as follows:

B. ARGUMENT

1. Gary tries to mis-characterize Marijo's appeal.

This appeal is from the trial court's math error when dividing a partnership asset consistent with the Revised Uniform Partnership Act (RUPA). RCW 25.05. It is *not* an appeal from a division of assets under Washington's meretricious relationship case law.

In this case, the court properly found that the meretricious relationship of the parties ended in 2004. CP 80. It also correctly found that their 2006 subsequent purchase of the Friendship boat was acquired in partnership. CP 81. The court simply erred when it failed to allocate the ownership of the only partnership asset (Friendship boat) consistent with the Revised Uniform Partnership Act.

Gary's bold assertion that the 60/40 allocation of the value of the Friendship boat was part of a "comprehensively just and equitable disposition of property accumulated during the parties' twenty (20)

year relationship”¹ is unsupported by any factual finding. CP 79-80. Instead, the court failed to value even a single asset of the meretricious relationship. It did not consider the value of the other boats owned by Gary, nor the houses owned by Marijo. It did not value the heavy equipment retained by Gary when he left the relationship. It did not place a value on the retirement incomes of either party. Instead, after finding that the parties ended their twenty year meretricious relationship in 2004, it left the parties as they left themselves. CP 80-81.

Gary’s assertion that the division of the Friendship boat was based on the court’s “global determination of fairness and equity”² is similarly unsupported by any factual finding. CP 79-80. Instead, having found that the Friendship boat was acquired in partnership, the court expressly determined that the percent ownership was “based on the difference in their respective contribution to the acquisition of that asset”. CP 80 - 81. However, when it allocated the parties’ respective percentage, it clearly made a math error³.

¹ Respondent’s Opening Brief, pg 3.

² Respondent’s Opening Brief, pg 4.

³ $80,000 / 255,000 = 31.4 \%$; $175,000 / 255,000 = 68.6\%$

The trial court specifically found that Gary contributed \$80,000 and Marijo contributed \$175,000. CP 80. Given the factual findings of the contributions to the purchase of the Friendship Boat and subsequent purchase of the 1999 Bayliner, the trial court abused its discretion when it denied Marijo's motion for reconsideration of the 60/40 allocation.

2. The trial court, while capable of interpreting its own order, erred when it failed to do so.

In this case, the court specifically made a finding that the "[i]ssue of the proceeds of the Friendship that were received by Petitioner but not accounted for in the acquisition of the Bayliner requires clarification by the court". CP 81. When it subsequently denied relief without reason or rationale, it abused its discretion. Mayer v. Sto Indus., Inc., 156. Wn2d 677, 684, 132 P.3d 115 (2006).

There are no findings associated with the court's denial order to clarification. CP 130. Consequently, it is not possibility to understand what, if any, reason the court used to deny Marijo's motion. Given the court's impatience, irascibility, and frequent invitations to take the matter up on appeal, it is conceivable that the court had no rational reason. A-1 RP 3:18-19; A-2 RP 4:5-6; A-3 RP

7:15-16; A-4 RP 22:16-19; A-5 RP 23:9-12.

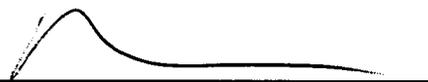
C. CONCLUSION

The Court should reverse the trial court's 60/40 allocation of the ownership interest in the Friendship boat and allocate the ownership consistent with their respective contributions. The Court should also find abuse of discretion on the part of the trial court for its failure to clarify the issue of the proceeds of the Friendship boat.

Respectfully submitted,

9-9-10

DATED



MARGARET BROST
Attorney for Appellant
WSBA No. 20188

D. APPENDIX

1 THE COURT: We're here to present papers.
2 There's also a motion for reconsideration. I have
3 reviewed it. I will give each side five minutes on
4 the motion for reconsideration, then we'll go into
5 other things. There were various things filed.
6 We're ready to go.

7 MR. QUINN: Your Honor, I have a
8 preliminary procedural matter.

9 THE COURT: Go ahead.

10 MR. QUINN: I would object to the motion
11 for reconsideration, given the fact that it is not
12 timely. In fact, it's premature in that the motion
13 for reconsideration contemplates an order that would
14 need to be reconsidered. There is no such order.
15 Under Local Rule 59, it talks about a motion for
16 reconsideration of a judicial officer's order must
17 be filed, et cetera.

18 THE COURT: I realize that. Let's just go,
19 and let's just deal with it. Five minutes. It's
20 your situation.

21 MR. QUINN: Your Honor, I'm sorry. Another
22 objection or procedural matter is that I would ask
23 that pleadings that have been filed by the
24 respondent subsequent to her motion, other than the
25 reply declaration, be stricken, in that they should

1 have been -- again, under the same Local Rule, they
2 should have been filed with the motion, and they
3 were not. They were filed as late as last Thursday
4 and last Friday, and those were not in reply.

5 THE COURT: Thank you. Five minutes. I'm
6 going to stop you.

7
8 (Pause.)

9
10 THE COURT: Go ahead.

11 MS. BROST: Thank you. This is a motion in
12 which we ask the Court to clarify the \$62,000 that
13 is the difference between what the China boat sold
14 for 225,000 and what the Bayliner, 193,000, was
15 purchased for. We can account for about \$12,000.
16 \$7,000 was returned to Mr. Ingram at the time that
17 the Bayliner was purchased. We can account for,
18 again, the rest of that. About \$3,700 was spent
19 getting the boat ready, including painting the
20 bottom, an additional \$1,300 might have been spent
21 on incidentals. I know Mr. Ingram has submitted a
22 very large declaration in which he details what he
23 says he put into the China boat, but, first of all,
24 he did not put \$98,000 into the China boat. He put
25 in 80,000. That's clear from both Mr. Powell's

1 20 years, and I split it the way I split it, and I'm
2 not going to back down. All right.

3 MR. QUINN: Your Honor, as far as -- yes,
4 ma'am.

5 MS. BROST: The issue I think that is
6 really missing here is that, at the time that this
7 China boat sold, Your Honor, there were \$255,000
8 worth of proceeds. The Bayliner cost \$193,000.
9 There's a \$62,000 difference here. And Mr. Ingram,
10 who had control over the China boat. He had control
11 over the Bayliner. He had control over every single
12 boat that these parties ever had, has retained those
13 funds.

14 THE COURT: Stop. You're arguing. I'm
15 going to give them 60-40 in the new boat. And take
16 it up to the Court of Appeals. I'm done with this.

17 MR. QUINN: Your Honor, that's exactly what
18 Mr. Ingram is asking for.

19 THE COURT: No. I want to go on. Now,
20 what about this dinghy? Where is the dinghy?

21 MR. QUINN: Your Honor, let me give you our
22 understanding of the issue there. During trial,
23 Ms. Riddle brought up at one point -- I don't have
24 the transcript of that portion, but she brought up
25 the fact that Mr. Ingram had stripped the boat of

1 THE COURT: I am. This is it. I think the
2 commissioner, you can argue adequately at the
3 commissioner level on little things. I think we're
4 okay here.

5 MS. BROST: Your Honor, I want to make sure
6 that I'm clear: The \$50,000 that Mr. Ingram has
7 retained from the sale of the China boat, is the
8 Court saying that he is going to be able to retain
9 that \$50,000?

10 THE COURT: You know, I made percentages
11 when I did that. There wasn't a \$50,000 -- he paid
12 off a loan, if I remember right, on a credit card of
13 \$50,000.

14 MS. BROST: That's actually not the case,
15 Your Honor.

16 THE COURT: You know, I'm going to write --
17 I'm not going to change anything, and if you think
18 I'm wrong on \$50,000, that's enough money, I suggest
19 you take it up to the Court of Appeals.

20 MS. BROST: But, again, Your Honor, the
21 parties terminated their relationship, they bought
22 this Friendship boat. That boat sold for 255,000.
23 They bought the Bayliner for 193, and that's after
24 everything had been paid. And I understand what the
25 Court is saying, but I am so reluctant to spend more

1 money going to the Court of Appeals --

2 THE COURT: I don't understand what you
3 mean about the \$50,000. There was -- and I don't
4 want to litigate it again. But there was a loan
5 taken out, was there not?

6 MR. QUINN: Yes, Your Honor.

7 MS. BROST: All of that is included in this
8 \$55,000. If you look at the exhibit --

9 THE COURT: I'm going to take about a
10 five-minute recess. We'll pull the exhibits. We'll
11 deal with this. But when we're done, we're going to
12 sign these orders, and we're going away.

13 MS. BROST: Certainly.

14 THE COURT: Okay. But I do think that -- I
15 want to make sure that I understood the math.

16 MS. BROST: Thank you. That's all I'm
17 asking.

18 MR. QUINN: Yes, Your Honor, and just so
19 that it's clear, my client -- there were no excess
20 funds, none whatsoever. My client accounted for
21 those. He accounted for them at trial. He's
22 accounted for them again with receipts and a full
23 explanation as to the fact -- what happened that to
24 105,000. In fact, what he paid exceeded the
25 105,000.

**COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON**

MARIJO RIDDLE,
Appellant,
and
GARY INGRAM,
Respondent.

NO. 40220-3-II
DECLARATION OF
SERVICE

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DIVISION II
STATE OF WASHINGTON
BY
DEPUTY

I certify that on 9-9, 2010:

I sent a true and correct copy of the foregoing Reply Brief of Appellant
by US Mail to:

J. PATRICK QUINN
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OLYMPIA, WA 98501

I sent a true and correct copy of the foregoing Reply Brief of Appellant
by US Mail to:

COURT OF APPEALS, DIVISION II
950 BROADWAY, STE 300
TACOMA, WA 98402

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND

CORRECT.

9/9/2010
DATE

Olympia, Wa
PLACE

SAMANTHA MITCHELL
TYPED NAME

Samantha Mitchell
SIGNATURE