

No. 43232-3-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

In Re The Marriage of:

MERRY WOECK,
Appellant,

v.

DOUGLAS WOECK,
Respondent.

On Appeal from the Pierce County Superior Court
Cause No. 11-3-03031-7
The Honorable Judge Ronald L. Culpepper

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

This case centers on an inquiry as to the relative bargaining power of the parties at contract formation where the husband controlled nearly all of the assets and seventy-five percent of the community's \$200,000¹ annual income. This case also raises the issue of whether an established ten-year victim of domestic violence can voluntarily or fairly enter into a contract with her abusive husband where the victim lives with her abuser and the contract terms clearly favor the husband's continued control of a majority of the community income and assets.

The contract is unfair on its face given the duration of the marriage², income of the parties, and role of both parties in building up the community income and assets during that marriage. The contract should have been voided and set aside by the trial court particularly when two distinct restraining order cases and the financial documents evidenced the husband's superior position over the wife prior to entry of the final Orders. Appellant requests that all Orders entered on February 24, 2012, including the incorporated CR2A separation contract, be voided and nullified by this Court and that the dissolution action be remanded for trial on the merits regarding a fair and equitable division of the parties' assets and liabilities.

¹ This is a rounded off figure for ease of argument.

² Douglas and Merry were married from 10/29/2001 to 2/24/2012 (over ten years) plus the time elapsed since the Stay was granted on 6/27/2012 until now.

II. REPLY TO HUSBAND'S STATEMENT OF THE CASE

Husband's over four page statement of the case ignores most of the record on appeal and contains many misrepresentations and inaccuracies. Brief of Respondent pg. 1-6. Husband was very insistent that the parties "get divorced" CP 224, and "the fact is that [he] wanted this divorce to end [the] dysfunctional relationship" CP 496. Wife did not 'drive the divorce process'; she merely drafted documents consist with what husband would agree to so she could afford to leave the martial home. CP 225.

Husband controlled wife's life and made her feel unsafe, like she had no place to go. RP 9. Commissioner Mark Gelman found sufficient evidence to support entry of two distinct restraining orders protecting the wife from the husband. CP 430, 549-552³. Wife told the trial court about her emotional duress she was under and provided a print out of her counseling appointments to verify that she sought treatment for the emotional distress husband put her through before and during the dissolution process. CP 230, 235. The 73 pages of text messages between husband and wife in November 2011 only demonstrate the extent of their unhealthy and warped their relationship. CP 351-423.

³ See also Narrative Report of Proceedings of February 21, 2012 Hearing filed and served January 31, 2012 (Motion to Supplement the Record RE: Transcript of DVPO Final Hearing 2-21-12 has yet to be ruled on by this Court but the Original Transcript is on file with Pierce County Superior Court under Case No. 12-2-00105-2).

While husband tries to rationalize the meaning of these texts in one declaration, it is clear that he calls his wife names and demeans her just from that evidence alone. Id., CP 344. It is also clear from both the husband's declaration and the texts he provided, that wife is in fact in a state of duress caused by the husband. Id. Husband even acknowledges that wife was suicidal in September 2011 and that he stayed with her to keep her from killing herself until her uncle⁴ arrived. CP 345.

Wife explains in an Informational Filing Declaration In Support of the Protection Order filed January 20, 2012 more of her abusive experience during her marriage to Douglas Woeck. CP 448-456. At least ten distinct declarations from nine of wife's friends and family verified the abuse they observed perpetrated against the wife during the marriage and/or the toll they observed it took on her. CP 489-491, 521-544. Almost all of the independent witnesses describe how the husband was also rude, callus and/or abusive to them as well. Id. The wife's mother and grandfather both verify that they saw Merry on Thanksgiving 2002 and that she had two black eyes and that although she initially told a made up story about a bar fight that she independently confessed to both of them what they already suspected that Doug hit her. CP 524, 536.

⁴ It should be noted that the wife's uncle is geographically her nearest relative and he drove over from Spokane, WA where he lives.

Husband made 75% of the money in the marriage and refused to provide adequate support or spousal maintenance. CP 228. Husband received the majority of the assets CP 3-7, 269-274. Husband provided \$1400 for moving costs to the wife on August 11, 2011 only after they BOTH filed the dissolution paperwork at the clerk's office and appeared together in Open Court to enter the AGREED Temporary Order before Commissioner Clint P. Johnson. CP 97-100. The Separation Contract was filed along with the dissolution paperwork. CP 3-7. Wife moved out five days later on August 16th, RP 11, with the help of husband. CP 226.

Wife did not obtain her own apartment sometime in May 2011. See Brief of Respondent, pg. 3. When the separation contract was negotiated, drafted and signed wife was living with her abuser husband under severe emotional distress and wanting to get out from under his watchful eye to re-establish her life as an individual. RP 9, CP 228, 549, 339-340, 140-143. Wife would have drafted and signed anything that gave her freedom. RP 11. Wife had no place to live other than with the husband in the marital home. RP 9, CP 233. Many of her friends and family told her that the contract terms were unfair and not favorable to her but she just wanted to be done and free from husband's control over her life. CP 226. The "agreement" was reached by way of discussions with David Woeck, the husband's father, who was hardly objective and had a financial interest in

husband's \$24,000 gun trust. CP 225. The course of conduct and behavior that husband engaged in after the dissolution action was filed only served to frighten and intimidate the wife. CP 231.

The assets were not divided in a fair and equitable manner. See Brief of Respondent, pg. 5. Husband grosses over \$12,000 per month, CP 25⁵, the husband gave the wife \$1400 to move in mid-August 2011 and \$300 per month for twelve months beginning September 15, 2011. CP 3-7, 100. Husband also promised wife a \$5000 distribution from his 401k facilitated by a QDRO. CP 3-7, 270, 73-79. The husband's earnings record shows that his earnings substantially increased after 2004 (during the marriage). CP 33, 94. Husband's first qualifying year for ILWU-PMA benefits was 1997; however, his hours were very low in 2000 he did not qualify that year. CP 34. From 2001 forward, the husband's hours and benefits steadily increased during the marriage. CP 34.

Virtually all of the property was awarded to husband, including the house and most of the furnishings therein, time-share condo (subject to one-week of use to the wife), truck, bank accounts in his name⁶, gun trust, all guns (except one) and all the ammunition, ILWU pension and 401K, subject to a \$5000 distribution to wife, and social security or other benefits earned as a result of his employment. CP 270-271. The martial home was

⁵ \$84,977.56/7 = \$12,139.65.

⁶ Where he deposits and controls 75% of the community funds.

purchased on or about September 20, 2005; wife quit claimed her interest to husband for financing purposes only. CP 36-41. The home went up and down in value. CP 38. The agreement and other final orders are facially unfair and inequitable and clearly favor the abuser husband. CP 278-308, 225-227. Wife asked the Trial Court for an equitable distribution of the assets and a trial. CP 277, RP 12, lns. 2-4.

Regarding “domestic violence” section—husband first admits to committing a 2003 act of domestic violence in the first paragraph and then in the following one-sentence paragraph states “Doug has at all times denied any and all alleged acts of domestic violence against Merry.” Brief of Respondent, pgs. 5-6. Two restraining orders were entered after contested hearings prior to the entry of Final Orders on February 24, 2012. RP 9-12, CP 106-184⁷, 198-199, 217⁸-233. The trial court erred as a matter of law. Opening Brief, Assignments of Error, pgs. 4-13.

III. HUSBAND’S RECENT APPELLATE PROCEDURAL HISTORY RELEVANT TO REPLY

It should be noted that Husband has argued throughout the Motions process in this case that the wife’s appeal is frivolous and without merit, except in one specific instance, as follows:

⁷ The Trial Court Judge Ronald Culpepper heard husband’s Motion for Revision in the Anti-Harassment Case and struck the anti-stalking language only on February 3, 2012.

⁸ Wife specifically incorporated the other two cases into her Motion to Void and Set Aside CR2A Agreement.

On January 10, 2013, the Court Clerk, David C. Ponzoha, issued a letter directed to Sophia M Palmer advising her of pending sanctions against her should she fail to file Respondent's brief on or before fifteen days from the date of the letter because the brief was not filed by December 6, 2012 (the second deadline allowed). On January 11, 2013 wife filed a Motion for Directed Verdict because husband had delayed this appeal for months and months by not filing his Response Brief that was originally due on September 6, 2012. (Respondent was never granted an extension; he just didn't file a Brief). Ms. Palmer responded on January 22, 2013 acknowledging the pending sanctions and stating "This matter needs to be decided on the underlying merits as there is clearly debatable issues, and great issues at stake." On January 25, 2013, (three days later), Ms. Palmer argues "This appeal is wholly without merit and frivolous" and demands attorneys fees for the husband. Brief of Respondent, pg. 20.

So it would appear that whether this appeal has merit in Ms. Palmer's mind depends upon whether she is going to be sanctioned by this Court or not. That is not the proper legal standard for analysis of the merits of any case. Wife is not aware of any caselaw, statute or court rule that supports Ms. Palmer's turn-about face on the merits of this case. Such circular analysis would certainly frustrate the interests of justice and

equity. In the interest of protecting the legal process for this and all future litigants Ms. Palmer should be admonished by this Court.

IV. ARGUMENT IN REPLY

1. STANDARD OF REVIEW.

Wife agrees that interpretation of a separation contract presents a question of law that Washington Courts of Appeal review de novo. In re Marriage of Gimlett, 95 Wash.2d 699, 704-05, 629 P.2d 450 (1981); see also Brief of Respondent, pg 6. The Court’s examination focuses on the intent of the parties, which is to be determined by probing into their objective manifestations, including both the written agreement and the context within which it was executed. See In re Marriage of Boisen, 87 Wash.App. 912, 920-21, 943 P.2d 682 (1997). Contracts between spouses are interpreted under the same rules for interpreting any other contract. In re Estate of Wahl, 31 Wash.App. 815, 818, 644 P.2d 1215 (1982), affirmed, 99 Wash.2d 828, 664 P.2d 1215 (1983). However, reviewing Courts must also consider that spouses “do not deal with each other at arm’s length,” Friedlander v. Friedlander, 80 Wash.2d 293, 301, 494 P.2d 208 (1972), thus they owe each other “the highest fiduciary duties.” Peters v. Skalman, 27 Wash.App. 247, 251, 617 P.2d 448 (1980).

2. MUTUAL ASSENT IS REQUIRED FOR THE FORMATION OF A VALID CONTRACT.

“It is essential to the formation of a contract that the parties manifest mutual assent to the same bargain at the same time. Mutual assent generally takes the form of offer and acceptance.” Yakima County (West Valley) Fire Protection Dist. No. 12 v. City of Yakima, 122 Wash.2d 371, 388-89, 858 P.2d 245 (1993), quoting Pacific Cascade Corp. v. Nimmer, 25 Wash.App. 552, 555-56, 608 P.2d 266, review denied, 93 Wash.2d 1030 (1980). A promise to render a certain performance in exchange for a return promise being given generally meets the element of mutual assent. Id. A party’s signature on a contract is objective evidence of the party’s intent to be bound by the contract and its terms. See Retail Clerk’s Health & Welfare Trust Funds v. Shopland Supermarkets, Inc., 96 Wash.2d 939, 944, 640 P.2d 1051 (1982). Accordingly, a party who signed a contract cannot successfully argue lack of mutual assent unless there was lack of capacity, fraud, deceit, or coercion involved. See Skagit State Bank v. Rasmussen, 109 Wash.2d 377, 381-84, 745 P.2d 37 (1987).

In the instant case, wife is not alleging any direct deceit or permanent lack of capacity of her part. Wife is an experienced attorney and drafted the CR2A agreement with the terms the husband would agree to after the parties talked to each, their respective counsel, and to the husband’s father. However, wife is alleging that by nature of the parties relationships with each other—namely “husband and wife” and “batterer

and victim”—that the husband exercised undue influence and overreaching in the formation of the separation contract. As previously argued, undue influence and overreaching are species of fraud that will vitiate a transaction. See Opening Brief of Appellant, pgs. 34-42 and Restatement (Second) Contracts §177 (1981). Wife is also directly alleging that, apart from the established history of domestic abuse in the record, that the husband used his exclusive control of 75% of the community income and the vast majority of the real and personal property to coerce wife to take whatever he would agree to give her or leave with nothing. CP 228, CP 3-7, 269-274. Either way, she was moving out and they were getting divorced as soon as possible in accordance with husband’s wishes. RP 9, CP 224-25, 496.

3. UNFAIRNESS AT THE TIME OF EXECUTION.

A. Husband’s Reliance on the Cohn Test for Fairness.

Husband’s reliance on the Cohn good faith test is misplaced in this litigation. See Brief of Respondent, pg. 7 and In re Marriage of Cohn, 18 Wash.App. 502, 505-506, 569 P.2d 79 (1977). The question in this case is not whether the husband acted in good faith in asking the contract to be enforced but rather was the agreement fair and equitable at the time of execution? Therefore a more appropriate standard might be articulated by In re Marriage of Foran, which uses a two-prong test to evaluate the

validity prenuptial agreements at execution, 67 Wash.App. 242, 249, 834 P.2d 1081 (1992), quoting In re Marriage of Matson, 107 Wash.2d 479, 482-83, 730 P.2d 668 (1986). The first prong of the Foran test asks whether the agreement makes a fair and reasonable provision for the party not seeking enforcement. 67 Wash.App. at 249. If the Court makes this finding, then the analysis ends and the agreement may be validated. Id.

In the present case, there was no analysis done by the trial court as to whether the agreement made a fair and reasonable provision for the wife, only a blanket statement: “CR 2A agreements, people think about them later and wish they hadn’t done things, and that’s, I think, what’s happening here, so I’m going to enforce the CR 2A agreement,” RP 13, followed by general finding contained in the Decree prepared by the husband’s counsel that “The distribution of property and liabilities as set forth in the decree is fair and equitable.” CP 266. The trial court made no comment on the gross disparity in the parties’ incomes, or the fact that the separation contract awarded virtually all of the assets acquired during the marriage including the pension and 401K benefits (minus \$5000) to the husband. See RP generally. The present case is in some ways very analogous to the Foran case in that virtually no provision was made for the wife from the community assets and in fact she was specifically excluded

from the benefit of most of what the parties' had produced jointly during the marriage. See 67 Wash.App at 250-51 and CP 3-7, 11-80.

The Foran case also involves domestic abuse but the Court of Appeals makes a point of distinguishing Its reasoning from that of the trial court for finding the prenuptial contract unenforceable. Id. at 248-49. The trial court found the contract was valid at execution but that it would be inequitable to enforce the contract in light of husband's misconduct towards the wife, namely repeated instances of domestic violence. Id. The Court of Appeals found that the contract was invalid at the time of execution because it failed the test of economic fairness. Id. at 251. On this basis the Court stated, "we must 'zealously and scrupulously' examine the circumstances leading up its execution, with an eye to procedural fairness." Id. quoting Matson, 107 Wash.2d at 486, 730 P.2d 668.

This case also fails the test of economic fairness. The distribution of assets glaringly favors the husband. The second prong involves two tests as follows:

(1) whether disclosure has been made by [the parties] of the amount, character and value of the property involved, and (2) whether the agreement was entered into fully and voluntarily on independent advice and with full knowledge by [both spouses of their] rights.

Id., at 249, quoting Matson, at 482-83.

Analysis of the second prong involved mixed issues of legal policy and fact, therefore it is reviewed a question of law but with an eye toward

those undisputed findings of the trial court which are supported by substantial evidence and in turn support the trial court's ultimate conclusion. Id. at 251, referencing Berg v. Hudesman, 115 Wash.2d 657, 663, 801 P.2d 222 (1990) at fn. 9. The Foran court finds that the second prong fails because the wife did not fully understand the consequences of the contract she signed—specifically how economically unfair the contract was to her. The evidence in the record was to the contrary. Id. at 257.

That is where the present case and this case differ because the wife in this case is herself an attorney and she herself drafted the contract; albeit with terms that directly disenfranchised her from the majority of the community assets consistent with the husband's wishes and against advice of her own attorney with respect to healthcare. So it is necessary to ask why? The separation contract is still fails the first prong the economic fairness test, but because the wife in this case is an attorney second prong of the Foran test does not adequately address this particular situation. In fact, the wife in this case fails the second prong because she was in a position to know the unfairness of the contract that she drafted consistent with the parties agreement. The issue is whether the facts and circumstances at contract formation amount to a coercive environment such that wife's assent could not have been voluntarily made. Was there any true choice as to whether to accept the terms dictated by the husband?

B. Relative Bargaining Power and Unconscionability.

The wife in this case believes the contract is still voidable at her request on equity grounds such as duress, undue influence and unconscionability due to the relative bargaining power of the parties at the time of execution of the separation contract. In August 2011, the parties' relative bargaining positions were grossly imbalanced for three reasons: (1) husband controlled 75% of the annual income CP 25-29; (2) husband controlled nearly all of the property and assets, including the home, health insurance, ILWU pension and 401K benefits CP 3-72; and (3) husband had engaged in continual domestic abuse of wife, including domestic violence, to the point where she felt controlled and unsafe—like she had no place to go and no way out save for agreeing to the husband's terms. RP 9, NRP 5, 8-15, CP 106-138, 140-143, 217-248, 336-340, 448-56, 458-486, 489-492, 495, 499-508, 521-552.

The Opening Brief of Appellant already analyzes the duress argument and the wife's vulnerability relative to the pressure exerted by the husband to accept his 'take it or leave it' deal so those arguments will not be repeated here. See pp. 21-33. Wife also addresses undue influence and overreaching as a means to rescind or vitiate the separation contract. *Id.* at pp. 34-42. However, after reviewing Brief of Respondent the

missing analysis seems to be with regard to the relative bargaining power of the parties at contract formation in the context of unconscionability.

Whether a contract is one of adhesion depends upon an analysis of the following factors: (1) whether the contract is a standard form printed contract, (2) whether it was prepared by one party and submitted on a take it or leave it basis, and (3) whether there was no true equality of bargaining power between the parties. Zuver v. Airtouch Commc'ns, Inc., 153 Wash.2d 293, 304, 103 P.3d 753 (2004). However, an adhesion contract is not necessarily procedurally unconscionable. Alder v. Fred Lind Manor, 153 Wash.2d 331, 348, 103 P.3d 773 (2004). The key inquiry is not whether one party was more powerful or knowledgeable than the other, but whether one party abused its power to impose its will on the other party. See Torgerson v. One Lincoln Tower, LLC, 166 Wash.2d 510, 519, 210 P.3d 318 (2009); Zuver, 153 Wash.2d at 305, 103 P.3d 753; and Alder, 153 Wash.2d at 344-45. The Supreme Court has cautioned that “these three factors [should] not be applied mechanically without regard to whether in truth a meaningful choice existed.” Alder, 153 Wash.2d at 345, quoting Nelson v. McGoldrick, 127 Wash.2d 124, 131, 896 P.2d 1258 (1995).

In the present case, factor one (1) does not apply because the party's drafted a unique separation contract to fit their situation; however

factors two (2) and three (3) merit some discussion. Factor two is interesting with regard to the facts of this case in that the terms were dictated to the wife on a take or leave it basis and yet the wife herself drafted the contract with those terms without the benefit of independent review of counsel prior to entry of the separation contract. The parties do agree that husband's father acted as a "mediator" while the parties were negotiating the contract terms and that the father had an interest in the gun trust. The value of this trust is disputed but the wife was told its worth \$24,000. CP 225. To determine whether procedural unconscionability was involved further factual findings would need to be made by the trial court. When disputes exist as to the circumstances surrounding an agreement, the Supreme Court remands to the trial court to make additional findings. Alder, 153 Wash.2d at 350, referencing Nelson, 127 Wash.2d at 136, 896 P.2d 1258.

However, unconscionability can be established with a showing of substantive unconscionability alone, where the terms are harsh, unfair, or unduly favorable to one of the parties. See Alder, 153 Wash.2d at 346-47, 103 P.3d 773 (holding that substantive unconscionability alone can support a finding of unconscionability). Factor three (3) is also interesting when applied to the facts of this case, because the husband was found to be a domestic abuser during and after the parties separated and it is

undisputed that the husband controlled access to the majority of the couple's income and property. NRP 5-15, RP 9, CP 140-143, 549-552. Husband was represented by an attorney and had his father "mediate." CP 196-199. Wife is an attorney and also a victim of domestic abuse who was in treatment for the medical conditions caused by the abuse when the contract was executed. CP 224-235. Wife told the trial court was under duress when the agreement was entered, that she had no place to live other than with respondent, and he controlled her life. She felt unsafe, like she had no place to go. RP 9. Husband stated in September [2011] his wife was suicidal and that he stayed with her until her uncle got there [from Spokane] and stayed for a week, until the feeling passed. CP 345.

Yet husband argues that the "allegations [of domestic abuse] made by [the wife] are not supported by the record" even while stating that expert testimony is important to establish the presence of any conditions caused by domestic violence. Brief of Respondent at p. 15. So Ms. Palmer appears to support a trial with an expert to determine if the wife was truly under duress when the separation contract was executed. Her client says the agreement was fair, CP 255. The trial court already entered a domestic violence protect order based upon the evidence of domestic abuse before it, NRP 5-15, CP 549-552. However, if Ms. Palmer thinks the parties need a trial with an expert on domestic violence than that supports wife's

argument for remand. Brief of Respondent at p. 15. It would also allow the trial court to make findings as to whether or not the separation contract was procedurally and/or substantively unconscionable given the facts and circumstances surrounding its formation and nature of its terms which clearly favor the husband and award him virtually of the joint assets.

4. AN AWARD OF COSTS AND/OR ATTORNEY'S FEES IS WARRANTED UNDER RCW 26.09.140 AND RAP 14.2.

A party requesting attorney's fees and/or expenses must devote a section of its opening brief to the request for fees or expenses. RAP 18.1(b). Husband does not cite to RAP 18.1 or to the logical authority in family law cases, RCW 26.09.140, for his request for attorney's fees. Instead he relies on his counsel's circular argument that the appeal is "wholly without merit and frivolous" under RCW 4.84.185. Husband's argument here fails for at least two reasons: (1) this Court already granted a STAY of the Decree and other final orders on June 27, 2012 which request was approved after review by a panel of three and required the wife to make a showing that they are debatable issues on the appeal therefore it is not without merit or frivolous; (2) husband has now argued

through counsel that “This matter needs to be decided on the underlying merits as there is clearly debatable issues, and great issues at stake.”⁹

Whether husband likes it or not, his counsel, Ms. Palmer, has boxed him in to a place where it would appear he cannot recover attorney’s fees unless this Court overturns Its own finding that the appeal is not wholly without merits and/or frivolous. An appeal is frivolous only “if there are no debatable issues upon which reasonable minds might differ and it is so devoid of merit that there is no reasonable possibility of reversal.”¹⁰” It would appear given the volume of filings by both parties that we are beyond the point where this argument even makes sense.

Wife did devote a section of her opening brief to costs and reasonable attorney’s fees as required by RAP 18.1(b). See Opening Brief of Appellant, pg 46. At this time, no attorney’s fees have been incurred by the wife for the appeal, so no specific authority was cited. The option was only reserved as required. However if wife were able to retain counsel say for oral argument and wife was afterwards found to be the substantially prevailing party, then wife would be entitled to reasonable attorney’s fees

⁹ See “RESPONSE TO APPELLANT’S MOTION FOR DIRECTED VERDICT” at pg 2 of 3 dated January 22, 2013 in the record for this case on appeal.

¹⁰ State v. Chapman, 140 Wash.2d 436, 454, 998 P.2d 282 (2000), quoting State ex rel Quick-Ruben v. Verharen, 136 Wash.2d 888, 905, 969 P.2d 64 (1998), cert. denied, 531 U.S. 984, 121 S.Ct. 438, 148 L.Ed.2d 444 (2000).

under RCW 26.09.140 and RAP 18.1¹¹. Wife has incurred several costs throughout this review process for which recovery is allowed under RAP 14.3. If wife is found to be the substantially prevailing party she would be entitled such costs.

Any further discussion will be reserved until after filing of an appellate court decision terminating review, save for a denial that husband should be entitled to any attorney's fees given the gross inequity of the parties' financial positions created by the husband's use of unfair bargaining tactics at contract formation, as well as before and after that time as evidenced by the nearly 600 page record on appeal. Husband was awarded the majority of the assets by the trial court and still controls 75% of the community funds—he alone is in a position to pay for attorney's fees. Wife cannot afford them for herself, let alone for her husband.

V. CONCLUSION

The trial court erred by entering the Decree and other Final Orders instead of voiding the separation contract and setting the case for trial.

The trial court did not consider the economic circumstances of the parties or apparently any other relevant evidence as to the fairness of the contract

¹¹ It is also worthy of note that RAP 18.1(b) provides that "Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j)." Wife would not want to waive her right to request costs and/or attorney's fees in front of the Supreme Court for failure to make the request in her opening brief at the Court of Appeals level.

at the time of its execution, such as the established history of domestic abuse and the husband's unequal bargaining power given his exclusive control of 75% of the income and the majority of the property. The trial court also failed to recognize that husband's and wife's owe each other the highest of fiduciary duties because they do not deal at arm's length.

Husband freely admits that wife drafted a separation contract consistent the terms that he agreed to in August 2011; therefore it is undisputed that wife demonstrated the requisite level of fiduciary duty to her husband. She prepared a document that merely cemented what he wanted.

The problem is that contract was unfair at the time of execution and had the trial court actually considered the economic circumstances of the parties and all other relevant evidence in the record before it such as the husband's undisputed control of the majority of the income and a property and the established history of domestic abuse, including the one act of domestic violence the husband admits, it might have realized it was reversal error to enter a conclusion of law stating "The distribution of property and liabilities set forth in the decree is fair and equitable." CP 266. The wife asked the trial court to vacate the agreement and set the case for trial. When the trial court denied her motion he violated RCW 26.09.070(3). Perhaps the presence of only one factor (domestic abuse vs. husband's exclusive control of the majority of property and income)

wouldn't be enough to void the separation contract but this case combines each of these two independent factors against one victim to give the husband supreme bargaining power as against wife. This should be enough to demonstrate the inherent unfairness of the separation contract at the time of its execution.

However, if these two factors are not enough, a third should be considered. The separation contract awards the wife what amounts to less than one month of the husband's annual salary after an over-ten year marriage where the parties jointly worked hard to build up their collective property and income. The separation contract is facially unfair now and at the time of execution. It does not provide for reasonable maintenance of the wife or a fair and equitable distribution of the couple's assets and liabilities. The Decree and other final Orders, including the CR2A Separation Contract should be null and void and this case should be remanded back to the trial court for trial on the merits to determine a fair and equitable division of all of the parties' assets and liabilities pursuant to RCW 26.09.080.

RESPECTFULLY submitted this 18th day of March, 2013, by:

APPELLANT


Merry E. Broberg, Pro Se

CERTIFICATE OF SERVICE

I CERTIFY THAT ON March 18, 2013 I CAUSED A TRUE AND CORRECT COPY OF THE FOLLOWING DOCUMENTS:

APPELLANT'S REPLY BRIEF

TO BE SERVED UPON Tuele and Young, A Professional Services Corporation, of which Ms. Sophia Palmer is an associate pursuant to our electronic service agreement which is on file with this Court,

Via email at spalmer@tuele-young.com AND pam@tuell-young.com

By:



Merry E Broberg

TUELL & YOUNG
A PROFESSIONAL SERVICES CORPORATION

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TO: Merry Broberg
FROM: Sophia M. Palmer
RE: Electronic Service Agreement
DATE: April 29, 2012

Our office would like to enter into an agreement with you to receive communications and service of pleadings, exclusive of original service of process, electronically.

This Agreement would involve any cases that we currently have between our office, as well as any future cases.

This Agreement can be cancelled, in writing, by either office, at any time, without reason.

Electronic service to our office can be achieved as follows:

Email: spalmer@tuell-young.com (for Sophia M. Palmer); AND
pam@tuell-young.com (for Pam Ford, Ms. Palmer's Assistant)

Fax: #253-759-0310

If you agree to participate in this reciprocal agreement, please provide the following electronic service information and sign below:

Email: mwoeck@comcast.net

Facsimile: 253 845 6996

Law Office of: ABEIS LEGAL SERVICES, LLC

Signature of authorized individual: Merry E Broberg

Print name of authorized individual: Merry E Broberg

Thank you,

Sophia M. Palmer

AEGIS LEGAL SERVICES, LLC

March 18, 2013 - 4:43 PM

Transmittal Letter

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