

FILED  
COURT OF APPEALS  
DIVISION II

2016 MAY 31 PM 1:45

STATE OF WASHINGTON  
BY DM  
DEPUTY

NO. 48199-5

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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

APARNA AVALA

v.

SREENARESH GOPU

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Appeal from the Superior Court of Pierce County  
The Honorable Kathryn M. Stolz  
Pierce County Superior Court Cause No. 14-3-02355-2

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**BRIEF OF RESPONDENT**

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By

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A. ASSIGNMENTS OF ERROR.

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3. A trial court's findings will be upheld if they were supported by substantial evidence.
4. The Court properly exercised its discretion in applying RCW 26.04.130 and voiding the marriage.
5. The Appellant should be denied an award of reasonable attorney's fees.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Did the trial court abuse its discretion with its fraud determination?
2. Should the trial court's objection be reversed on appeal?
3. Should the trial court's findings be upheld?
4. Did the trial court properly apply RCW 26.04.130 in voiding the marriage?
5. Should Appellant be awarded reasonable attorney's fees?

C. STATEMENT OF THE CASE.

1. Procedural Background.

On June 13, 2014, the Appellant filed a Summons and Petition for Dissolution of Marriage. CP 1-4. The Respondent was served with these documents on June 16, 2014. Also on this date, the Appellant applied for, and was granted, an Ex Parte Restraining Order and Order to Show Cause. CP 5-8. The Show Cause Hearing was set for July 1, 2014.

In the Appellant's Declaration to support her motion referred to above, she alleged that the Respondent had attempted to commit suicide in the past and is therefore "very unstable and unpredictable". CP 10. She alleged he has "started being physically forceful". CP 11. She alleged that he was "controlling" by forcing her to clean the entire house, wash the dishes by hand, wipe the toilet after every use, not letting her turn the heat on in the Winter, and not allowing her to talk to neighbors. CP 12-13. Finally, the Appellant alleged that she "lives in constant fear that my husband will attack me or my family". CP 9. The Appellant failed to mention any of these alleged facts in her trial testimony. Moreover, she testified that it was her who had contemplated suicide during the marriage. 7/28/15 RP 134.

On June 25, 2014, the Respondent filed his Responding Declaration denying the Appellant's unsupported and false claims, but stated that he would agree to mutual standard restraining orders as is typical in dissolution actions. CP 111-115. The Appellant did not file a Strict Reply Declaration.

On July 1, 2014, mutual restraining orders were entered for both parties. CP 48-55. Notably, these restraining orders did not contain restraints for assaulting, stalking, or harassing the other party, as there was no basis for such restraints. CP 48-55.

Also, on July 1, 2014, a Temporary Order was entered. CP 56-58. That Order allowed the Appellant to obtain specific and detailed items from the family home that day from 1:15 p.m. to 2:15 p.m., and she agreed that her time at the home would be supervised by Dinesh Velupala. CP 56-58. On that date, the Appellant removed items which were not specifically listed for her to take. These items were listed in the Declaration of Dinesh Velupala filed with the Court on July 10, 2014. CP 116-118. Among the items taken by the Appellant were the Respondent's family heirlooms, which the trial court ordered she immediately return to Respondent after the trial and froze her bank account(s) until she did so. 7/30/15 RP 7-8. The Temporary Order entered on July 1, 2014 also restrained both parties from dissipating any assets other than in the normal course of business. CP 56-58. Despite the

Temporary Restraining Order entered on July 1, 2014, the Petitioner continued transferring significant sums of money to India after the Order was entered. CP 74.

On October 23, 2014, the Respondent filed a corrected Amended Response to Petition alleging that the marriage is invalid based upon the Appellant's fraud.

Trial in this case took place on June 23 and 24, 2015, and on July 27, 28, 29 and 30, 2015.

On September 4, 2015, the Findings of Fact and Conclusions of Law and the Decree of Dissolution Re: Invalidity of Marriage were entered by the Court. CP 73-83.

On September 14, 2015, the Appellant filed her Motion for Reconsideration. Pursuant to Pierce County Local Rule 7(c)(3), the Respondent was not directed by the Court to submit a Response and therefore, did not do so.

On October 9, 2015, no one appeared for Ms. Avala's Motion for Reconsideration, and the motion was denied. SCP \_\_\_\_ (10/9/15 Clerk's Minute Entry). On October 14, 2015, the Court entered its order denying the motion for reconsideration. SCP \_\_\_\_ (10/14/15 Order Denying Motion for Reconsideration).

2. Counter Statement of Case

The parties were married on March 7, 2012 and separated on May 24, 2014. 7/28/15 RP 6. This was an arranged traditional Indian marriage, after due discussions and agreements between the parties, including the parents of the parties. 7/28/15 RP 25-26. Respondent and Appellant both discussed starting a family, religious convictions, financial obligations, including mortgages and debts, the potential future need to support Respondent's family (per Indian customs only sons support parents) and Appellant's United States VISA status. 7/28/15 RP 15-16; 7/28/15 RP 25; 7/28/15 RP 86. Respondent would not have consented to the marriage had Appellant not agreed and expressed that she wanted to start a family and have children. 7/28/15 RP 11; 7/28/15 RP 25; 7/28/15 RP 71; 7/28/15 RP 76.

Contrary to Appellant's Brief, prior to marriage. Appellant only discussed her H-1B Visa and nothing related to her company sponsoring her for her Green Card. RP 7/27/15 RP 35.

On March 7, 2012, the parties participated in a dual traditional wedding with Appellant and her brother:

Q: All right. And is that for just your marriage, or is that for the other festivity at the hall that I think you were speaking about?

A: This was only for my marriage. *My brother was married,* also, on the same date. . .

6/23/15 RP 37; and respondent's admitted evidence. 7/28/15 RP 29-30. The bride's side of the family paid for the wedding expenses and the groom's family paid for their accommodations as per the traditions. 7/28/15 RP 26-28. Appellant's claim of the wedding costs and wedding debt are not supported by any admissible evidence by the Appellant. The only admissible evidence was from Respondent's State Tax department document proving that the Kumar's Event never existed and the bill was not genuine. 7/28/15 RP 36-37.

Again the Appellant's Brief is misstating the truth and facts regarding the parties' honeymooning. The parties never honeymooned, and the marriage was never consummated after the marriage while the parties were in India. Appellant evaded the idea every time Respondent tried to plan a honeymoon (approximately four). 7/28/15 RP 74. This Testimony was never challenged nor refuted by Appellant during the trial.

After the Marriage, Respondent returned to Dupont, Washington. Appellant returned to Newark until August, 2012 when Appellant relocated to Dupont, Washington with Respondent. Appellant worked from her home-office most of the time throughout the marriage. 7/28/15 RP 44; 6/23/15 RP 151.

The Respondent, Sreenaresh Gopu is age 43. He has been employed by IBM since November, 2002. and is a resident of Dupont, Washington. 7/28/15 RP 4-5. Respondent became a naturalized United States citizen in April, 2015. 7/28/15 RP 5; 7/28/15 RP 62.

The Appellant, Aparna Avala, has two (2) birthdates. Her true date of birth is November 27, 1978, which makes her age 37. However, when she was younger, she changed her birth date so she could take Board and Civil Service exams in India. 7/28/15 RP 122. She changed her birth date to make her four (4) years older. This altered birth date appears on her passport. 7/28/15 RP 122. The Appellant believes that changing her birth date so she could be eligible to take a board exam that other students could not, because of their ages, was an honest thing to do. 7/28/15 RP 155.

The Appellant is employed by WIPRO Limited and has been since 2006. Her education consists of a Masters of Computer Application. 6/23/15 RP 30; 6/24/15 RP 145.

Despite Appellant's statement in her Brief that the parties continued to attempt to start a family after marriage, this is not true. Appellant would not respond to Respondent's initiation for starting a family. Appellant forced Respondent to wear condoms and she, herself, took birth control measures. The very few times the parties had sexual intercourse (Ms. Avala did not

challenge or refute the facts during her testimony) was protected sex 7/28/15 RP 74-75; 7/28/15 RP 143. Contrary to the Appellant's brief, there is no testimony or evidence that the parties ever had unprotected sex, and that never happened. A couple who are seriously trying to start a family would engage in sex more frequently and more often and without protection, unlike in this case. Appellant's own testimonies are in contradiction which proves her statement in her Brief is not true. 7/28/15 RP 143.

During the course of the marriage, the Respondent paid almost all of the parties' living expenses out of his earnings. He paid the mortgage, taxes, and insurance on the home. He also paid for the utilities, cable, internet, some groceries and the house and lawn maintenance expenses. 7/28/15 RP 14. The Appellant paid for her own charge cards, gas, whatever clothing she may need, and her automobile insurance. 7/30/15 RP 3. More importantly, she had \$113,404.00 in cash transfers during the marriage. 7/30/15 RP 3. Shortly after the marriage, the Appellant started sending a lot of money back to India, and continued doing so after she filed for dissolution. 7/30/15 RP 5.

From Appellant's testimony, it has not been clearly established and there was no testimony that her parents intervened to salvage the marriage; neither is there any testimony where Respondent's parents were involved, which is as per Indian custom for the parents of both parties to get involved in

disputes between the couple, if any. As per Appellant's testimony, she invited her parents to go on a pleasure trip:

Q: With those \$6,000 that were transferred, what was that for?

A: I actually requested my parents come to U.S. for the pleasure trip...

6/23/15 RP 83.

Contrary to Appellant's testimony, there is no evidence that Respondent was exhibiting controlling behavior or attacked Appellant. Appellant never once, on direct examination, testified that Respondent physically assaulted her or threatened to assault her. Appellant's testimony was not consistent and changed often. 7/30/15 RP 3-4. Regarding her allegations of abuse by the Respondent, the Appellant testified as follows:

Q: ... Did Mr. Gopu abuse you?

A: Yes.

Q: And how did he abuse you?

A: He was actually controlling everything in my life. Like, every second of my life was - - I use to feel that I was in a solitary jail where I didn't have any freedom for anything.

7/27/15 RP 40-41.

Later that day, the Appellant was asked questions by the Court and testified as follows:

Q: You had your own bank accounts?

A: Yes ma'am.

Q: Did your husband request to be put on those accounts?

A: No.

Q: Alright. And you also had your own charge cards?

A: Yes. Yes, ma'am.

Q: And did your husband ask to see statements on those?

A: No. He has never asked.

Q: Did he ever ask you what your using them for?

A: No...

Q: And you had your own vehicle during this marriage?

A: Yes, ma'am.

Q: And you were employed during this marriage?

A: Yes, ma'am.

Q: And you spent time with your parents and your sister and brother-in-law during this marriage?

A: Yes, ma'am.

7/27/15 RP 59-61.

Further, Appellant states that she fled the home on May 24, 2014. To the contrary, per her own testimony, Respondent dropped Appellant off at the airport to visit her sister in California. 7/28/15 RP 61; 7/28/15 RP 151.

It is fairly clear from the testimony of Respondent in a conversation a week prior to May 24, 2014 that Appellant would kill a child by abortion if she ever got pregnant which was neither challenged nor refuted by Appellant. During that same conversation, Appellant told Respondent that the Green card was more important to her. 7/28/15 RP 74. This is very evident from Appellant's testimony that she is worried about immigration status and would not get her Green card through her employer and her H-1B Visa may become invalid. 7/27/15 RP 34; 7/27/15 RP 37. Appellant testified that she cannot prove any threat to her life. 7/27/15 RP 33. Again, the Appellant's testimony was not consistent and changed often. Appellant is making the text book allegation of abuse in order to file the I-360 immigration petition which she discovered in 2013. 7/27/15 RP 35.

After being served the Petition for Dissolution and Temporary Restraining Order, and during the discovery phase Respondent discovered that Appellant committed fraud by inducing Respondent into marriage by concealing her real intent to acquire United States citizenship quicker and Appellant had no intent of starting a family and mothering Respondent's

children. Starting and enjoying family was very important to Respondent as he is getting up in age and he was repeatedly assured by Appellant that she was marrying Respondent to start a family. 7/28/15 RP 73-81; 7/28/15 RP 11; 7/28/15 RP 25; 7/28/15 RP 71.

The parties did not cohabit after the discovery of fraud by Appellant which is clear from Respondent's testimony.

D. ARGUMENT

1. THE COURT PROPERLY EXERCISED IT'S DISCRETION IN APPLYING RCW 26.04.130 AND VOIDING THE MARRIAGE

RCW 26.04.130 remains in full force and effect, and provides as follows:

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed.

RCW 26.04.130.

This statute relates to voidable marriages, and requires the Court to make an equitable decision using its inherent power to declare an alleged marriage void, and having no force or effect. Estate of Lint, 135 Wn.2d 518, 541, 957 P.2d 755 (1998).

Respondent agrees that there is not a lot of case law relating to this statute. The case law that is present usually concerns a combination of estate cases and dissolution of marriage actions involving undue influence on the Testator and marriages induced by fraud. In Re Romano's Estate, 40 Wn.2d 796, 246 P.2d 501 (1952), Matter of Estate of Lint, 135 Wn.2d 518, 540, 957 P.2d 755 (1998), In Re Estate of Alsup, 181 Wn. App. 856, 327 P.2d 1266 (2014).

The trial court was not required to apply RCW 26.09.040, and the legislature did not intend to entirely occupy the field of voidable or invalid marriages and abolish attacks upon the putative marriage that was...the product of fraud of the grossest kind. (Emphasis added). Matter of Estate of Lint at p. 541.

The trial court's ruling reflects that it considered the two (2) statutes which apply to voidable marriages and then analyzed RCW 26.04.130 to the facts of the case at hand. 7/30/15 RP 6.

The Appellant's brief states that because the trial court entered a finding that "the Respondent was induced to enter into the marriage by Petitioner's fraud involving the "essentials of marriage" CP 75, it must apply RCW 26.09.040. That statement is not supported by any case law whatsoever. Our courts have previously found that in applying RCW 26.04.130, the test is

whether the fraud entered into the marriage contract, and effected an essential of the marital relations. Id. at 146.

The court properly applied RCW 26.04.130 and voided the marriage. The court's ruling should be affirmed.

2. THE TRIAL COURT PROPERLY FOUND THAT THE RESPONDENT WAS INDUCED TO ENTER INTO THE MARRIAGE BY PETITIONER'S FRAUD INVOLVING THE ESSENTIALS OF MARRIAGE.

The trial court found that the expectations of both parties were fully discussed, and which included having children, raising a family, and being financially successful. CP 74. This finding by the court has not been challenged on appeal. Also, the trial court found that the Appellant had no intention of following through with having children with the Respondent. CP 74. This finding was also unchallenged by the Appellant. Further, the Appellant had no intention of raising a family with the Respondent or being financially successful together with the Respondent. 7/30/15 RP 6. All of these expectations relate directly to the essentials of marital relations, and are part of the trial court's record.

The case at hand is clearly distinguishable from the Harding case. In Harding, the court did not find that Mrs. Harding entered the marriage contract with the intent not to carry out the duties and obligations imposed on

her. Id. at 147. In other words, she intended to follow through with the business type aspect of this marriage. Here, however, the court determined that the Appellant had no intentions of honoring the expectations discussed with the Respondent prior to entering the marriage contract. 7/30/15 RP 6.

There is substantial evidence to support the court's finding that the Appellant had no intention of having children with the Respondent. CP 74.

The Respondent testified as follows:

Q: And I believe when you left off, you were discussing the first basis, misrepresentation of her intent of family during marriage proposal?

A: Yes.

Q: Please tell the Court about that.

A: Well, during the marriage proposal - - and we discussed about having a family, and that's one of the main things that - - for me is having a family. It is very important to starting a family as soon as possible, so the first thing is: we have first night. As I mentioned earlier, first night is a very important night. It's called the maiden night where the married couple, first time, consummate the marriage. She didn't want to consummate the marriage at the time. She said she was not comfortable.

Ok. The next time was: a couple of days later, we went to a place called DIRUDADHI; so there we were [sic] able to consummate marriage, and she got up and left and she didn't have - - take the birth control pills, so she didn't want to go for it any more; and then later on, after coming back to US, I planned for a honeymoon trip three times. Every time she would give excuse, oh, it's not a good

place. or work would not permit her for a honeymoon trip. She kept on and on and on, kind of, postponing those every time I planned for a honeymoon trip. Even when I planned in 2013, she said she didn't want to go because of something or the other.

And in May of last year, 2014, May 16, especially on May 16, I kind of brought up the issue about starting a family. And I said, like, Aparna, when we are - - tell me when we are going to - - we should start a family as soon as possible because it's been two years since our marriage. And she was all upset; and at that time, she said she didn't want to think about the family. The first and more - - first - - important thing is the VISA. The Green card is the more important thing, and she told me that I should be thinking about that, not a family; and she - - if she ever got pregnant, she's going to kill the baby by abortion. That kind of upset me very much, and I was kind of shocked to hear that, and next - - I just let it go because next day was my birthday. I didn't want to kind of have this thought lingering, and it was very tough day for me. That's exactly a week before she left the household.

And every time we had sex, it's very - - the few times we had, and all the times she would use contraceptive; and she would force me to use the contraceptives, as well; and whenever I tried to get intimate or tried to, kind of, be close to her and ask for - - let us have sex, and she would say, oh, I have work; I have to support offshore. She would not come to bed around, like, until 3 in the morning; or, I only like November babies. She would give one excuse or the other. So all throughout the course of our marriage, we probably had sex, maybe, 20 times; and that's it. She was never in to that, and be initiating, but she said she loved the babies, and she wanted to have families, everything; and that's why I wanted to marry her, because I wanted to start my own family, and later on things changed.

Q: And how old are you, Sreenaresh?

A: I'm 42.

Q: And how old is Aparna?

A: Well, it's confusing to me. Based on her one date of birth, it will be 41.

Q: Ok. 40?

A: And - - 40 - - and other one will be, oh, 38, probably.

Q: Ok.

A: 38 or 37.

Q: And was this aspect of your marriage discussed as a pre-arranged marriage?

A: Yes.

Q: - - for the families?

A: Yes. Because pre-arranged marriage in India is: everything is discussed. Every aspect of the future is discussed, how you're having the discussion about what is each party's belief and what they're agreeing upon; so families is one of the things that - - that is a unit. Like, we need to have family, start a family as soon as possible; and as your age is growing - - growing, like, it - - the delay you do, it's kind of hard; so we wanted to start a family as soon as possible, because we want to enjoy the family, and that's what - - what was agreed upon; and after marriage, everything flipped.

Q: And do you believe Aparna misrepresented her beliefs on that issue prior to your marriage?

A: Yes. And then she - - all of the reasons which she wanted was - - to marry, we feel that she can work on her immigration. That's, like, she never intended to have a - - start a family.

Despite the record referred to above, the Appellant states in her brief that the "Respondent does not deny that the marriage was consummated..." That is not correct. There is a typo on the transcript at 7/28/15 RP 73 at line 23. The word "were" should be "weren't". The typo is clear if you read the sentence in its entirety and in the context it was provided. Further, it is very troubling that the appellant would make the claim that they had sexual intercourse and "consummated" the marriage a couple days after the "maiden night" when that never happened.

The Appellant also states in her brief "that the parties had unprotected sex, and that the parties had sexual relations throughout the marriage". Appellant's Opening Brief, p. 16. Those claims are not supplemented by the record anywhere. The un-refuted evidence shows that the parties had sex maybe 20 times throughout the 27 month marriage, and all the time the Appellant would use contraceptives and she would force the Respondent to use contraceptives, as well. 7/28/15 RP 74-75. The Appellant, herself, even testified that the Respondent always wore a condom. 7/28/15 RP 143. The

parties' testimony conflicts on the issue of who always demanded using protection during sexual intercourse.

Where there is conflicting evidence, the court needs only to determine whether the evidence viewed most favorably to the Respondent supports the challenged finding. Miller v. Badgley, 51 Wn. App. 285, rev. denied (1988). Concerning the evidence in this light, the court should deem the trial court's findings as verities.

3. THE TRIAL COURT WAS NOT REQUIRED TO FIND THE NINE ELEMENTS OF FRAUD.

The cases cited by appellant relate to the intentional tort of fraud, are clearly distinguishable. One (1) case related to a real estate contract where the buyer alleged he was induced to purchase real property by fraudulent representations of the seller. Williams v. Joslin, 65 Wn.2d 696, 399 P.2d 308 (1965).

In another case, the Plaintiff alleged he was induced to make a loan by fraudulent representations. Sigman v. Stevens-Norton, Inc., 70 Wn.2d 915, 425 P.2d 891 (1967). In the last case cited by Appellant, Angelo v. Angelo, the issues were post-dissolution matters relating to fraudulent concealment, fraudulent inducement, and the Uniform Fraudulent Transfer Act. Id. at 626.

None of these cases dealt with the issue of fraud in the context of marriages and, specifically, fraud in obtaining the other person's consent to the marriage. Cases with these fact patterns are governed by RCW 26.04.130 and RCW 26.09.040, and do not require a finding of the nine (9) elements of fraud. Harding v. Harding, 11 Wn.2d 138, 118 P.2d 789 (1941); Matter of Estate of Lint, 135 Wn.2d 518, 957 P.2d 755 (1998); In Re Estate of Alsup, 181 Wn. App. 856, 327 P.3d 1266 (2014).

4. THE TRIAL COURT PROPERLY APPLIED RCW 26.04.130 AND WAS NOT REQUIRED TO FIND THAT THE MARRIAGE WAS NOT RATIFIED AFTER THE FRAUD WAS DISCOVERED.

The Appellant has not provided any legal authority for her argument. Clearly, the parties never ratified their marriage after the Respondent discovered the Appellant's fraud.

The Appellant vacated the family home on May 24, 2014 when the parties separated. The Appellant filed this dissolution action on June 13, 2014. The Respondent was served on June 16, 2014. On October 23, 2014, the Respondent filed his Corrected Amended Response to Petition alleging fraud and asking the Court to invalidate the marriage. From May 24, 2014 to the present, the parties have never cohabitated or lived together. Accordingly, if RCW 26.09.040 is applicable, then there is substantial evidence to support a

finding that the parties never ratified this marriage after the Respondent discovered the Appellant's fraud, and the trial court's failure to enter said finding was harmless error.

Additionally, it should be noted that at the presentation of the final orders held on September 4, 2015, Appellant vigorously argued against the admission of Finding No. 14 and prevailed. As this court will note, Finding No. 14 was crossed out by the trial court. CP 74. Now, the Appellant is claiming an error by the Court in not entering this finding. That does not seem fair to the trial court.

5. THE APPELLANT SHOULD BE DENIED AN AWARD OF REASONABLE ATTORNEY'S FEES.

The Respondent respectfully requests the Court deny the Appellant's request for an award of attorney's fees and costs and award the Respondent attorney's fees and costs for this appeal.

RAP 18.1(a) provides as follows:

Generally. If applicable law grants to a party the right to recover reasonable attorney's fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless the statute specifies that the request is to be directed to the trial court.

RCW 26.09.140 provides as follows:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable

amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the costs to the other party of maintaining the appeal and attorneys fees in addition to statutory costs.

The Respondent is in need of an award of attorney's fees and costs, and the Appellant clearly has the ability to pay. During the course of this twenty-seven (27) month marriage, the Appellant received approximately \$113,000.00 of which she did not account for, or was unable to account for. 7/30/15 RP 7. From May 24, 2014 through July 30, 2015, the Appellant resided with her sister in California and had very little monthly expenses. Additionally, the trial court's final decision was to the Appellant's advantage financially, given the fact there was a lot of money that she transferred that she did not have a good excuse for. 7/30/15 RP 6.

The Respondent respectfully requests an award of attorney's fees and costs against the Appellant for this appeal.

E. CONCLUSION

The Court should affirm the trial court because it properly exercised its discretion in apply RCW 26.04.130 and voided the marriage.

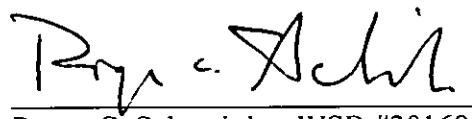
There was substantial evidence to support the trial court's finding that the Respondent was induced to enter into the marriage by the Petitioner's fraud involving the essentials of marriage.

The trial court was not required to find the nine (9) elements of fraud, and properly applied the correct standard of fraud for invalidating marriages.

RCW 26.04.130 does not require the Court to find that the parties ratified their marriage after the fraud was discovered. However, substantial evidence exists to show that the parties never ratified the marriage after the fraud was discovered, and, therefore, any error by the trial court was harmless error.

Finally, the Respondent should be awarded his attorney's fees and costs against the Appellant incurred by him in defending this appeal.

DATED this 31<sup>ST</sup> day of MAY, 2016.

  
Roger C. Schweinler, WSB #20169  
Attorney for Respondent

**CERTIFICATE OF SERVICE:**

The undersigned certifies that on this day she delivered by U.S. Mail or ABC-LMI delivery to Andrew Helland, 960 Market Street, Tacoma, WA 98402 a true and correct copy of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

5-31-16      W. J. Hewett  
Date                      Signature