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Court of Appeals  
Division II  
State of Washington  
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NO. 50920-2-II

IN THE COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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SHANE D. REGO, Appellee/Petitioner

v.

SUZANNE J. REGO, Appellant/Respondent.

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REPLY BRIEF OF APPELLANT

Trial Court No. 16-3-0052-1

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Submitted by:  
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## II. TABLE OF AUTHORITIES

### Washington State Cases

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### III. ARGUMENT

***1. The appropriate standard of review for this case is de novo.***

In this case, the appropriate standard of review is de novo review. Appellee/Petitioner (hereinafter “Mr. Rego”), cited multiple cases regarding standard of review in his brief. However, Mr. Rego failed to make any assertion or argument regarding which standard of review is applicable in the present case. In the present case, there are three issues before the appellate court: (1) Did the trial court consider and adopt extrinsic evidence; (2) Was the consideration and adoption of the extrinsic evidence a violation of the constitutional due process rights of Appellant/Respondent (hereinafter “Ms. Rego”); and (3) Did the trial court incorrectly interpret the CR2A Agreement. All three of these issues are questions of law. Questions of law should be reviewed de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash.2d 873, 880, 73 P.3d 369 (2003). Because the issues at hand are questions of law, all of the issues should be reviewed de novo.

***2. The trial court inappropriately considered and adopted extrinsic evidence.***

The trial court inappropriately considered and adopted the spreadsheet attached to Mr. Rego’s trial brief (hereinafter the “Spreadsheet”) and erred in doing so. Mr. Rego did not argue in his brief that the Spreadsheet was

not extrinsic evidence. Mr. Rego's argument relies solely on the assertion that the trial court did not "employ" the Spreadsheet in making its decision. Mr. Rego draws this conclusion because the trial court did not reference the Spreadsheet in its Memorandum Opinion. However, the appellate court is not limited to a trial court's memorandum opinion when determining the trial court's conclusions of law and findings of facts. In *Dalthorp*, the appellate court found that the record supported an implicit conclusion by the trial court of parental fitness, despite the trial court's failure to make an explicit finding in its memorandum opinion. *Matter of Marriage of Dalthorp*, 23 Wn.App. 904, 911-12, 598 P.2d 788 (1979).

The record clearly reflects that the trial court considered the Spreadsheet in making its decision. The trial court and both parties engaged in discussions regarding the Spreadsheet, during which the trial court refused Ms. Rego's request that the trial court not consider it. RP 22-25. The trial court also makes references throughout the record to the spreadsheet while questioning the positions of the parties. RP 16-18. The record shows the trial court did consider the Spreadsheet as evidence, whether or not it was submitted as such, and therefore Mr. Rego's argument fails.

Mr. Rego also argues that the Spreadsheet was used to summarize his argument regarding how the CR 2A Agreement should have been

interpreted. This argument fails because the Spreadsheet includes conclusions and assertions that were not in evidence. Even Spreadsheets and summaries used to aid the trier of fact must meet certain evidentiary standards. A summary chart must be “a substantially accurate summary of evidence properly admitted.” *State v. Lord*, 117 Wn.2d 829, 856-57, 822 P.2d 177 (1991). In this case, the Spreadsheet draws conclusions regarding the intent of the parties that was not in evidence. Both parties agree that the trial court did not hear testimony regarding the intent of the parties when they included the terms “equalize the property distribution.” Therefore, whether the Spreadsheet was submitted as evidence or as a chart to assist the trier of fact, it was improperly submitted and the trial court erroneously considered and adopted it.

***3. The trial court improperly interpreted the CR 2A Agreement.***

The trial court interpreted the CR 2A Agreement incorrectly. Mr. Rego erroneously asserts that Ms. Rego is appealing the trial court’s decision because it was unfair. This is an incorrect interpretation of Ms. Rego’s argument. Ms. Rego has never objected to the terms of the CR 2A Agreement on the basis that they were unfair. She has only objected to the court’s decision to interpret the terms of the agreement, specifically the terms “equalize the property distribution,” to mean equalize community property and liabilities. The issue before the appellate court is not whether

the agreement was fair or entered into fairly. The issue is whether the trial court correctly interpreted the CR 2A Agreement in accordance with required principles of contract interpretation.

Both parties agree that if terms are vague or ambiguities exist, those ambiguities should be construed against the drafter of the contract. *Pierce County v. Sate*, 144 Wn.App. 783, 813, 185 P.3d 594 (2008). Mr. Rego does not deny that his attorney drafted the CR 2A Agreement. Mr. Rego's brief appears to argue that Ms. Rego's participation in modifying some parts of the agreement means that any vague terms in the agreement should not be construed against Mr. Rego. However, this does not change the fact that the terms in question were drafted by Mr. Rego's attorney. Mr. Rego drafted the terms "equalize the property distribution," and therefore ambiguities in these terms should be construed against Mr. Rego.

Mr. Rego argues that Ms. Rego's interpretation of the term "property distribution" strains credulity, however, he fails to give any explanation as to why this is the case. It is not disputed that no testimony regarding the intent of the parties and meaning of the terms in the CR 2A Agreement were presented to the trial court. Therefore, Mr. Rego's conclusion is unsupported by any evidence. Since neither party submitted testimony regarding the intent of the parties and the meaning of the terms of the CR 2A Agreement, the court is limited in its interpretation of the CR 2A

Agreement by the four corners of the document.

When interpreting contracts, courts will generally give terms in a contract “their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent.” *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). In addition, Washington continues to follow the objective manifestation theory, under which the court will determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties. *Id.* at 503. In this case, the trial court should have interpreted the terms “equalize the property distribution” to mean their ordinary, usual, and popular meaning while taking into consideration the entirety of the CR 2A Agreement and construing any vagueness in these terms against Mr. Rego.

As Ms. Rego previously argued, the above-referenced terms do not specify that property distribution should mean community property minus all liabilities. The CR 2A Agreement specifically designates liabilities and property in other parts of the agreement, however the terms in question do not designate liabilities. In addition, the terms in question do not specify the property as community or personal, despite the drafter's legal expertise. The ordinary meaning of property would be items that someone owns or possesses. It would not be usual or popular to consider the term

property to include liabilities. Therefore, the objective manifestation of the parties' intent and the plain meaning of the terms in question require the court to interpret the terms "equalize the property distribution" to mean equalize the distribution of personal and community assets for each party, not including liabilities.

Mr. Rego's brief fails to offer any reason, other than Mr. Rego's subjective intent, for the terms "property distribution" to be interpreted to mean equalize the distribution of community assets minus liabilities for each party. Mr. Rego's only argument is that "it is implausible to conclude that Mr. Rego intended to remove consideration of community debt from the equalization of the overall division." Respondent's Brief, 11-12.

However, not only does Mr. Rego fail to offer any reason why this interpretation is implausible, it *is* plausible given the disparity in incomes between the two parties. Mr. Rego also argues that the goal of the court is almost always to equalize the award of net community property. However, this argument is irrelevant because the trial court in this case was bound by the CR 2A Agreement and made its decision based on its interpretation of that agreement, not based upon its authority under RCW 26.09.080. CP 57.

***4. Ms. Rego has not made erroneous or unsupported assignments of error.***

Ms. Rego has not made erroneous or unsupported assignments of error. Mr. Rego claims that Ms. Rego has not presented any argument in supported of her claimed assignments of error. This is simply incorrect. Ms. Rego's brief includes arguments supported by citations to legal authorities and to the record that support her arguments. Mr. Rego supports this claim by arguing that nothing in the record indicates that the trial court considered the Spreadsheet. However, the record clearly shows that the trial court read the Spreadsheet, discussed the Spreadsheet, and referenced it during closing arguments. RP 16-18, RP 22-25.

Mr. Rego also argues that any reference to testimony during trial must be disregarded because the Record of Proceeding is limited to closing arguments. The only reference that Ms. Rego makes in her arguments to testimony is the fact that there was no testimony regarding the intent of the parties or the interpretation of the terms in regards to the CR 2A Agreement. However, closing arguments are sufficient to support this assertion. Counsel for Ms. Rego stated during closing, "there's been no testimony about this spreadsheet that's submitted." RP 7. Further, there is no denial during closing arguments at trial that testimony related to the Spreadsheet or the parties' intent was not provided. In fact, Mr. Rego argues in his own brief that the trial court "relied exclusively on the

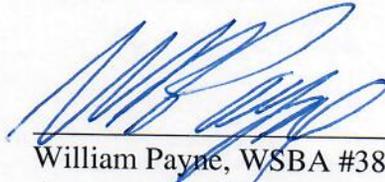
Agreement entered by the parties prior to the trial.” Respondent’s Brief, 6.

#### IV. CONCLUSION

In conclusion, Ms. Rego respectfully asks the Court to find that the trial court erred in admitting, considering, and adopting the Spreadsheet submitted by Mr. Rego, failed to apply appropriate principles of contract interpretation and remand the case accordingly and provide any other relief appropriate in the premise.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of March, 2018

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**PAYNE LAW, PS**

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