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Division II
State of Washington
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No. 51848-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

NGOMA MOSES HOWARD,

Appellant,

v.

JESSICA RAE HOWARD

RESPONDENT

ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY

RESPONSIVE BRIEF OF RESPONDENT

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I. INTRODUCTION

The Trial Court correctly entered final pleadings in the dissolution matter between Ngoma Howard (hereinafter referred to as “Appellant”) and Jessica Howard (hereinafter referred to as “Respondent”) that were consistent with and incorporated by reference in the CR 2A Agreement signed by the parties and therefore the decision of the Trial Court should not be disturbed. The Appellant’s assignments of error identified in Paragraph A of his opening brief do not match the assignments of errors as address in the argument section in Paragraph D. For clarity, this brief addresses the assignment of error in order and as described in the argument section in Paragraph D of the Appellant’s opening brief.

II. ASSIGNMENTS OF ERROR

Issues Pertaining to Appellant’s Assignment of Error

1. Did the Trial Court have jurisdiction to enter final pleadings consistent with the signed CR 2A Agreement? **Yes.**
2. Can the Trial Court issue an order of child support when the appellant has not specifically consented to pay child support? **Yes.**
3. Did the Trial Court enter an order that was equitable? **Yes.**

4. Was the Trial Court acting in a judicial capacity when it entered the final pleadings? **Yes.**
5. Should the Appellant be able to challenge the CR2A Agreement based upon his claim that he was under duress at the time of the signing of the CR2A Agreement? **No.**
6. Did the State of Washington and/or the Clerk's office of Pierce County commit a fraud on the Appellant? **No.**
7. Does the Social Security Act govern the issue of child support or spousal support in this case? **No.**
8. Are child support and spousal support voluntary acts that require specific consent for the Trial Court to enforce Agreements regarding child support and spousal support? **No.**

III. STATEMENT OF THE CASE

A. Procedure

The Respondent filed a Petition for Dissolution on June 13, 2017. *Clerk's Papers* at 37. The Appellant hired an attorney who filed a notice of appearance on June 16, 2017. The Appellant filed an acceptance of service, which accepted service of the Petition, Summons, and Proposed Parenting Plan on June 19, 2017. *Clerk's Papers* at 52-53. The Appellant then filed a Response to Petition on

July 6, 2017. *Clerk's Papers* at 54-56. The Appellant and the Respondent participated in private mediation on July 13, 2017. *Clerk's Papers* at 61. Both parties were represented by counsel. *Id.*

The Respondent filed a motion to enforce the CR2A Agreement which requested the Trial Court sign final pleadings in the ongoing dissolution action which was consistent with the CR2A Agreement signed by the parties. This motion was filed on March 29, 2018. *Clerk's Papers* at 58. The Appellant was duly served this motion and appeared at the hearing. *Clerk's Papers* at 57. The Court signed final pleadings consistent with the CR2A and which incorporated the CR2A by reference. This appeal follows.

B. Facts

The parties were married on March 25, 2006 in Tacoma, Washington. *Clerk's Papers* at 37. The parties separated on April 1, 2017, at the time of the filing of the Petition for Dissolution. *Id.* The parties had two children, Ages 9 and 6. *Clerk's Papers* at 38. The children are now 11 and 8. The Appellant accepted service of the initial dissolution pleadings through counsel. *Clerk's Papers* at 52-53. The Appellant filed a response to the Dissolution Petition on July 6, 2017. *Clerk's Papers* at 54-56. In the Response, the Appellant agreed and admitted the date of marriage, the date of separation, the

jurisdictional basis for the Court to adjudicate the marriage, the children of the marriage, information about the children's residences, that child support and a parenting plan should be entered, division of assets and debts, and jurisdiction over the children. *Id.* The Appellant disagreed or indicated he lacked information to respond to whether real property should be divided, whether spousal support should be ordered, and whether attorney fees and costs should be ordered. *Id.* Notably, the Appellant did not challenge the jurisdiction of the Trial Court to adjudicate the issues of spousal support or attorney fees. The Appellant simply noted "The Petitioner has the ability to support herself." *Id.*

The parties participated in private mediation with Norman Margullis on July 13, 2017. *Clerk's Papers* at 61. The Appellant was represented by Jeremy Swann and the Respondent was represented by Samuel Page. The parties stipulated in the Agreement that "the parties were represented at the time of the entry of this Agreement and fully understand the contents of the Agreement," and that "The parties intend this to be a binding Agreement and a full and final resolution of all issues in their dissolution case." *Id.*

The CR2A Agreement specified the details of a parenting plan; the method of calculating child support and the attendant issues

including the start date for child support; the division of debts and assets; the division of the parties' real property; the division of the parties' respective retirement accounts; spousal support in the amount of \$750.00 per month for a term of 48 months commencing in August 2017; and attorney fees and costs in the amount of \$3,500.00. *Clerk's Papers* at 62.

The Appellant did not cooperate with the exchanging of financial information or the execution of signed final pleadings. Mr. Swann withdrew as counsel on October 26, 2017. The Respondent filed her first motion to enforce on January 17, 2018 with respect to the production of necessary documents for calculating child support. The Respondent complied. The Respondent then filed another motion to enforce, requesting the Court enter order consistent with the CR2A Agreement. The Appellant was served the motion to enforce timely. *Clerk's Papers* at 58.

The Appellant appeared at the hearing for the motion to enforce. *Clerk's Papers* at 99. The Appellant did not object to service at the time of the hearing and has not done so now. *Verbatim Report of Proceedings* at 3-9. The Appellant filed a written motion to continue the day of the hearing. *Clerk's Papers* at 101. The Appellant made an oral statement to the Court that purported to make a special

appearance in front of the Court. *Verbatim Report of Proceedings* at 4. The Appellant objected to jurisdiction at the time of the hearing but did not submit any documents supporting this claim. *Id.* The Court ruled it did have jurisdiction over the matter. *Verbatim Report of Proceedings* at 7. The Appellant also made an oral motion to continue the case, as the written motion was not before the Court at that time. *Id.* The Trial Court found the orders were consistent with the CR2A Agreement and the Appellant had not appropriately lawfully challenged the CR2A Agreement. *Id.* The Trial Court also found the CR2A Agreement was lawfully entered into by the parties. *Id.*

The Appellant did not and has not filed any motions or pleadings to challenge the CR 2A Agreement or the final pleadings. This appeal followed the entry of the final orders.

IV. LEGAL AUTHORITY AND ARGUMENT

- a. *The Trial Court had jurisdiction over the parties and the matter and could therefore enter final pleadings consistent with the CR 2A Agreement signed by the parties.*

The issue here is whether or not the state of Washington has jurisdiction to adjudicate the issues of spousal support and child support in the Howard dissolution. Jurisdiction over an issue is discussed in terms of subject matter jurisdiction and personal

jurisdiction. Subject matter jurisdiction is reviewed de novo. *Dougherty v. Department of Labor and Industries for State of Washington*, 150 Wn.2d 310, 316 (2003). The critical concept in determining whether a Court has subject matter jurisdiction is the type of controversy. *Id.* A dissolution action is a statutory proceeding. *In re Marriage of Robinson*, 159 Wn.App. 162, 167 (Div. 3, 2010.). RCW 26.09.030 determines subject matter jurisdiction in dissolution cases and provides a party may file a petition to dissolve a marriage if he or she is a resident of this state or is a member of the armed forces and is stationed in this state or is married to a party who is a resident of this state or who is a member of the armed forces and is stationed in this state. *Id.* at 168; *see also* RCW 26.09.030.

Personal jurisdiction is the second “prong” of inquiry here. However, an in-depth review of personal jurisdiction is not necessary in this case. A party waives a claim of lack of personal jurisdiction, and thus submits himself or herself to the jurisdiction of the Court, if he or she omits to make such a claim (a) in a motion “made before pleadings in a further pleading is permitted” or (b) “in a responsive pleading or an amendment thereof permitted by CR 15(a) to be made as a matter of course. *In re Marriage of Steele*, 90 Wn.App. 992, 997 (1998). A party also waives any claim of lack of personal jurisdiction

if, before the Court rules, he or she asks the Court to grant affirmative relief, or otherwise consents, expressly or impliedly, to the Court's exercising jurisdiction". *Id.*

In this case, the Court has subject matter jurisdiction. In the answer to Petition, the Appellant admits the parties were married in Pierce County, live in Pierce County, and own real property in Pierce County. Further, the Appellant has submitted no information to show the parties were not residents of the state of Washington. Under RCW 26.09.030, both parties are residents of the state of Washington. Therefore, the Court has subject matter jurisdiction over the matter in controversy.

The Appellant did not raise any object to personal jurisdiction at the time of the filing of the case. In the Response to Petition, the Appellant, in fact specifically consented to jurisdiction by admitting the allegation of the Respondent that Washington had jurisdiction. The Appellant also asked for affirmative relief in his Response, by requesting the Court enter an order of child support, dispose of the parties' property and enter a parenting plan. In fact, the Appellant continues to ask for affirmative relief in his opening brief by requesting this Court enter a new parenting plan in his conclusion.

In all, the Court simply does have jurisdiction, both subject matter jurisdiction and personal jurisdiction, to dissolve the marriage between the parties.

b. The State of Washington has legislated a scheme of child support and spousal support that does not include a specific requirement that the Appellant consent first to be bound by an order of the Court.

The issue here is whether the Appellant has to specifically consent to being subject to the Court addressing child support and spousal support. This is a jurisdictional claim. Jurisdiction is described in Paragraph 3.a *supra*. The Pierce County Superior Court has jurisdiction over the marriage. RCW Chapter 26.09 details scope of the Court's jurisdiction over a dissolution of marriage action. In a proceeding for dissolution of marriage, the Court shall order either or both parents owing a duty of support to any child of the marriage dependent on either or both spouses. *RCW 26.09.100*. In a proceeding for dissolution of marriage, the Court may grant a maintenance order for either spouse. *RCW 26.09.090*.

A dissolution action is a statutory action. The boundaries of the statutory scheme mandate the Court issue an order of child support if there are dependent children and allow the Court to issue an order of spousal support. The issue of formal consent, as

articulated by the Appellant, is irrelevant. The case law and statutes cited are simply not relevant to this action. The relevant determination is 1.) if the Court has jurisdiction and 2.) did the Court enter orders consistent with the statutory scheme. The Court clearly has personal and subject matter jurisdiction over the Appellant. The statute allows for spousal support and mandates child support. Therefore, the Court entered orders that proper.

c. The Court did not abuse its discretion in entering final pleadings that were consistent with the CR 2A Agreement.

The issue here is whether the Trial Court abused its discretion by entering an inequitable dissolution decree. The Appellant argues there are elements of fraud, but his argument focuses mostly on an inequitable outcome in the proceedings. The Court is not obligated to make an equal division of property or ensure that the parties' incomes are equal. *In re the Marriage of Larson and Calhoun* 178 Wn.App. 133 (Div. 1 2013). In a proceeding for dissolution of the marriage, the Court shall, without the regard to misconduct, make such disposition of the property and liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors. RCW 26.09.080.

In this case, the Trial Court adopted final pleadings that were consistent and incorporated by reference the CR 2A Agreement. The Appellant agreed to the CR2A under the advice of counsel. The Trial Court held the CR2A Agreement, and the division of assets and the award of spousal support contained therein was not lawfully challenged. The Appellant had rights under CR 60 to challenge the CR2A Agreement of the final dissolution decree. He did not. The Court did not abuse its discretion when adopting the orders. The Appellant has not provided to this Court or to the Trial Court that there was an inequitable division of assets. The Appellant argument with respect to federal laws about child support and spousal support enforcement simply do not have any relevance to the issue at hand.

d. The Trial Court was operating in a judicial capacity when it entered the final orders in the case.

The issue here is whether the Trial Court Judge was operating in a judicial capacity or an administrative capacity. The Appellant cites irrelevant statutes and cases to support his proposition that the Court was operating in an administrative capacity. The Appellant does not cite anything of consequence to support the notion the Trial Court Judge was operating as anything other than a Judicial Officer. The Trial Court entered a dissolution decree and the attendant

pleadings pursuant to RCW Chapter 26.09. The Court made specific findings that it had jurisdiction over the matter in controversy and the parties. Since the action was properly before the Court and the Court had jurisdiction, the Trial Court was well within its authority to enter the orders.

e. The Appellant has not shown that he was under duress when he signed the CR 2A Agreement and has not utilized the appropriate remedy if this was the case.

The issue here is whether the Appellant can challenge the CR2A Agreement and the final pleadings on appeal claiming fraud or duress. Again, the Appellant does not apply any relevant law to the issue at hand. The Appellant does not have the ability to ask this Court to relive him of a final judgment or order he believes was the result of fraud or duress. CR 60(b)(4) and (11) allows the Appellant relief from a final judgment if there was fraud or misconduct of the prevailing party or as justice so requires. CR 60(b)(4),(11).

The Appellant did not exercise this option. The Trial Court specifically found the CR2A Agreement was not lawfully challenged. This ruling clearly references an ability to challenge the CR2A. The Appellant could have also challenged the final orders in CR 60. He did not. Therefore, the claim of duress is not properly before this Court.

f. *The State of Washington and the Clerk of Pierce County did not commit a fraud upon the Appellant.*

The issue here is whether the state of Washington engaged in fraud against the Appellant. The argument of the Appellant relates to the conduct of the Respondent. In his conclusions, the Appellant also states the “fraud” is related to the authority of the state of Washington to be the governing party of the marriage. Spousal support and the division of property are to be made without regard to misconduct. *RCW 26.09.090* and *RCW 26.09.080*. Further, as discussed in Sections 3(a) and (b), *supra*, the Court is vested with authority to adjudicate dissolution proceedings among residents of the State of Washington under *RCW 26.09.030*.

The Appellant does not articulate specific reasons why there was fraud or what the fraud consisted of. It seems the fraud argument is related to the jurisdictional argument above. In any event, the Court has the jurisdiction over this case because the parties are both residences of the state of Washington and the Appellant consented to the jurisdiction of the Court in his Response to Petition. The allegation regarding the conduct of the Respondent are not relevant to the division of assets, the award of spousal maintenance, or the award of child support.

- g. Spousal Support and Child Support are governed by state statute and the orders were entered pursuant to those statutes; the federal statutory scheme described by the Appellant is not applicable in this case.*

The issue here is what law applies to the case in controversy. Dissolution actions in Washington State are governed by RCW 26.09. The Appellant claims spousal support and child support are governed by the Social Security Act. Spousal Support and Child Support are governed in this case by RCW 26.09.080 and RCW 26.09.090.

The entirety of the Appellant's argument hinges on the proposition that the Social Security Act applies. It doesn't, and his argument is irrelevant. The Appellant specifically asked the Court to address these issues in his Response and specifically agreed to those terms in the CR 2A Agreement.

- h. The Court can enter child support orders and spousal support order without specific consent from the obligor.*

The issue here is whether specific consent to pay spousal support or child support. Again, the Appellant relies on irrelevant statutes to support his propositions. RCW 26.09.030 does not require consent. Consent is not the relevant factor over the Court ability to adjudicate this case. Personal Jurisdiction and subject matter jurisdiction are the dispositive factors. These issues have already been discussed

above. In any event, the Appellant did consent to the case adjudicating these issues in his Response to Petition.

V. ATTORNEY FEES AND COSTS

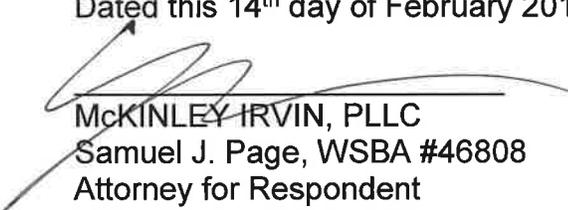
The Respondent respectfully requests costs and attorney fees pursuant to RAP 14.2 and 18.1. The Respondent has the need and the Appellant has the ability to pay. Attorney fees and costs are allowed in a dissolution action after consideration of the financial resources of both parties. *RCW 26.09.140*. *RCW 26.09.140* also allows the Appellate Court in its discretion to order a party to pay for the cost of maintaining the appeal and attorneys' fees in addition to statutory costs. The Trial Court ordered attorney fees in the amount of \$3,500.00 as described in the CR 2A Agreement. This appeal is brought in bad faith and is not based on relevant law. The Respondent has had to expend significant resources to defend this appeal and should be entitled to recover costs and attorney fees.

VI. CONCLUSION

The Court should not disturb the lower Courts decision to enforce the CR2A Agreement and enter pleadings consistent therewith. The Court has jurisdiction, both personal and subject matter, over the case at issue and exercised authority within the

scope of RCW Chapter 26.09. The Appellant has cited irrelevant law and has misinterpreted it to apply in this case when it does not.

Dated this 14th day of February 2019.



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Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that on February 14, 2019, I caused a true and correct copy of this Brief of Petitioner to be served on the following in the manner indicated below.

APPELLANT

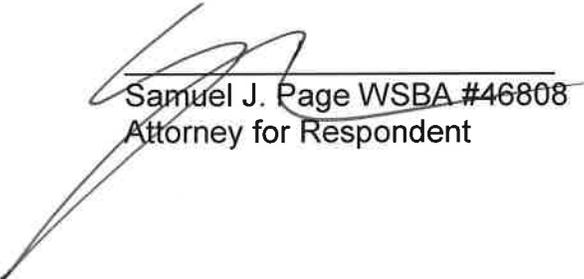
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RESPONDENT

Jessica Howard via Email

Dated this 14th day of February 2019, at Tacoma, Washington
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