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COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

Robert Collins,

Appellant

v.

Nia Collins,

Respondent.

OPENING BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. The trial Court erred by denying the motion of Robert Collins to compel arbitration.
2. The trial Court erred by entering Findings of Fact and Conclusions of Law and Final Divorce Order.
3. The trial Court erred by distributing property in the Decree without Findings of Facts and Conclusions of Law supporting the distribution.
4. The trial Court erred by limiting the arbitrator's role as set forth in the Cr2a agreement.
5. The trial Court erred by failing to award the Appellant his attorney's fees.
6. The Appellant should be awarded his reasonable attorney's fees.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by denying the motion of Robert Collins to compel arbitration?
Assignment of Error 1
2. Did the trial court err by entering the Findings of Fact and Conclusions of Law about a Marriage and Final Divorce Order?
Assignment of Error 2

3. Did the trial Court err by distributing property in the Decree without Findings of Fact and Conclusions of Law supporting the distribution?
Assignment of Error 3

4. Did the trial Court err by limiting the arbitrator's future role as set forth in the Cr2a agreement?
Assignment of Error 4

5. Did the trial court err by denying the Appellant his attorney's fees?
Assignment of Error 5

STATEMENT OF THE CASE

The underlying proceeding is a dissolution of marriage action without children.

The divorce proceeding was initiated by Nia Collins, wife/Petitioner. Robert Collins, husband/Respondent/Appellant, initiated this appeal. Hereinafter, without disrespect and for clarity purposes, Nia Collins is referred to as Nia or wife, and Robert Collins is referred to as Robert or husband.

At issue is the trial court's ruling that a Cr2a agreement between the parties which mandated resolution of unresolved issues with regard to the drafting of the Decree of Dissolution, Findings of Fact and Conclusions of Law, as well as implementing the terms and provisions of the Cr2a agreement by binding arbitration need not be complied with and that the trial court could limit the arbitrator's future role.

Factual Background

The parties hereto were married on November 30, 1984 and separated on August 9, 2017.

The parties did not have any children born of issue to them as a result of their marriage to each other.

Procedural Background

On August 9th, 2017, the wife, Nia Collins, filed for dissolution of marriage in the Pierce County Superior Court.

The parties hereto spent 10 hours in mediation on May 31, 2018 in a successful effort to resolve their dissolution issues and entered into a Cr2a agreement. CP 152.

The Cr2a agreement provided that the terms of the agreement constituted a legally binding and enforceable agreement in full and final settlement of all claims foreclosed by the terms of the Cr2a agreement. CP 85.

The Cr2a agreement further provided:

Any disputes in drafting of the final documents or as to reserved and/or omitted issues shall be resolved by Norm

Margullis in binding arbitration. Cost for the arbitration fees shall be divided 50% – 50%, but shall be subject to reallocation by the arbitrator. In addition, the arbitrator shall have the power to award attorney’s fees incurred in conjunction with the arbitration as deemed appropriate by the arbitrator, Norm Margullis, in the event he finds that either party has acted in bad faith. CP 87.

The CR2a agreement further provided as follows:

In the event of a dispute in the drafting of final orders reflecting and incorporating this agreement, or subsequently in construing, implementing or effectuating this agreement, the parties agree to submit the dispute(s) to Norm Margullis in binding arbitration. The fees of the arbitrator shall be advanced and paid equally by the parties, but subject to reallocation by the arbitrator.

Attorney’s fees may be awarded by the arbitrator in the event the arbitrator finds that either party has acted in bad faith, otherwise each party shall pay his/her own attorney’s fees. CP 94 – 95

Nia's attorney was to draft the final pleadings for entry with the court. CP 87.

The parties were unable to agree as to the terms of the final pleadings. The wife's attorney prepared and presented her proposed final pleadings to the arbitrator. The husband prepared his proposed final pleadings. The arbitrator rendered a decision with regard to the issues before him pertaining to the final pleadings and related issues. The arbitrator fined the wife \$1,500 for acting in bad faith with regard to the sale of the family home. The wife had unilaterally entered into a purchase and sale agreement of the family home without husband's knowledge or consent. CP 145-154.

The wife redrafted final pleadings which husband did not believe were correct. The sale of the parties' residence had not yet closed. CP 153.

The wife filed with the Pierce County Superior Court Clerk, a "Motion and Declaration for Expedited Order Confirming Arbitration Award for Appointment of Special Master and" (sic) on August 22nd 2018. CP 104. The motion requested the Court to grant the following relief:

An expedited Order confirming arbitration award and appointing Special Master for completion of the closing of pending sale of the family home pursuant to the arbitration ruling issued by arbitrator Norm Margullis on August 20, 2018; and for the deposit of seller's net proceeds from the sale of the family home into the trust account of Nia's attorney pending allocation by further court order. CP 106.

Husband responded, claiming he was not in agreement with wife's motion, and he also filed a Motion to Compel Arbitration on September 25th, 2018. CP 159.

The sale of the family home resulted in approximately \$369,475 for distribution.

On October 28, 2018 the court entered an Order on Motion denying Robert's Motion to Compel Arbitration (CP 106-161). The Court' also made a determination of the allocation of home sale proceeds and entered Findings and Conclusions about a Marriage (CP 162-166) and entered a Final Divorce Order. CP

167-177. The Court made a final determination and allocation of approximately \$369,475 of funds in the wife's attorney's trust account. (CP 176)

The Order on Motion to Compel Arbitration limited arbitrator Norm Margullis's future involvement in this matter as follows:

1. Resolving any dispute as to community or post separation charges on specified accounts (CP 170); 2. Resolving any disputes/requests for setoff pertaining to Robert's obligation to pay for the second mortgage (CP 174); 3. Resolving any disputes pertaining to debt payment and personal property setoff. (CP 176).

ARGUMENT

I. THE TRIAL COURT ERRED BY DENYING THE MOTION OF ROBERT COLLINS TO COMPEL ARBITRATION

The standard of review of a trial court's decision on a motion to compel or deny arbitration is de novo. *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 342, 103 P.3d 773 (2004).

The laws of the State of Washington favor the enforcement of agreements to arbitrate.

In Agars v. Waters, 69566 – 5 – I Division I of the Court of Appeals on December 16, 2013, in an unpublished opinion, stated that: "under the uniform arbitration act, the trial court may order the parties to arbitrate on motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement." RCW 7.04A.070(1).

The Agars court continued by stating:

"When presented with a motion to compel arbitration, the trial court asks only whether it can 'fairly say that the parties' arbitration agreement covers the dispute...."
Davis v. General Dynamics Land Systems, 152 Wn. App. 715, 718. Any doubt concerning the scope of an arbitration clause should be resolved in favor of coverage. *Kamaya Co., Ltd. v. American Property Consultants, Limited*, 91 Wn. App. 703, 714.

The Agars court continued by stating:

“There is a strong public policy in Washington State favoring arbitration of disputes.” *Perez v. Mid Century insurance*, 85 Wn. App. 760, 765. Public policy favors arbitration because it “eases court congestion, provides an expeditious method of resolving disputes and is generally less expensive than litigation.” *Muncie vs Walla Walla College*, 80 Wn.App. 92, 95. “There is no reason why, in the face of their solemn agreement, the party should be given out an alternative of invoking the time-consuming and costly machinery of the court's in lieu of the relative expedience of an arbitration proceeding. *Hanford Guards Union of America local 21 v. General Electric Company*, 57 Wn.2d 491, 498. “It is the evaluation and conclusion of the arbitrator, and not those of the courts, that the parties have promised to abide by.” *Hanford Guards*, 57 Wn.2d at 498.

The Agars court concluded that the dispute must be decided by arbitration in accordance with the parties' agreement.

In Young v. Cosgrove, Division I, June 10, 2013, in an unpublished opinion, the court addressed a Cr2a agreement that provided that any disputes regarding unresolved issues shall be submitted to binding arbitration. The Young court stated:

"If the reviewing court 'can fairly say that the parties arbitration agreement covers the dispute, the inquiry ends because Washington the strongly favors

arbitration.' *Davis v. General Dynamics Land Systems*, 152 Wn. App. 715, 718; *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 454. Any doubts regarding the applicability of an arbitration agreement 'should be resolved in favor of coverage. *Heights at Issaquah Ridge Owners Association v. Burton Landscapescape Group, Inc.* 148 Wn. App. 400, 405. It is well-established that 'if the dispute can fairly be said to involve an interpretation of the agreement, the inquiry is at an end and the proper interpretation is for the arbitrator.' *Meat Cutters Local Number 494 v. Rosauer's Super Markets, Inc.*, 29 Wn. App 150, 154."

RCW 7.04A.060(1) states that an agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of the contract.

The Collins' entered into a CR2a agreement that provided any disputes with regard to the drafting of final orders, as well as with regard to implementing the CR2a agreement, would be arbitrated by arbitrator Norm Margolis. CP 94 – 95.

Nia, who never filed a motion for entry of final pleadings, should have been directed by the court to return to arbitrator Norm

Margullis for establishment of the terms and provisions of the Final Findings of Fact and Conclusions of Law about a Marriage and Order of Divorce.

II. THE TRIAL COURT ERRED BY ENTERING FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND A FINAL DIVORCE ORDER

The parties agreed to resolve any issues pertaining to the terms and provisions of the Final Findings of Fact and Conclusions of Law about a Marriage and Final Divorce Order by arbitration utilizing arbitrator Norm Margullis. CP 87.

The parties did not agree to the terms and the provisions of the Final Findings of Fact and Conclusions of Law about a Marriage and Final Divorce Order. CP 152. The parties initially submitted their differences to arbitrator Norm Margullis who issued his decision. CP 153. Nia's attorney redrafted the Final Findings of Fact and Conclusions of Law about a Marriage and Final Divorce Order. Robert Collins did not agree with the provisions. CP 152. Nia's attorney was able to convince the trial

court to enter her Proposed Final Findings of Fact and Conclusions of Law about a Marriage (CP 162 – 166), together with her Proposed Final Decree of Divorce Order. CP 167 – 177. The Final Divorce Order contained a provision limiting arbitrator Norm Margullis’s future involvement in the proceedings. By so doing, the Court modified the parties CR2a agreement.

The law set forth above mandates that the arbitrator should resolve the issues pertaining to the provisions of the Final Findings of Fact and Conclusions of Law and Final Divorce Order.

III. THE TRIAL COURT ERRED BY DISTRIBUTING PROPERTY IN THE DECREE WITHOUT MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE DISTRIBUTION

The trial court entered Findings and Conclusions about a Marriage. CP 162 – 166. Each finding with regard to property and debt simply lists that the property and debt is set forth in the Final Divorce Order. Each conclusion is that the division of the property and debt is fair (just and equitable).

The Final Divorce Order awards Nia \$232,396 from her attorney's trust account and awards Robert \$136,807 in proceeds from the Nia's attorney's trust account without further elaboration. CP 176.

Civil rule 52 requires the entry of the Findings of Facts and Conclusions of Law in all final decisions in divorce proceedings, whether heard ex parte or not.

The findings must support the judgment rendered. *Dillabough v. Okanogan County*, 105 Wash. 609, 614, 178 P. 802 (1919).

The role of a court reviewing Findings and Conclusions is simply to determine whether substantial evidence supports the Findings of Fact and, if so, whether the findings in turn support the trial court's Conclusions of Law. *In re marriage of Greene*, 97 Wn. App. 708, 714, 9896 P.2d 144 (1999).

With regard to the Findings and Decree entered in this

matter, the Findings failed to support the Conclusions and the Findings and Conclusions failed to support the judgment.

IV. THE TRIAL COURT ERRED BY LIMITING THE ARBITRATOR'S ROLE AS SET FORTH IN THE CR2A AGREEMENT

The trial court modified the parties Cr2a agreement by limiting the arbitrator's future role. CP 160 – 161 and CP 170; 174; and 176.

There was no motion or supporting documentation to modify the parties Cr2a agreement and to limit the arbitrator's future involvement between the parties. The trial court did not make and enter any Findings or Conclusions why the parties Cr2a agreement should be modified to limit the arbitrator's future involvement in the case.

There has not been any motion/request to the court or to the arbitrator to modify the parties Cr2a agreement by limiting/restricting the future involvement of the arbitrator to resolve disputes between the parties.

The case law set forth above strongly supports giving credence to agreements reached by the parties.

The trial court should have remanded this matter back to the arbitrator to resolve the remaining issues including distribution of assets and enter a ruling with regard to the form and contents of the Findings of Fact and Conclusions of Law, together with the Final Divorce Order in order to allow the parties to present same to the court for the court's signature and entry.

V. THE TRIAL COURT ERRED BY FAILING TO AWARD THE APPELLANT HIS ATTORNEY'S FEES

Robert requested an award of attorney's fees from the trial court judge when Nia requested entry of her final proposed orders. CP 154. The trial court denied Robert's motion for attorney's fees. CP 160

The trial court should have required the parties to arbitrate the Final Findings of Fact and Conclusions of Law and Decree pursuant to their Cr2a agreement. RCW 7.04A.070

mandates arbitration based upon the parties' agreement to arbitrate. The trial court erred by denying the motion to arbitrate and erred by denying Robert attorney's fees for the necessity of filing a motion to arbitrate. RCW 26.09.140 allows for the payment of attorney's fees for maintaining or defending any proceeding under RCW 26.09.

VI. ATTORNEY FEES

RAP 18.1 (a) provides:

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 a statute specified that the request is to be directed to the trial court.

RCW 26.09.140 provides:

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 proceedings under this chapter and for reasonable attorney's 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 cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The Court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

Robert requests an award of attorney's fees for this appeal. Nia earns more than what Robert earns, and therefore he is entitled to attorney's fees based upon need and ability.

Nia chose to ignore the arbitration provision in the Cr2a agreement and returned to court.

An award of attorney's fees in this matter is justified under RCW 26.09.140 based upon need and ability to pay, as well as under the theory of intransigence based upon Nia's refusal to arbitrate the terms and the provisions of the final orders as mandated by the Cr2a agreement and causing Robert to incur additional legal services for returning to court. See *In re marriage of Morrow*, 53 Wn. App. 579, 590 (1989).

VII. CONCLUSION

The parties hereto chose to mediate and entered into a CR2A agreement.

The parties chose the terminology set forth in their Cr2a agreement.

Their Cr2a agreement provided that disputes with regard to preparation of the final pleadings as well as

implementation of their Cr2a agreement would be resolved through binding arbitration.

The parties sought arbitration on issues pertaining to preparation of final pleadings. Said rulings were made prior to the closing of the sale of the family home.

Nia sought the appointment of a special master to facilitate the sale of the family home through the Court. Nia, in her declaration, asked the Court for entry of final pleadings.

Robert objected and requested arbitration to determine the contents of the final orders.

The trial court denied arbitration and entered final pleadings and unilaterally modified the parties Cr2a agreement by restricting the arbitrator's future involvement in the proceedings.

Agreements to arbitrate are to be enforced by the Court.

The Findings and Conclusions are deficient and do not support the entry of the Decree.

Robert should have been awarded his attorney's fees at the trial court level as well as on appeal.

Robert does not object to the provisions in the Decree of Dissolution of Marriage terminating the parties' marriage. However, Robert is requesting that all other provisions, other than the Dissolution of their Marriage, be vacated and remanded for arbitration pursuant to the terms of the Cr2a agreement.

DATED this 7th day of January, 2019

RESPECTFULLY SUBMITTED,



Robert Helland, WSBA #9559
Attorney for Robert Collins, Appellant

Declaration of Transmittal

Under penalty of perjury under the laws of the State of Washington I affirm the following to be true:

On this date I transmitted the original document to the Washington State Court of Appeals, Division II, by personal service and delivered a copy of this document via US POSTAL SERVICE:

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Signed at Tacoma, Washington on this 7th day of January, 2019.



Robert Helland WSBA 9559

HELLAND LAW GROUP

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