

FILED
Court of Appeals
Division II
State of Washington
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No. 52787-1-II

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

Robert Collins,

Appellant

v.

Nia Collins,

Respondent.

REPLY BRIEF OF APPELLANT

Robert Helland, WSBA 9559
Attorney for Appellant

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I. ARGUMENT

The issue before this court is whether or not the Superior Court had the authority to make determinations and rulings pertaining to distribution of the parties' assets as well as limiting the arbitrator's future involvement in the proceedings, when the parties had entered into a CR2A agreement requiring arbitration for entry of unresolved issues.

The respondent did not file any motion with the court to vacate, interpret or limit the parties' CR2A agreement.

The Respondent has not provided any authority that would allow the Superior Court to do anything other than to enter final pleadings that were agreed to by the parties or approved by the arbitrator. In fact, the authority cited by the respondent, including *In re Marriage of Pascale*, 173 Wn. App. 836, 295 P.3D 805 (2013), requires the trial court not to consider the merits of the controversy when determining

whether arbitration is required but only to consider whether the party seeking arbitration has made a claim which on its face is governed by the contract.

In the *Pascale* case the respondent filed a motion to enforce a CR2A agreement involving her dissolution of marriage. Her CR2A agreement provided an arbitration clause stipulating that “any disputes in the drafting of the final documents or any other aspect of this agreement, form or substance, or any issue not discussed shall be submitted to Harry R. Slusher for binding arbitration.” *Id.* The *Pascale* trial court ruled in favor of the respondent and ruled on the merits her CR2A agreement. The Court of Appeals reversed citing the provision reserving disputes in the drafting of the final arguments as reserving the issue to the arbitrator. Stating: “given that any doubts regarding the applicability of the arbitration agreement must be resolved in favor of coverage, and because it may be fairly said that the parties arbitration agreement covers the dispute no further inquiry into the merits was permissible”. *Davis*, 152 Wn. App. 718, 217 P.3d 1191. Arbitration of the dispute was thus

required." *Id.* at 844 – 845.

The appellant strongly objected to respondent's motion to enter final pleadings and to limit the arbitrator's agreed-upon role. CP 152 – 154.

In an un-sworn statement of respondent's attorney the court was requested to adopt respondent's calculations for distribution of marital assets including \$40,000 in holdbacks. CP 224. The court ordered as respondent requested. CP 176. There is nothing in the arbitration agreement allowing for holdbacks.

The court restricted the arbitrator's future involvement with this case by limiting the arbitrator's authority to those items specifically identified in the divorce decree prepared by respondent. CP 160; CP 170; CP 174; and CP 176. The appellant advised the court that respondent had already transferred his property to Moses Lake to be auctioned without his prior knowledge or consent. CP 154. Whereas the CR2A agreement provided

that Norman Margolis would arbitrate any issues with regard to implementing or effectuating the CR2A agreement (CP 94 – 95) the court's order now precludes that from occurring except as narrowly provided for in the decree. If, for example, appellant needs assistance in the return of his property he can no longer rely on the arbitrator implementing or effectuating the return of the property.

II. ATTORNEY'S FEES

The appellant requested attorney's fees from the trial court for having to file a motion to compel arbitration and to respond to respondent's motion. The appellant filed his attorney's fee affidavit. RCW 26.09.140 allows the trial court, after considering resources available to both of the parties, to make an award of attorney's fees.

The Superior Court was aware of the financial resources of both parties. The Superior Court had just given \$232,669 to respondent and \$136,807 to appellant.

The respondent claims that appellant was intransigent before the Superior Court. There was never a request for attorney's fees made by respondent for appellant's alleged intransigence. There was never a request before the arbitrator for attorney's fees from appellant to respondent based upon alleged intransigence. The only attorney's fees were ordered by the arbitrator against respondent in favor of appellant for respondent's bad faith for selling the parties' home without appellant's involvement.

Appellant has likewise requested attorney's fees on appeal. The issue as to whether or not a Superior Court has the authority to disregard an agreement to arbitrate is not frivolous.

II. CONCLUSION

Both parties agreed to be bound by a CR2A agreement.

Both parties were represented by counsel.

Both parties agreed to a provision having the mediator act as an arbitrator in the event of a dispute in the drafting of the final orders reflecting and incorporating their CR2A agreement and subsequently in construing, implementing, or effectuating the agreement. The parties specifically agreed that upon execution of the final pleadings that respondent's attorney could proceed to have the final pleadings entered by the court and that any disputes and drafting of the final documents would be resolved by arbitrator Margullis.

The final orders were not agreed to by the parties. The final orders were not approved by the arbitrator. Respondent's attorney proceeded to file a motion requesting the court to enter the agreement absent agreement of the parties or the approval of the arbitrator.

The court, over appellant's objection, distributed

approximately \$369,000 between the parties and ordered the withholding of another \$40,000.

The issue is not whether or not the trial court could make as good of or a better decision than the arbitrator. The issue was whether or not a party who has been sanctioned by the arbitrator for acting in bad faith can simply ignore the contractual provisions of the CR2A agreement and ask the Superior Court to resolve the remaining issues, distribute assets, and limit the arbitrator's future involvement in the proceedings.

The appellant, even though he objected to the Superior Court proceedings, clearly stated that he was immediately willing to enter into an agreement with his respondent pertaining to the immediate disbursement of some of the house sale proceeds.

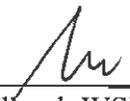
The remedy is to leave intact the dissolution of the parties' marriage and vacate all other provisions in the decree and findings and remand same back to the Superior

Court for completion by arbitration pursuant to the CR2A agreement. The order denying appellant's motion to compel arbitration should likewise be vacated.

The appellant should be awarded attorney's fees at the Superior Court level and on appeal.

DATED this 10th day of April, 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 10th day of April, 2019.


Robert Helland WSBA 9559

HELLAND LAW GROUP

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Transmittal Information

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