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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:

DAVID MILLER,

Respondent,

v.

WENDY MILLER,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR CLARK COUNTY
THE HONORABLE DEREK J. VANDERWOOD

BRIEF OF APPELLANT

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I. INTRODUCTION

Wendy and David Miller separated after a 16-year marriage. Their “agreed” dissolution was plagued with irregularities that are largely undisputed:

- Wendy has a long history of severe mental health issues, affecting her ability to understand her rights and the consequences of the agreement.
- Despite Wendy’s capacity issues, David completely controlled the dissolution process, securing her signature on final orders just a few weeks after Wendy was released from an inpatient psychiatric facility.
- David failed to disclose the nature and value of all community assets subject to division.
- David failed to provide Wendy an opportunity to seek independent advice from counsel.
- Wendy, who was unemployed, was completely financially dependent on David.
- The final orders award Wendy no maintenance while awarding David the most valuable assets.

The “agreed” dissolution decree resulted from a fundamentally irregular and unjust process in which Wendy was denied a full and fair consideration of the merits of the dispute. But despite the alarming irregularities here, the trial court denied Wendy’s motion for relief from the judgment under CR 60.

This court should reverse. Wendy could not intelligently represent her own interests, and David, fully aware of Wendy's limited capacity, fast-tracked the dissolution without fully disclosing the parties' assets and without providing Wendy an opportunity to seek independent counsel, awarding the most valuable assets to himself. Given the spouses' fiduciary responsibilities to one another, the trial court erred when it denied Wendy's motion to set the judgment aside.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its Order Denying Respondent's Motion for Relief from Judgment and for Suit Fees. (Appendix A: CP 434-37)

2. The trial court erred in holding that appellant Wendy Miller ("Wendy") "failed to demonstrate an adequate basis to vacate final orders entered on May 15, 2018 and July 25, 2018." (CP 434-35; *see also* CP 436)

3. The trial court erred in refusing to vacate the final orders based on its findings that "the parties had both signed the final orders and the Petitioner's Declaration in Support of Entry identified that the proposed division of assets was fair and equitable" (CP 437); "there is no dispute regarding the accuracy of the factual

representations in the Declaration” (CP 435); and the “parties agreed to the provisions in the final orders.” (CP 437)

4. The trial court erred in holding that Wendy “failed to establish clear, cogent, and convincing evidence that she was unable to make decisions and that her mental condition deprived her of the ability to comprehend orders.” (CP 436)

5. The trial court erred in concluding that the fact the parties signed the dissolution orders and the declaration in support of entry of those orders before the statutory 90-day period under RCW 26.09.030 lapsed was not an “irregularity with entry of the final orders sufficient to satisfy CR 60(b)(1).” (CP 435)

6. The trial court erred in refusing to vacate the final orders because Wendy “acted upon and benefitted from the final orders subsequent to signing them.” (CP 437)

7. The trial court erred in denying Wendy attorney fees. (CP 437)

8. The trial court erred in entering its Order Denying Respondent’s Motion for Reconsideration (Appendix B: CP 432-33)

III. STATEMENT OF ISSUES

1. Wendy has a history of psychological issues. Six weeks after Wendy was discharged from a psychiatric hospital, and less

than a month after respondent David Miller (“David”) filed for dissolution, and before the 90-day statutory period under RCW 26.09.030 expired, David obtained Wendy’s signature on orders prepared by his counsel dissolving the parties’ marriage, dividing their marital estate, limiting Wendy’s contact with their daughter, and establishing child support. Wendy was unrepresented by counsel when she signed the dissolution orders, and there was no evidence that David fully disclosed the assets under his control. Should the dissolution orders have been vacated?

2. Did the trial court err in denying Wendy attorney fees when she had the need for her attorney fees to be paid and David had the ability to pay those attorney fees?

3. Should this Court award Wendy attorney fees on appeal?

IV. STATEMENT OF THE CASE

A. Wendy has Bipolar Disorder, Type 1, in addition to other mental health issues, which have caused her repeated hospitalization in various psychiatric facilities.

Appellant Wendy Miller, age 51, and respondent David Miller, age 50, married on June 10, 2002; they have a daughter, D.M., now age 13. (CP 57-58, 65) David is a special agent with the Department

of Homeland Security. (CP 65) Wendy was a research analyst with the FBI until she was suspended in June 2017 due to mental health issues.¹ (CP 65)

In the months leading up to her suspension from the FBI, Wendy had been suicidal and was in and out of inpatient psychiatric hospitals for periods of ten days or more. (CP 358-69; RP 46) Wendy suffers from anxiety, major depressive disorder, suicidal ideation, post-traumatic stress disorder, and bipolar disorder. (CP 358-69) As part of her psychiatric treatment, Wendy has been prescribed various mood stabilizers, anti-depressants, and lithium-based anti-psychotic medications, including Lexapro, Zoloft, Lithium Carbonate, Zyprexa, and Latuda. (CP 358-69)

In January 2018, the FBI evaluated Wendy's fitness to return to duty, and found that her "Bipolar Disorder, Type 1 . . . is currently in remission." (See CP 455) Two months later, in a March 14, 2018 letter, the FBI informed Wendy that she was "fit to return to limited duty" on a part-time basis. (CP 455) By then, Wendy's mental health

¹ David referred to Wendy's suspension as a "leave of absence" (CP 319), but it is undisputed that Wendy could not return to service with the FBI until she completed an evaluation of her psychological fitness clearing her for duty. (See CP 455)

had once again deteriorated, she began suffering manic episodes, and her behavior became more erratic. (CP 65; *see also* CP 272-75)

During the month of March 2018, Wendy disappeared for days at a time with little explanation to her family as to her whereabouts. (CP 269-72) During this period, David described Wendy as “unpredictable,” (CP 272), reminding her to take her medication (CP 269), and urging her to seek professional help. (CP 272: “You need to speak with someone. I don’t want you on the streets, I want you to get help.”)

On March 20, 2018, nearly a week after being notified that she could return to the FBI on limited duty, Wendy was admitted to Fairfax Behavioral Hospital for two weeks due to a manic episode and suicidal ideation. (CP 365-66) Wendy was discharged from Fairfax on April 4, 2018. (CP 65, 279) Although she had been previously cleared to return to limited service with the FBI, Wendy never returned to work, and she was terminated by the FBI in August 2018. (CP 85)

B. David petitioned for dissolution shortly after Wendy was released from a psychiatric hospital, where she had been admitted due to a manic episode and suicidal ideation, and obtained her signature on an interim order and response to petition waiving spousal maintenance, even though she had no income.

Shortly after Wendy was discharged from Fairfax Behavioral Hospital, David moved Wendy out of the family residence, and into an apartment that he leased on her behalf. (CP 357) Wendy objected to leaving the family home, because she did not want to separate, but relented, feeling she “had no choice” to do as David directed because she was “dependent” on him. (CP 357)

Despite her discharge from Fairfax, Wendy continued to show signs of mental instability. On April 14, David implored Wendy to “continue your meds, see the doctors, temper your behavior,” claiming she was causing “undue stress” on their daughter and making them “both uncomfortable.” (CP 282) David also warned Wendy not to “appear unbalanced to your new neighbors.” (CP 282)

David retained legal counsel, and filed for dissolution of the parties’ marriage on April 26, 2018, approximately three weeks after Wendy was released from Fairfax. (CP 7-11) Eight days later, on May 3, 2018, David convinced Wendy to sign a “stipulated” interim order

prepared by his attorney and a response to his petition that he completed for her. (CP 14-16, 17-21)

It is undisputed that Wendy was not represented when she signed these documents, nor had she consulted with counsel. Further, her mental condition was continuing to deteriorate. The week before Wendy signed the pleadings that David presented to her, he had to remind Wendy to “take your medication” after she sent him a string of nonsensical text messages. (*See* CP 286)

The day after Wendy signed the interim order and response to petition, on May 4, 2018, she responded to a text message from David with seven confusing messages in quick succession: “No sTiLL GimPy LeGGed,” “WrApped in HeAt,” “At HoUZe G,” “BeaURed,” “GOinG fOr A dRiVe since I CaNT WaLk,” “I LEft if HeRe in Ur CLOset,” “enterINstinG.” (CP 288) Two minutes later, Wendy sent another string of text messages containing the same messages but in a different order. (CP 288-89)

David does not dispute Wendy’s mental health issues. Although he claims that Wendy’s “symptoms are alleviated when she takes her medication as prescribed” (CP 319), he acknowledged that when Wendy is off her medication “she displays manic behavior to include inability to focus, increased energy, apathetic responses

despite the importance or severity of the situation and heightened defiance and defensiveness not reasonable for the circumstances.” (CP 88) Nevertheless, David denied that Wendy lacked capacity to sign the interim order and response to petition (CP 88), which were indisputably adverse to her.

For instance, the interim order acknowledged Wendy was not working, yet gave David exclusive use of the family home while making her responsible for all of her expenses and future debts, including rent on the apartment that David leased purportedly on her behalf. (CP 15) Similarly, the response to petition had Wendy “admit” that “spousal support is **not** needed.” (CP 10, emphasis in original)

C. Less than a month after filing his petition, David had Wendy sign dissolution orders prepared by his counsel that awarded him the majority of assets. At the time she signed the orders, Wendy was unrepresented and denied the marriage was irretrievably broken and “unsure” what she wanted.

On May 13, 2018, less than a month after he filed for dissolution, David tried to obtain Wendy’s agreement on final dissolution orders that his counsel prepared. (CP 289) There is no evidence David provided Wendy with these orders prior to seeking her signature. Wendy resisted signing the prepared orders, telling

David by text message that she wanted “No divorce,” adding “Sorry I Want to work it out moving back home.” (CP 289)

The following day, on May 14, 2018, David again tried to obtain Wendy’s signature on the dissolution orders, telling Wendy “I want us to sign and move on and have an amiable relationship for the sake of our daughter. I think we both want her to have stability and closure.” (CP 290) Wendy continued to resist, explaining that she was unsure about the divorce, that she did not know what was best for her, and did not know who to trust. (CP 291: “Sorry I’ll think about it,” “No revenge just unsure,” “Don’t know what is best anymore,” “I don’t know who to trust.”)

Despite her protests, David convinced Wendy, who was still unrepresented, to sign the prepared orders on May 14, 2018. (CP 22-56) The orders declared the marriage irretrievably broken (CP 45), divided the parties’ property (CP 52), denied Wendy any spousal maintenance (CP 53), and limited Wendy’s contact with the daughter to “once per week for a two-hour period,” based on “a long-term emotional or physical problem that gets in the way of her ability to parent.” (CP 23) The “agreed” findings in support of the dissolution decree stated that “the division of property described in the final order is fair (just and equitable).” (CP 45) While Wendy apparently

signed these orders, she did not sign or initial the exhibits setting out the property division that were attached to the orders. (See CP 48-50, 54-56)

The decree awarded David the family home, giving Wendy an “offsetting judgment” of \$84,136.75. (CP 55-56) The decree does not state the value of the home or how the “offsetting judgment” was calculated. (CP 55-56) There was also no evidence that this information had been provided to Wendy prior to David obtaining her signature on the prepared orders. In fact, with the exception of the judgment awarded to Wendy, none of the assets distributed in the decree were valued. (CP 55-56)

Further, with the exception of the house and the vehicle awarded to each of the parties, the assets were only generically identified. (See CP 55-56) For instance, each party was awarded “any bank, retirement, investment, or cash account” in their name. (CP 55-56) These accounts were neither identified nor valued in the decree. There was also no evidence that David provided any information regarding these accounts to Wendy prior to obtaining her signature. Wendy later learned that one of the retirement accounts awarded to David, who had been the primary wage earner during the marriage, was worth over \$500,000. (CP 389) The value

of the retirement accounts awarded to Wendy was only a fraction of the value of David's retirement accounts. (CP 389)

Finally, even though she was not working and had no income, the dissolution orders did not require David, whose monthly net income was over \$6,600, to pay Wendy any spousal maintenance. (CP 31, 53)

The parenting plan and child support order were entered on May 15, 2018, the day after Wendy signed them.² (CP 22-43) David waited to enter the findings and decree of dissolution until July 25, 2018 – the first day they could be entered after the statutory 90-day “cooling off period” lapsed. RCW 26.09.030.

Although the prepared orders signed by Wendy on May 14, 2018 stated the “marriage was irretrievably broken,” Wendy continued to express her desire for the parties to reconcile. On June 18, 2018, over a month before the final orders could be entered, Wendy told David that she wanted to reconcile, explaining that “I’ve calmed down so much, Want to take care of my family.” (CP 294) David responded that he no longer wanted to “live under the same

² Wendy was not ordered to pay child support, but she was required to pay 100% of “reunification counseling” for her and the daughter. (CP 22-43)

roof again”: “I want you to get better and be in a good place. I do. The right psychologist, correct medication and healthy outlet is part of that. But I am going through with the divorce and do not wish to live under the same roof again.” (CP 294) The following day, on June 19, Wendy sent David nearly 70 text messages pleading for reconciliation and expressing suicidal ideation. (CP 295-97) David did not answer any of these messages.

D. Wendy was arrested after threatening to kill herself in front of David and their daughter. The court in the criminal proceeding ordered a competency evaluation.

On July 1, 2018, Wendy and David fought about finances when she returned to the family home. (CP 66) After the daughter, who witnessed the fight, told Wendy to “just leave,” Wendy threatened to kill herself, and took a knife from the kitchen as she left the home. (CP 66) David had Wendy arrested when she tried to return to the home later that day. (CP 66)

Wendy was charged with third degree malicious mischief, criminal trespass, harassment, and obstructing a law enforcement officer. (CP 66) Wendy was incarcerated for 30 days. David had a domestic violence no-contact order entered against Wendy on July 5, 2018. (CP 66)

Wendy was appointed a public defender in the criminal proceeding. (See CP 460) Because the court questioned Wendy's competence to participate in the criminal proceeding, it ordered Wendy to undergo a competency evaluation. (CP 339, 459) As a courtesy, Wendy's defense attorney notified David's divorce attorney of the pending competency evaluation. (CP 339)

On July 26, 2018, the court in the criminal proceeding found Wendy "competent to proceed." (CP 459-62)

E. David's attorney entered the dissolution orders on the 90th day after the petition was filed, without notice to Wendy.

On July 25, 2018, after being notified of Wendy's completion of the competency evaluation, David's attorney entered the dissolution orders that Wendy had previously signed on May 14, 2018. This was the day before the criminal court entered its order finding Wendy competent, and on the 90th day after David filed his petition for dissolution. Wendy was not given notice of the presentation of the dissolution orders.

In support of entry of the dissolution orders, David's attorney presented a declaration signed by David on May 14, 2018 swearing under the penalty of perjury that the marriage was irretrievably broken and "more than ninety (90) days have elapsed since the filing

and service of the petition.” (CP 57-58) David had signed this declaration the same day he and Wendy signed the orders prepared by his attorney, which was less than 30 days (not more than 90) after he filed the petition for dissolution.

David’s declaration also stated that the property division was fair and equitable. (CP 58) However, because Wendy had been unable to support herself after she signed the dissolution orders, David had Wendy sign “orders” in which he agreed to pay her expenses as a “prepayment” towards the judgment awarded to her in the dissolution decree, which had not yet been entered. (See CP 448) By the time the decree was actually entered, Wendy’s “offsetting judgment” of \$84,143.75 had been reduced by nearly 17% to \$70,546, by David’s “prepayment” of Wendy’s future property award for her present expenses. (See CP 86, 450) Thus, the property division as stated in the signed dissolution orders was not the actual property distribution that Wendy received when the orders were entered.

F. The trial court denied Wendy’s motion to vacate the dissolution orders, made less than four months after the dissolution orders were entered.

On November 5, 2018, less than four months after the final dissolution orders were entered, Wendy retained counsel and filed a motion to vacate the dissolution orders under CR 60 (b)(1), (2), (4),

and (11). (CP 67-69) Wendy asserted that her mental health issues limited her capacity to knowingly enter any agreement in the dissolution of her marriage to David; David had taken advantage of her by convincing her to sign orders that disproportionately awarded him a greater share of the parties' assets; and it was an irregularity that both the dissolution orders and the declaration in support of entry of the orders, were signed before the 90-day statutory waiting period lapsed. (See CP 64-69)

On April 1, 2019, Clark County Superior Court Judge Derek J. Vanderwood ("the trial court") denied Wendy's motion. (CP 434-37) Despite their apparent unfairness to Wendy, the trial court denied Wendy's motion because "the parties had both signed the final orders and the Petitioner's Declaration in Support of Entry identified that the proposed division of assets was fair and equitable." (CP 437) The trial court was unconcerned about the lack of spousal maintenance for Wendy because it found "the response signed by the Respondent and filed on May 8, 2018 did not include a request for a maintenance." (CP 437) Because David's earlier payments of Wendy's expenses were treated as prepayments towards the judgment awarded to Wendy, the trial court reasoned that Wendy

had “acted upon and benefitted from the final orders subsequent to signing them.” (CP 437)

The trial court also found that Wendy “failed to establish clear, cogent, and convincing evidence that she was unable to make decisions and that her mental condition deprived her of the ability to comprehend the orders.” (CP 436) The trial court noted that while “not dispositive of this issue, the Respondent had been found competent by her employer and in a contemporaneous criminal matter.” (CP 436)

On May 3, 2019, the trial court denied Wendy’s motion for reconsideration. (CP 432-33)

Wendy appeals. (CP 429)

V. ARGUMENT

A. **The trial court abused its discretion in denying Wendy’s motion to vacate the dissolution orders, thus depriving her of the opportunity to have the merits of the issues examined.**

This Court reviews a decision on a CR 60 motion for an abuse of discretion. *Norton v. Brown*, 99 Wn. App. 118, 123, 992 P.2d 1019 (1999) (reversing order refusing to vacate default judgment); *Kennewick Irrigation Dist. v. 51 Parcels of Real Prop.*, 70 Wn. App. 368, 370, 853 P.2d 488 (reversing order denying motion to vacate

when required evidence of payments made to plaintiff had not been presented when judgment was presented), *rev. denied*, 122 Wn.2d 1027 (1993). “Where the determination of the trial court results in the denial of a trial on the merits an abuse of discretion may be more readily found than where the default judgment is set aside and a trial on the merits ensues.” *White v. Holm*, 73 Wn.2d 348, 351–52, 438 P.2d 581 (1968); *see also Haller v. Wallis*, 89 Wn.2d 539, 544, 573 P.2d 1302 (1978). This less deferential standard of review is due to “the policy of the law that controversies be determined on the merits.” *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979) (cited sources omitted).

Here, there was no examination of the merits by the court or counsel on behalf of Wendy before the dissolution orders were entered. Instead, the orders were entered under rushed circumstances when Wendy’s mental health issues limited her ability to enter any agreement intelligently. The trial court abused its discretion in refusing to vacate the dissolution orders, depriving Wendy of an opportunity to have the issues related to the dissolution of her marriage with David decided on the merits.

B. The circumstances under which the dissolution orders were signed and entered were so flawed and fundamentally unfair to Wendy that the trial court erred in refusing to vacate the orders.

Even if the trial court's decision denying Wendy's motion to vacate is not reviewed under the less deferential standard for orders denying a trial on the merits, the proceedings in which the purportedly agreed dissolution orders were entered was so fundamentally unfair to Wendy that the orders must be vacated. Indeed, there were hardly any "proceedings" at all – there was no discovery, no evaluation of the parties' assets, and no determination as to whether the proposed distribution was fair and equitable. Instead, David obtained Wendy's signature on dissolution orders prepared by his counsel approximately 6 weeks after Wendy was discharged from a psychiatric hospital, less than a month after he filed for dissolution, and before Wendy, whose mental health issues limited her capacity to intelligently enter an agreement, had an opportunity to consult with counsel. As a result, without viewing any evidence and without hearing any testimony, the trial court rubber-stamped "agreed" dissolution orders allocating most of the parties' assets to David, the economically advantaged spouse.

These were “extraordinary circumstances” that warranted the trial court vacating the dissolution orders “to overcome a manifest injustice.” *Hammack v. Hammack*, 114 Wn. App. 805, 810, 60 P.3d 663 (affirming order vacating dissolution decree that awarded husband more property in exchange for wife not paying child support), *rev. denied*, 149 Wn.2d 1033 (2003). “Whenever such action is appropriate to accomplish justice,” courts are empowered to vacate judgments. *Flannagan v. Flannagan*, 42 Wn. App. 214, 221, 709 P.2d 1247 (1985) (cited source omitted) (retroactive application of Uniform Services Former Spouses Protection Act justified vacation of dissolution decree under CR 60(b)(11)), *rev. denied*, 105 Wn.2d 1005 (1986). When, as here, Wendy’s motion to reopen the dissolution action fell “squarely within [the trial court’s] equitable jurisdiction over the parties’ dissolution,” the trial court should have granted her motion to vacate the dissolution order, as necessary to be “just and equitable.” *Farmer v. Farmer*, 172 Wn.2d 616, 624, ¶ 16, 259 P.3d 256 (2011) (affirming trial court’s order reopening decree of dissolution based on husband’s conversion of stock options awarded to wife).

- 1. That the dissolution orders and declaration were signed before the 90-day statutory cooling off period expired was an irregularity warranting vacation.**

The trial court erred in refusing to vacate the dissolution orders when they were signed by the parties less than 30 days after David filed for dissolution. Before a court can enter stipulated orders dissolving a marriage it must consider a “declaration in lieu of testimony” to support entry of the decree. Clark County Local Rule (CCLR) 4.1(a). This rule provides that “the declaration in lieu of testimony *must* be made after the expiration of the ninety (90) day period.” CCLR 4.1(a) (emphasis added).

The statutory 90-day period that must pass from the time a petition for dissolution is filed before a court has authority to enter final orders dissolving a marriage, RCW 26.09.030, is intended as a “cooling off” period to “allow time for reflection and to act as a buffer against ‘spur of the moment’ arbitrary action.” *Buecking v. Buecking*, 179 Wn.2d 438, 445, ¶ 16, 316 P.3d 999 (2013) (quoted source omitted), *cert. denied*, 135 S.Ct. 181 (2014). “The arbitrary action that the 90–day requirement seeks to avoid is a hasty end to the marriage without time for considering whether dissolution is truly what the parties want.” *Buecking*, 179 Wn.2d at 445, ¶ 16.

In this case, the “arbitrary action” to be prevented was a rushed settlement at a time when Wendy was denying the marriage was irretrievably broken and unsure of the settlement proposed by David in dissolution orders prepared by his counsel. (See CP 289, 291, 294, 295-98) That the dissolution orders and David’s declaration in support of the orders’ entry were signed before the statutory 90-day cooling off period was an irregularity under CR 60(b)(1) warranting vacation.

“An irregularity for purposes of CR 60(b)(1) has been defined as ‘the want of adherence to some prescribed rule or mode of proceeding; and it consists either in the omitting to do something that is necessary for the due and orderly conducting of a suit, or in doing it in an unreasonable time or improper manner.’” *Jones v. Home Care of Washington, Inc.*, 152 Wn. App. 674, 679, ¶ 13, 216 P.3d 1106 (2009) (reversing order denying motion to vacate when counsel for plaintiffs, whose withdrawal was not yet effective, was not served with a stipulation and order of dismissal), *rev. denied*, 169 Wn.2d 1002 (2010); *see also Kennewick Irrigation Dist. v. 51 Parcels of Real Prop.*, 70 Wn. App. 368, 370, 853 P.2d 488 (1993) (reversing order denying motion to vacate when the default judgment was entered without the requisite testimony under CR

55(b)(3) regarding any payments that have been made to the plaintiff).

In this case, had David not rushed Wendy into signing the dissolution orders before the statutory 90-day “cooling off” period under RCW 26.09.030, some of the unfairness of the process could have been alleviated, allowing her time to obtain counsel, and properly consider a proposed settlement. Yet, in refusing to vacate the dissolution orders, the trial court erroneously relied on the fact the orders were entered with the court after the “required waiting period” had passed, and its finding that “there is no dispute regarding the accuracy of the factual representations in the Declaration.” (CP 435) First, CCLR 4.1(a) requires that the declaration be signed “*after* the expiration of the ninety (90) day period.” (emphasis added) Second, Wendy had disputed the statement in the declaration that the “marriage was irretrievably broken” (See CP 289, 291, 294, 295-98), as well as the statement that “the division of property contained in the Findings and Conclusions about a Marriage is a fair and equitable division.” (See CP 58)

Had the judge to whom the dissolution orders were presented known that Wendy disputed that the marriage was irretrievably broken, it could not have entered them, without first making its own

finding that the marriage was irretrievably broken, ordering the parties into counseling, or delaying entry of the final orders for 60 days. RCW 26.09.030(c)(ii).

Nor could the judge have found that the division of the parties' assets and debts was "fair (just and equitable)." Whether a property division is "just and equitable" requires consideration of the "economic circumstances of each spouse [] *at the time the division of property is to become effective.*" RCW 26.09.080(4) (emphasis added). Because the declaration, findings, and decree were all signed by the parties over two months earlier, the judge had no evidence to support a finding that the property division was just and equitable at the time it entered the final orders effecting the division.

The purpose of the statutory "cooling off period" was intended to avoid Wendy's exact situation – having David demand her agreement on dissolution orders while she was unsure the marriage was irretrievably broken and unready to resolve the issues related to the end of her marriage of 16 years. That the dissolution orders and David's declaration were signed less than 90 days after he filed the petition for dissolution was an irregularity under CR 60(b)(1) warranting vacation because it undermined the policy underlying RCW 26.09.030 and the statutory waiting period.

2. The circumstances surrounding David's extraction of Wendy's agreement to the dissolution orders smacked of bad faith, warranting vacation of the orders.

Even if the fact the declaration and the dissolution orders were signed by the parties before the 90-day cooling period expired was not an irregularity under CR 60(b)(1), the trial court still abused its discretion in not vacating the orders when the proceedings smacked of bad faith. Wendy's vulnerable psychological state, her lack of counsel, her confidential relationship with David, and the rapidity in which David obtained Wendy's signature on dissolution orders adverse to her, were such "extraordinary or unusual circumstances" that the trial court erred in refusing to vacate the orders under CR 60(b)(11). *See Yearout v. Yearout*, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985). CR 60(b)(11) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," including where, as here, "irregularities which are extraneous to the proceedings" call into question "the regularity of [those] proceedings." *Flannagan*, 42 Wn. App. at 221 (quoted sources omitted).

"Spouses owe each other 'the highest fiduciary duties.'" *Marriage of Lutz*, 74 Wn. App. 356, 369, 873 P.2d 566 (1994)

(quoting *Peters v. Skalman*, 27 Wn. App. 247, 251, 617 P.2d 448, *rev. denied*, 94 Wn.2d 1025 (1980)). These fiduciary duties requires spouses to not only “enter into agreements in good faith but, as with contracts generally, to deal with each other fairly so that each may obtain the benefit of the other’s performance.” *Marriage of Sanchez*, 33 Wn. App. 215, 218, 654 P.2d 702 (1982). This duty “does not cease upon contemplation of the dissolution of a marriage.” *Seals v. Seals*, 22 Wn. App. 652, 655, 590 P.2d 1301 (1979).

The burden was on David to prove he acted in good faith in obtaining Wendy’s consent for entry of dissolution orders that were adverse to her. “The burden of proving good faith in a transaction between a husband and wife is upon the party asserting the good faith.” *Marriage of Cohn*, 18 Wn. App. 502, 505, 569 P.2d 79 (1977); *see also Marriage of Sievers*, 78 Wn. App. 287, 309–10, 897 P.2d 388 (1995). “In every case, where any question arises as to the good faith of any transaction between spouses [], whether a transaction between them directly or by intervention of third person or persons, the burden of proof shall be upon the party asserting the good faith.” RCW 26.16.210.

David breached his duty of good faith by providing Wendy, who was unrepresented and suffering mental health issues, almost

no opportunity to consider the terms of the dissolution orders before extracting her purported agreement. There is no evidence David provided Wendy with a draft of the dissolution orders prepared by his counsel before seeking her signature. Even if, as he claims, the parties' had previously reached a "global settlement" (CP 322), Wendy made clear to David her misgivings about any agreement, stating that she no longer "knows what is best anymore" and did not "know who to trust." (CP 291)

Despite these statements David relentlessly pursued Wendy's agreement, and clearly expected her to immediately sign these orders without providing her an opportunity to obtain counsel or even time for her to consider the agreement. Instead, David insisted Wendy meet him at a coffee shop to review orders that she would have been seeing for the first time, claiming it "should take just a few minutes" for her to review and sign them. (CP 289) This was not enough time for Wendy to review and understand the dissolution orders before she signed them, and the trial court erred in refusing to vacate the orders. *See e.g. Marriage of Bernard*, 165 Wn.2d 895, 906, ¶ 25, 204 P.3d 907 (2009) (invalidating prenuptial agreement when wife was provided a working draft of the agreement only 20 days before the wedding, when she had "several distractions," she was only able to

consult with an attorney 5 days before the wedding, and she signed the agreement the day before the wedding).

In an attempt to show his good faith, David asserted that he had “suggested that [Wendy] get an attorney, [but] she then said that she doesn’t need an attorney.” (CP 321) However, this “suggestion” alone is not sufficient to prove his good faith in dealing with his unrepresented wife, who had debilitating mental health issues. David was required to explain to Wendy “*why* it is so important that [] she seek the advice of independent counsel.” *Marriage of Foran*, 67 Wn. App. 242, 254, 834 P.2d 1081 (1992) (addressing the validity of a prenuptial agreement) (emphasis in original). “The purpose of independent counsel is more than simply to explain just how unfair a given proposed contract may be; *it is for the primary purpose of assisting the subservient party to negotiate an economically fair contract.*” *Foran*, 67 Wn. App. at 254 (emphasis in original); *see e.g. Hansen v. Hansen*, 24 Wn. App. 578, 580, 602 P.2d 369 (1979) (setting aside a separation agreement prepared by wife’s counsel when husband was unrepresented and his spousal maintenance obligation under the agreement failed to take into account his financial status).

It was especially important under these circumstances for David to do more than “suggest” that Wendy retain an attorney. Wendy had been released from a psychiatric hospital only six weeks earlier, and the dissolution orders on which he sought her signature would permanently impact her financial future. Dissolution orders deal with assets in which the parties have an equal interest and immediately and permanently distributes those assets. Once the property is distributed in a dissolution decree, the distribution cannot be modified. RCW 26.09.070. And when, as here, spousal maintenance is not ordered, it can never be ordered regardless of any change in circumstances of the parties. *See Marriage of Hulscher*, 143 Wn. App. 708, 714, ¶ 10, 180 P.3d 199 (2008).

By rushing Wendy into an agreement that disproportionately favored him, and failing to explain to Wendy the reasons she needed to obtain counsel, David breached his fiduciary duty to Wendy. This coupled with Wendy’s vulnerable psychological state made the proceedings in which the dissolution orders were entered so fundamentally unfair that they were extraordinary and unusual circumstances that warranted vacation of the orders under CR 60(b)(11).

C. The trial court abused its discretion in refusing to vacate purportedly agreed order that were entered by Wendy without informed consent.

The trial court's error in refusing to vacate the dissolution order under these circumstances was compounded by its reliance on the fact that the parties purportedly agreed "to the provisions in the final orders" and "both signed the final orders." (CP 457) While the law favors settlements and their finality, that is because, unlike here, settlements are generally entered into by parties "with the aid of counsel, [after having] the merits of his claim or defense examined and has agreed upon the disposition of the controversy." *Haller v. Wallis*, 89 Wn.2d 539, 544, 573 P.2d 1302 (1978).

Here, not only did Wendy not have the "aid of counsel," David failed to provide her with full disclosure of the value of the marital estate, and her undisputed mental health issues limited her ability to enter any agreement intelligently, depriving her of the ability to provide her informed consent to entry of the dissolution orders. An agreed order entered without a party's informed consent must be vacated. *See e.g.* CR 60(b)(11); *Morgan v. Burks*, 17 Wn. App. 193, 199, 563 P.2d 1260 (1977) (vacating dismissal order under CR 60(b)(11) because the parties had not provided their informed consent to an "improvidently" entered settlement); *Graves v. P.J.*

Taggares Co., 25 Wn. App. 118, 126, 605 P.2d 348 (1980) (client's failure to consent to attorney's waiver of jury demand warranted vacation of judgment under CR 60(b)(11)), *rev. denied*, 93 Wn.2d 1015 (1980); *Haller v. Wallis*, 89 Wn.2d 539, 544, 573 P.2d 1302 (1978) (consent judgment may be set aside if "obtained by fraud or mutual mistake or that consent was not in fact given" (quoted source omitted)).

1. Wendy's severe mental health issues prevented her from understanding the consequences of the agreement.

Agreed dissolution orders, like the orders here, are valid only when spouses have the mental capacity to understand their rights and the nature of the agreement's terms and consequences. *See e.g.* CR 60(b)(2); *Shaffer v. Shaffer*, 47 Wn. App. 189, 195, 733 P.2d 1013 (addressing whether a separation agreement should be set aside because the wife did not understand its terms when she entered it), *rev. denied*, 108 Wn.2d 1024 (1987). "Final judgments entered by stipulation or consent are contractual in nature." *Martinez v. Miller Indus., Inc.*, 94 Wn. App. 935, 942, 974 P.2d 1261 (1999); *see also Estate of Harford*, 86 Wn. App. 259, 262, 936 P.2d 48 (1997) ("The principles of the law of contracts apply to review of settlement agreements."), *rev. denied*, 135 Wn.2d 1011 (1998). "The rule relative

to mental capacity to contract, therefore, is whether the contractor possessed sufficient mind or reason to enable him to comprehend the nature, terms and effect of the contract in issue.” *See Page v. Prudential Life Ins. Co. of America*, 12 Wn.2d 101, 109, 120 P.2d 527 (1942).

Here, Wendy lacked the capacity to consent to entry of the dissolution orders. It is undisputed that Wendy’s psychological issues were exacerbated when she was not taking her medication. As David acknowledged, one of the symptoms that Wendy exhibits when she is not taking her medication is “apathetic responses despite the importance or severity of the situation.” (CP 88) It is apparent that “apathy” caused Wendy to disregard the importance of the legal consequence of agreeing to orders waiving her rights to a just and equitable division of community assets, spousal maintenance, and limiting her contact with her daughter.

This case is analogous to *Barr v. MacGugan*, 119 Wn. App. 43, 78 P.3d 660 (2003) where the court granted relief under CR 60(b)(11) because the plaintiff’s attorney suffered from clinical depression, resulting in dismissal of the plaintiff’s action when the attorney failed to comply with a discovery order. *Barr*, 119 Wn. App. at 48. In affirming the order vacating the judgment of dismissal, the

court held that relief was warranted because the attorney's depression deprived the plaintiff of representation. *Barr*, 119 Wn. App. at 48.

Here, Wendy had no counsel, and her psychological issues rendered her "apathetic" to the need to protect her rights, leaving her as a practical matter without representation and incapable of consenting to dissolution orders that divided the parties' property and left her without support.

2. David's failure to disclose material facts regarding the property to be divided, left Wendy incapable of knowingly and intelligently agreeing to the dissolution orders.

Regardless whether Wendy's "mental condition deprived her of the ability to comprehend the orders" (CP 436), the dissolution orders must be vacated because David breached his fiduciary duty by failing to provide Wendy with "a full and fair disclosure of all material facts relating to the amount, character and value of the property involved so that she will not be prejudiced by the lack of information, but can intelligently determine whether she desires to enter" the agreement proposed by David. *Friedlander v. Friedlander*, 80 Wn.2d 293, 302, 494 P.2d 208 (1972). Rather than a "full and fair disclosure," David claimed that the dissolution orders

were based on “the terms [Wendy] ultimately wanted as a settlement.” (CP 321) Wendy disputes that claim. But even if true, David, who has the burden of showing good faith, presented no evidence that he provided Wendy with “a full and fair disclosure of all material facts” so that she could intelligently decide “the terms she ultimately wanted as a settlement.”

For instance, one of the most significant assets of the parties was David’s federal pension, valued at over a half million dollars, which was awarded to him. There is no evidence that David disclosed the value of his pension to Wendy before having her sign orders awarding that pension entirely to him, while awarding her a significantly smaller pension in her name. The dissolution orders must be vacated because David breached his fiduciary duty to Wendy by failing to provide her with all the material information necessary for her to make an informed decision on whether she wanted to sign the orders. *See e.g. Seals v. Seals*, 22 Wn. App. 652, 590 P.2d 1301 (1979).

In *Seals*, for instance, the trial court reopened a dissolution decree under CR 60(b)(4) when the husband failed to disclose community property to the wife, including hundreds of stock shares and multiple accounts totaling over \$50,000, before obtaining her

agreement to orders dissolving their marriage. *Seals*, 22 Wn. App. at 654. The court affirmed the trial court and rejected the husband's argument that he had no duty to disclose these assets to his wife, who "had little knowledge of her husband's" assets, after they separated. Instead, the court held that a spouse's "fiduciary duty does not cease upon contemplation of dissolution of a marriage," and breach of that duty warranted vacation of the decree. *Seals*, 22 Wn. App. at 655. As the *Seals* court stated, "to hold otherwise would be to penalize Mrs. Seals for the fraudulent conduct of Mr. Seals." 22 Wn. App. at 657.

Likewise, when a spouse breaches his fiduciary duty by failing to disclose the value of community assets to the other spouse, the court has authority to vacate the resulting decree under either CR 60(b)(4) or (11). See *Marriage of Burkey*, 36 Wn. App. 487, 490, 675 P.2d 619 (1984) (a spouse's breach of fiduciary duty in obtaining agreed dissolution orders by failing to disclose the value of assets may be grounds for vacation under CR 60(b)(11)); *Marriage of Maddix*, 41 Wn. App. 248, 253, 703 P.2d 1062 (1985) (the husband told the wife that a business controlled by him had no value before the decree was entered, if the wife lacked knowledge of the true value of the business or sufficient notice of its value to protect her interest, the trial court is authorized to vacate the decree under CR 60(b)(4)).

Here, there was no evidence that Wendy had sufficient knowledge of the value of the parties' assets before she signed the dissolution orders prepared by husband's counsel. Wendy was in a worse position than the wives in *Seals*, *Burkey*, and *Maddix*. Unlike in *Seals* and *Burkey*, Wendy was not represented by counsel. And unlike in *Maddix*, where there was evidence that the husband had offered to open the company's financial records to an independent auditor before the decree was entered, there was no evidence here that David offered to provide Wendy with any statements showing the value of the assets. *Compare also Marriage of Curtis*, 106 Wn. App. 191, 197, 23 P.3d 13 (declining to vacate decree when wife was represented by counsel, she named an expert to value husband's medical practice, but entered settlement before having the practice valued), *rev. denied*, 145 Wn.2d 1008 (2001).

Having been presented with orders prepared by David's attorney purporting to divide the parties' assets less than a month after he filed for dissolution, without full disclosure from David of the value of the assets, Wendy, who was unrepresented, was in no position to intelligently enter an agreement dividing the marital estate.

3. Wendy's purported agreement to the dissolution orders was obtained by David's undue influence.

Even if David had provided full disclosure to Wendy, the dissolution orders should still be vacated because David used undue influence in obtaining Wendy's agreement to those orders. *See e.g., Marriage of Bernard*, 165 Wn.2d 895, 906, ¶ 25, 204 P.3d 907 (2009) (invalidating prenuptial agreement, notwithstanding full disclosure, because wife was deprived of ability to intelligently enter argument). "Facts which may give rise to a suspicion of undue influence are (1) that the beneficiary occupied a fiduciary or confidential relation to [the other party,] (2) that the beneficiary actively participated in the preparation of the document . . . and (3) that the beneficiary received an unnaturally large share" under the contract. *Peters v. Skalman*, 27 Wn. App. 247, 255, 617 P.2d 448 (1980).

Here, David plainly occupied a fiduciary relation to Wendy and he "actively participated in the preparation" of the dissolution orders, as it was his attorney who drafted them. David also received an "unnaturally large share" of the community property considering he was the economically advantaged spouse. While David claimed he took on "significant debt" as part of their "agreement" (CP 384),

he provided no evidence of this purported debt. Further, David's obligation for this purported "significant debt" is not evident in the decree, which only obligated him to pay the offsetting judgment to Wendy, and any debts associated with "any asset being awarded to him," "incurred by him personally," "incurred by him since the date of separation," or "in his own name." (CP 55) Meanwhile David was awarded at least \$500,000 in retirement accounts, while Wendy received a fraction of that amount.

Almost entirely due to David's actions, Wendy lacked the capacity to knowingly and intelligently agree to the dissolution orders. The dissolution orders were therefore not "agreed" and the trial court abused its discretion in failing to vacate the orders.

D. The trial court erred in refusing to vacate the dissolution orders because Wendy, who was without financial resources of her own, accepted the benefits of the dissolution orders.

The trial court abused its discretion in denying Wendy's motion to vacate because Wendy had accepted David's payment of her expenses as an offset to her judgment, concluding that there was no basis "to set aside the final orders, especially where the Respondent acted upon and benefitted from the final orders subsequent to signing them." (CP 437)

A party may seek relief from a judgment under CR 60 while nevertheless complying with its terms. By analogy, a party does not waive the right to appeal a property distribution by accepting the property awarded to her where, as here, “the party will be entitled to at least the benefits of the trial court decision.” RAP 2.5(b)(1); *see also Marriage of Irwin*, 64 Wn. App. 38, 57, 822 P.2d 797 (1992).

Here, Wendy was *at the very least entitled* to what she was awarded in the decree. Wendy had no choice but take the property awarded to her. At the time the dissolution orders were entered, she was unemployed and completely financially dependent on David. At the time the parties signed the dissolution orders drafted by David’s counsel, Wendy was to be awarded approximately \$84,000 as her share of the community property. Because Wendy could not support herself in the two months before the orders were entered, David paid her expenses and deducted those payments from the \$84,000 she was awarded. As a result, the judgment that Wendy should have received as her share of the community property was reduced by nearly seventeen percent. (*See* CP 446-51)

That Wendy was forced to use her property award for her own support – when under any other circumstance David would have been required to pay spousal maintenance to her – was a reason to

vacate the dissolution orders, not uphold them. The trial court's logic would put litigants like Wendy in a catch-22 – either accept an unfair settlement or forego challenging it.

E. The trial court abused its discretion in denying Wendy's request for attorney fees.

The trial court also abused its discretion when it denied the wife's request for attorney fees. (CP 387) “The primary considerations in awarding fees in a dissolution action are ‘the need of the party requesting the fees, the ability to pay of the party against whom the fee is being requested, and the general equity of the fee given the disposition of the marital property.’” *Marriage of Davison*, 112 Wn. App. 251, 259, 48 P.3d 358 (2002) (quoting *Marriage of Van Camp*, 82 Wn. App. 339, 342, 918 P.2d 509, *rev. denied*, 130 Wn.2d 1019 (1996)); RCW 26.09.140 (“The court from time to time after considering the financial resources of the 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.”).

Here, the trial court denied the wife's request for attorney fees without considering any of the necessary factors, flatly concluding that “an award of attorney fees . . . is not appropriate.” (CP 387) But the financial positions of the parties required an award of attorney

fees. Wendy was unemployed and had ongoing mental health concerns, while David was earning nearly \$7,000 per month and was awarded the bulk of the parties' valuable assets in the property division. Further, the CR 60 motion at issue here seeks to remedy a fundamentally unfair process plagued with serious irregularities. The trial court erred in failing to award attorney fees under these circumstances.

F. This Court should award attorney fees to Wendy on appeal.

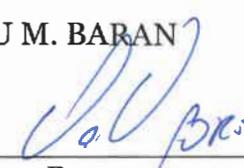
For the same reasons the trial court should have awarded Wendy attorney fees below, this Court should award attorney fees on appeal. RCW 26.09.140; RAP 18.1.

VI. CONCLUSION

For the foregoing reasons, this Court should reverse, and award Wendy her attorney fees on appeal.

Dated this 25th day of October, 2019.

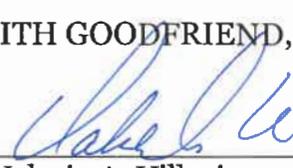
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By:  _____

Lou Baran

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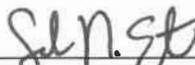
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 25, 2019, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Lou Baran 303 East 16th Street, Suite 109 Vancouver, WA 98663 baranlaw@comcast.net	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Michelle Prosser Stahancyk, Kent & Hook 400 W 11th St Vancouver, WA 98660-3148 michelle@stahancyk.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 25th day of October, 2019.



Sarah N. Eaton

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Scott B. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

In re the Marriage of:)	No. 18-3-03044-4
DAVID MILLER,)	ORDER DENYING RESPONDENT'S
)	MOTION FOR RELIEF FROM
Petitioner,)	JUDGMENT AND FOR SUIT FEES
)	
v.)	(Caption Corrected)
)	
WENDY MILLER,)	
)	
Respondent.)	

THIS MATTER having come before the court upon the Respondent's Motion for Relief from Judgment and for Suit Fees, the court having heard the argument of the parties on March 8, 2019, having reviewed the relevant pleadings, and being otherwise fully advised,

The Court hereby orders, adjudges and decrees as follows:

The Respondent's Motion for Relief from Judgment and for Suit Fees is DENIED. The Respondent's motion is based on Civil Rule 60(b)(1)(2),(4), and (11). The Respondent failed

1 to demonstrate an adequate basis to vacate final orders entered on May 15, 2018¹ and July 25,
2 2018.²

3 Although the Petitioner executed a Declaration in Support of Entry before the 90 day
4 waiting period had expired, the Declaration was not filed until after the required waiting period.
5 Because the parties in this case had stipulated to entry of final orders by signing all of the
6 documents, a declaration could be accepted instead of testimony.³ LR 4.1(a) provides that
7 “[t]he declaration in lieu of testimony must be made after the expiration of the ninety (90) day
8 period.” The waiting period had passed when final orders were entered and there is no dispute
9 regarding the accuracy of the factual representations in the Declaration. While the term “made”
10 provides some ambiguity regarding the timing of execution versus the timing of filing, because
11 the Declaration was not filed until after the required waiting period the Declaration does not
12 constitute an irregularity with entry of the final orders sufficient to satisfy CR 60(b)(1). The
13 Respondent also fails to establish an adequate basis to set aside the final parenting plan
14 pursuant to CR 60(b)(1).
15
16
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18 The Respondents arguments regarding CR 60(b)(2) and (4) focus on the Respondent’s
19 mental capacity at the time she executed the final orders. The Respondent argued that
20 subsequent to and contemporaneously with her execution of the final orders her mental health
21 conditions left her incapacitated to execute the documents and that the Petitioner knowingly
22
23

24 ¹ The Final Parenting Plan and Child Support Order were signed by the parties on May 14, 2018 and
25 filed on May 15, 2018. At the hearing on March 8, 2019, counsel for the Respondent indicated an order
26 setting aside the Final Parenting Plan would not be necessary, because in the end an identical parenting
27 plan would be appropriate.

² The Final Divorce Order, Findings and Conclusions about a Marriage were signed on May 15, 2018
and filed on July 25, 2018. A Declaration in Support of Entry was signed by the Petitioner on May 15,
2018 and filed at the time of entry based on LR 4.1(a).

1 took advantage of her incapacity to gain her consent. Although the Respondent established that
2 she had a pre-existing diagnosis of mental health disorders which impacted her employment
3 and required treatment, including hospitalization,⁴ she failed to establish clear, cogent, and
4 convincing evidence that she was unable to make decisions and that her mental condition
5 deprived her of the ability to comprehend the orders. Although not dispositive of this issue, the
6 Respondent had been found competent by her employer and in a contemporaneous criminal
7 matter.
8

9 Although the Respondent has asserted a variety of reasons to set aside the final orders
10 based on CR 60(b)(11), none of the reasons provide an adequate basis for the Respondent's
11 requested relief.
12

13 The Final Child Support Order did not require the Respondent to pay any child support.
14 At the time the order was entered RCW 26.19.065(2) provided that "...a support order of not
15 less than fifty dollars per child per month shall be entered unless the obligor parent establishes
16 that it would be unjust to do so in that particular case." Other than referencing the costs for
17 counseling that will be incurred by the Respondent, the Final Child Support Order does not
18 specifically address the reasons a support order less than the presumptive minimum was
19 appropriate. However, the financial benefit received by the Respondent by not having a child
20 support obligation does not create an adequate basis for her request to set aside the final orders.
21 In addition, even if an adequate basis did exist pursuant to CR 60(b)(11), that basis would apply
22 to setting aside the Final Order of Child Support and not all of the final orders as requested by
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27 ³ Local Rule 4.1(a).
⁴ See Exhibit A to Declaration of Respondent filed March 5, 2019.

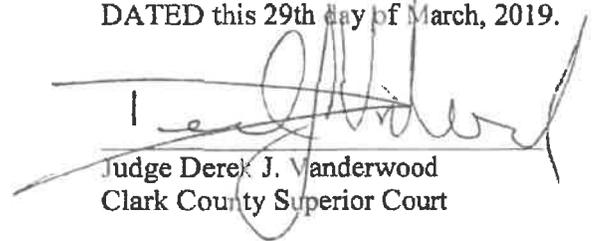
1 the Respondent. Such a result would not benefit the Respondent, because her support
2 obligation could not be lower than the current amount.

3 The lack of a financial declaration from the Petitioner at the time final orders were
4 entered, also does not create a basis to set aside the orders. The parties had both signed the
5 final orders and the Petitioner's Declaration in Support of Entry identified that the proposed
6 division of assets was fair and equitable.
7

8 The Respondent asserted that the property division established by the final orders and
9 absence of a maintenance award qualifies as an appropriate basis to set aside the final orders.
10 The parties agreed to the provisions in the final orders. The Response signed by the
11 Respondent and filed on May 8, 2018 did not include a request for maintenance. Under the
12 circumstances of this case CR 60(b)(11) does not provide an adequate basis to set aside the
13 final orders, especially where the Respondent acted upon and benefited from the final orders
14 subsequent to signing them.⁵
15

16 An award of attorney fees to the Respondent is not appropriate. Each party should pay
17 their own attorney fees in connection with this motion.
18

19 DATED this 29th day of March, 2019.

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22 Judge Derek J. Vanderwood
23 Clark County Superior Court
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27 ⁵ Additional action, including filing of a quit claim deed, was taken after the Respondent executed them.

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FILED

MAY 03 2019 8:33

Scott G. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

In re the Marriage of:)	No. 18-3-03044-4
)	
DAVID MILLER,)	ORDER DENYING RESPONDENT'S
)	MOTION FOR RECONSIDERATION
Petitioner,)	
)	
v.)	
)	
WENDY MILLER,)	
)	
Respondent.)	
)	

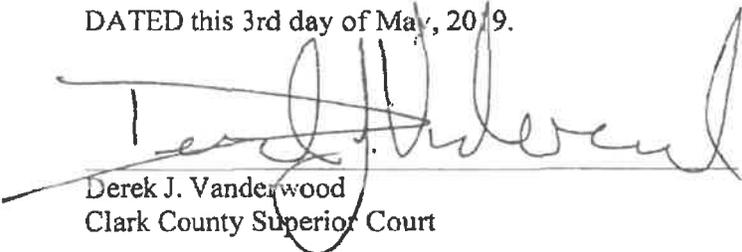
THIS MATTER having come before the court upon Respondent's Motion for Reconsideration and the Court having declined to permit oral argument pursuant to LR 59(b) but having reviewed the relevant pleadings, the records and files herein, and otherwise being fully advised in the premises,

1 The Court hereby orders, adjudges and decrees as follows:

2 The Respondent's Motion for Reconsideration is DENIED. The initial incorrect caption
3 on the Order Denying Respondent's Motion for Relief from Judgment and Suit Fees, subsequent
4 filing of a corrected order, and method/manner of service of the Order on the parties does not
5 provide a basis to alter the Order pursuant to Civil Rule 59(a)(1),(2), or (9). The remainder of
6 Respondent's Motion for Reconsideration addresses items evaluated by the Court when
7 considering the Respondent's Motion for Relief from Judgment.¹
8

9 The Petitioner's request for attorney fees is DENIED.

10 DATED this 3rd day of May, 2019.

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14 Derek J. Vanderwood
15 Clark County Superior Court
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¹ To the extent new factual information is presented in the Respondent's Motion for Reconsideration, the information could have been included at the time of the Respondent's Motion for Relief from Judgment.

SMITH GOODFRIEND, PS

October 25, 2019 - 5:13 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53564-5
Appellate Court Case Title: In re the Marriage of David Miller and Wendy Miller
Superior Court Case Number: 18-3-03044-4

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