

FILED
Court of Appeals
Division III
State of Washington
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COA No. 32650-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In re the Marriage of:

KERT A. CARLSON,

Appellant,

and

REBECCA M. CARLSON, (now EISMANN),

Respondent.

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

A. The judgment for back support, maintenance, and business valuation and attorney fees

Rebecca Eismann contends the February 14, 2014 judgment and judgment summary were unappealed final orders so they cannot now be reviewed. She is incorrect. The February 2014 judgment and judgment summary were based on the court's temporary orders on child support, maintenance, and fees. (CP 1342-44, 1349). Because other issues remained for resolution at the trial on the merits, the February orders were not appealable as a matter of right. RAP 2.2(a)(1). Rather, the orders were subject only to discretionary review as they were not final. Mr. Carlson was not required to file a motion for discretionary review before entry of the final orders in No. 32650-1-III. *ACF Mgmt., Inc. v. Chaussee*, 69 Wn. App. 913, 921-22, 850 P.2d 1387, *review denied*, 122 Wn.2d 1019 (1993).

Moreover, they neither determined the action, prevented a final judgment, nor discontinued the action. RAP 2.2(a)(2). The February 2014 judgment and judgment summary were not appealable as a matter of right. *Id.* When Mr. Carlson filed a timely notice of appeal on July 23, 2014, other non-appealable rulings of

the trial court prior to the final orders entered on June 27, 2014, were brought up for review. *Fox v. Sunmaster Prods., Inc.*, 115 Wn.2d 498, 504-06, 798 P.2d 808 (1990); *Dep't of Ecology v. Tiger Oil Corp.*, 166 Wn. App. 720, 749-50, 271 P.3d 331 (2012).

Even if they were final orders, RAP 2.4(b) permits review:

The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review. . .

The February orders had a prejudicial effect on the court's decisions designated in the July 2014 notice of appeal as they were taken into account in making its findings and rulings on support, maintenance, and fees following trial. (See, e.g., 5/23/14 RP 626, 631-32). Mr. Carlson challenged the final orders filed on June 27, 2014. (CP 3167). RAP 2.4(b) requires review of even appealable orders if the conditions are met. The first requirement of prejudice is satisfied. As to the second requirement, there can be no dispute the February 2014 orders were entered before the appellate court accepted review of the decisions designated in the July 2014 notice of appeal. *Id.* The February 2014 judgment and judgment summary are properly before this court for review.

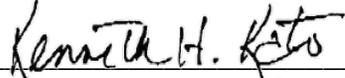
B. All other issues

Mr. Carlson rests on his opening brief with respect to any other contentions argued by Ms. Eismann.

II. CONCLUSION

Based on the foregoing, Mr. Carlson urges this court to reverse the trial court's orders of child support; the judgment for back child support and maintenance, attorney fees and expert fees; the award of \$20,000 for intransigence; and remand for further proceedings.

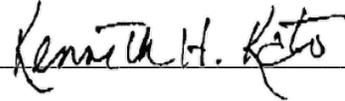
DATED this 20th day of June, 2018.



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CERTIFICATE OF SERVICE

I certify that on June 20, 2018, I served the Reply Brief of Appellant through the eFiling portal on Hailey Landrus at her email address.



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