

FILED

SEP 23 2019

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Case No. 358887

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:
KONRAD P. KULESZA, Appellant
and
JERRIE R. ANTHONY, fka JERRIE R. KULESZA, Respondent

BRIEF OF APPELLANT

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II. ASSIGNMENTS OF ERROR

1. THE TRIAL COURT ERRED WHEN IT DECIDED TO FIND THAT THE ACTIONS OF MR. KULESZA WERE THE EMBODIMENT OF BAD FAITH.
2. THE TRIAL COURT ERRED WHEN IT DECLINED MR. KULESZA' S REQUEST TO LOOK BEHIND THE DATE OF THE DECREE TO ACCOUNT FOR SIGNIFICANT AND APPLICABLE FACTS NEEDED TO FAIRLY RESOLVE THE ISSUES ON REVIEW.
3. THE TRIAL COURT ERRED WHEN IT CHOSE TO DECLINE MR. KULESZA' S ARGUMENT THAT THE CR-2A AGREEMENT WAS AMBIGUOUS AND INCORRECT.
4. THE TRIAL COURT ERRED WHEN IT ORDERED MR. KULESZA TO PAY MS. ANTHONY THE PRINCIPAL SUM OF \$45,120.00 AS COMPENSATION DUE TO HER PURSUANT TO THE AWARD OF THE RETIREMENT ACCOUNT.
5. THE TRIAL COURT ERRED WHEN IT ORDERED MR. KULESZA TO PAY MS. ANTHONY, \$13,405.00 IN ATTORNEY'S FEES AND \$1,000.00 FOR THE ACCOUNTANT'S FEES.

6. THE TRIAL COURT ERRED WHEN IT ORDERED MR. KULESZA TO PAY THE REMAINING COMMUNITY DEBTS OF THE US BANK CREDIT CARD ACCOUNT NUMBER ENDING IN 3095 IN THE SUM OF \$4,450.00 PLUS ANY ACCRUED INTEREST AND THE CITI CREDIT CARD ACCOUNT NUMBER ENDING IN 9259 IN THE SUM OF \$1,230.00 PLUS ANY ACCRUED INTEREST.
7. THE TRIAL COURT ERRED WHEN IT DECIDED THAT MR. KULESZA SHOULD NOT RECEIVE CREDIT FOR PAYING OFF THE HOME EQUITY LINE.

III. ISSUES ON ASSIGNMENTS OF ERROR

1. Does the withdrawal of funds from a personally vested retirement account without court approval, after multiple requests to the court respectfully necessitating the financially obligated orders imposed by the courts to be revised, by specifically stating the ordered conditions were not feasible provided detailed reasoning, resultant of dissolution proceedings, 6 months prior to and during the duration of nearly 11 months for the QDRO to establish finality from the agreed upon terms by both parties during mediation, which funds were necessary for the basic needs and support of the spouses and their two minor children, constitute such action as bad faith?

“(ASSIGNMENT OF ERROR NO. 1)”

2. Is it acceptable or reasonable for considerable and applicable facts needed to fairly resolve the issues on review to be omitted in the judgments for resolution of presented subject matter or is it abuse of the trial court discretion?

“(ASSIGNMENT OF ERROR NO. 2)”

3. Did the trial court abuse its discretion when it failed to recognize the basis of the Appellants argument and the verbiage within the

CR-2A which is inconsistent with the basis provided in support of the trial courts determining decisions?

“(ASSIGNMENT OF ERROR NO. 3)”

4. Did the trial court abuse its discretion when it established a principal sum of \$45,120.00 as compensation provided the information available and does it correctly reflect a determinable valuation of retirement account funds Ms. Anthony would subsequently be awarded if truly inclusive of debt reduced by Mr. Kulesza’s fiscal actions?

“(ASSIGNMENT OF ERROR NO. 4)”

5. Should the trial court assign the appellees attorney and accountant fees to Mr. Kulesza pursuant to RCW 26.09.140 in the face of averting an acceptable basis or fundamental reasoning by opting to omit pertinent evidence? Furthermore, did the trial court exercise due diligence by considering Mr. Kulesza’s financial circumstances and ability to pay Ms. Anthony or is it abuse of the trial court discretion?

“(ASSIGNMENT OF ERROR NO. 5)”

6. Did the trial court abuse its discretion when it reassigned the remaining community debts regarding the US Bank credit card

account number ending in 3095 in the sum of \$4,450.00 plus any accrued interest and the Citi credit card account number ending in 9259 in the sum of \$1,230.00 plus any accrued interest to Mr. Kulesza?

"(ASSIGNMENT OF ERROR NO. 6)"

7. Did the trial court abuse its discretion when it rejected the evidence provided, upon the trial courts request, showing the payoff of the 1st home equity line which respectively clarified and established *validity as community debt, and authoritatively determined that credit for paying off the home equity line not be credited?*

"(ASSIGNMENT OF ERROR NO. 7)"

IV. STATEMENT OF THE CASE

- i. In August of 2011 Mr. Kulesza and Ms. Anthony were married. In February 2015 the parties separated, and Ms. Anthony filed for dissolution alleging Mr. Kulesza of domestic violence. (Petition for Dissolution, CP 1-6) It was a short-lived marriage of 4 years and 6 months.
- ii. In April 2015 Ms. Anthony was court ordered to move back into Mr. Kulesza's home with their two children, and Mr. Kulesza's was ordered to move out. On April 23, 2015 the court mandated that Mr. Kulesza pay for the home's mortgage and associated bills, and in addition payment of \$500.00 in spousal support and \$1200.00 in child support to Ms. Anthony. (Temporary Order Re: Child Support and Spousal Maintenance, CP 96-97)
- iii. On August 19, 2015 the party's attended a mediation with Debra Brown and had reached an agreement regarding division of assets and debts as a means to finalize the Parenting Plan. (Certificate of completed mediation, CP 103)
- iv. On August 27, 2015 Mr. Kulesza had been let go from AREVA NP Inc. where Mr. Kulesza was employed as a Nuclear Criticality Safety Specialist. (CP 125-126)

- v. Agreement on a Parenting Plan was established on December 18, 2015. (FINAL Parenting Plan, CP 177-188)
- vi. A finalized Order of Child Support was established February 3, 2015. (Final Order of Child Support, CP 189-204)
- vii. Divorce was finalized on February 3, 2015 through filing Findings of Fact and Conclusions of Law (CP 205-218), and a Decree of Dissolution, (CP 219-236).
- viii. A Domestic Relations Order was entered with the courts on April 14, 2016. (CP 237-241)
- ix. January 13, 2017 Ms. Anthony filed a Motion to Enforce Decree of Dissolution (Supplemental Declaration of Jerrie Anthony re: Motion to Enforce Decree of Dissolution, CP 274-282)
- x. September 17, 2017, a trial on the Motion to Enforce Decree of Dissolution took place.
- xi. October 18, 2017, trial on the Motion to Enforce Decree of Dissolution continued and addressing further review of the Equiline 1st home equity line of credit loan.
- xii. January 23, 2018, trial on the Motion to Enforce Decree of Dissolution continued, and Court declined crediting Mr.

Kulesza the community debt of the Equiline 1st home equity line of credit loan. (RP 218 – 219)

- xiii. Order on Motion to Enforce Decree of Dissolution dated February 13, 2018, the Superior Court of Washington, Benton County in case #15-3-00151-6 ordered the following:
- The Respondent, Konrad Kulesza, is ordered to pay the Petitioner, Jerrie Anthony, \$45,120.00 as compensation due to her pursuant to the award of the Vanguard IRA Retirement Account under the terms of the Decree of Dissolution.
 - Attorney's fees are awarded to Jerrie Anthony in the sum of \$13,405.00. Costs are awarded in the sum of \$1,000.00 for the expenses incurred by Jerrie Anthony for retaining the services of Paul Neiffer, CPA.
 - A judgement is granted in favor of Jerrie Anthony and against Konrad Kulesza for the principal sum of \$45,120.00, reasonable attorney's fees in the sum of \$13,405.00, costs in the sum of \$1,000.00, plus interest at the rate of 12% per annum.
 - Konrad Kulesza is ordered to pay the remaining community debts of the US Bank credit card account

number ending in 3095 in the sum of \$4,450.00 plus
any accrued interest and the Citi credit card account
number ending in 9259 in the sum of \$1,230.00 plus
any accrued interest.

(Judgment and Order, CP 550-553)

- xiv. On February 21, 2018, Mr. Kulesza filed an appeal with the
Court of Appeals seeking review of the Trial Court's Order set
out above.

V. SUMMARY OF ARGUMENT

Mr. Kulesza is pursuing this Court of Appeals case as a pro se litigant appealing the case number 15-3-00151-6 Judgement rendered February 13, 2018. Mr. Kulesza strongly disagrees with the trial Court's decision about the money awarded to Ms. Anthony of \$45,120.00 and subsequent monies summing \$14,405.00 awarded for Ms. Anthony's attorney fees including an additional \$1000.00 for accountant fees. The Trial Court's Order of award is considerably unreasonable and is the basis of this appeal. As the aggrieved party, Mr. Kulesza feels this Appeal is exceptionally necessary to provide justice and finality to the high-conflict divorce proceedings driving this matter in need of resolution which can truly be accomplished through this higher level of review.

It is important to consider the fact that due to the entirety of this matter being handled by the same Commissioner whilst, putting aside the preference for continuity regarding evolution of this case, it is the very reason this matter requires a fresh pair of eyes. Mr. Kulesza respectfully requests that under the standard of review for a summary judgment order as "de novo," meaning literally that the appellate court takes a fresh look without deference to the trial court. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

The basis from the very beginning of Mr. Kulesza's arguments is that there was more debt attained during the marriage than there was any type of financial gain. Mr. Kulesza didn't have the financial means to provide the support and awards in Ms. Anthony's favor nor does he have the means of providing them now. Additionally, it isn't difficult to recognize that Mr. Kulesza has been treated somewhat unfairly due to Ms. Anthony's initial false claim of DV used to start this dissolution and it truly does impact fair and equal treatment throughout the entirety of a dissolution. Mr. Kulesza's previous motions provide several exemplary instances that are hard to argue, further involving the same Commissioner. There are many occurrences in this dissolution where unfair treatment and or lack of due diligence in reviewing evidence presents itself. One example of this is the wrongful judgement against Mr. Kulesza on December 21 of 2015 (Contempt Order Hearing CP 315-317) where even though Mr. Kulesza provided the Court proof of payment (Kids World Childcare statement, CP 663) on December 12 of 2015 predating the hearing, he was still found in contempt and a judgment of \$2000.00 was awarded to Ms. Anthony.

"(ASSIGNMENT OF ERROR NO. 1 AND NO. 2)"

On February 13, 2015, Mr. Kulesza was arrested and consequently in court trying to fight the false domestic violence accusations made by

Ms. Anthony. During Mr. Kulesza's arrest Ms. Anthony ran off, with the party's daughter (3 years old) and their newborn (1 month old) son, leaving behind no information as to where or why she left. For Mr. Kulesza this was a very traumatic experience and regarding the validity of the accusation was presented to the courts (Declaration of Konrad Kulesza, CP 64-70) as it was criminal, and it consequently set the precedence in the financial matters of the divorce.

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

On March 12, 2015 Mr. Kulesza's financial position was presented and filed with the Benton County Superior of Washington (Respondents Financial Declaration, CP 58-63) where the credit and loan debts reported totaled \$44,923.20, not inclusive of the debt against the Vanguard account which was \$30,123.45 which totaled \$75,046.70 in community debt. Barely one month after the party's date of separation, the debt rose significantly by \$3,598.04 provided that the **community debts on February 13, 2015 initially totaled \$71,448.66**. During this trial Ms. Anthony was ordered to move back into the family home with the party's two minor children and Mr. Kulesza was ordered to move out of his home. Upon this order to move back, Ms. Anthony began to overstate and exaggerate the false DV accusation to achieve favorable gain in the party's family law case which had just been initiated, and consequently it proved

to play a pivotal role as a tool used to play off the sympathy that the courts have for victims of domestic violence.

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

On April 23, 2015 the court ordered Mr. Kulesza to continue paying the home's mortgage including all associated expenses. Furthermore, the order consisted of paying \$500.00 in spousal support and \$1200.00 in child support. (Temporary Order Re: Child Support and Spousal Maintenance, CP 96-97). Given the award of spousal maintenance pursuant to RCW 26.09.090 was based upon insufficient evidence of the appropriate statutory factors and purpose of spousal maintenance and the trial court chose to overlook the financial circumstances and limitations presented in (Declaration of Konrad Kulesza, CP 64-70). The courts also failed to consider the new expenses incurred resultant of Mr. Kulesza being ordered to move out of his home raising the question whether such order and awards were fair and equitable or consequently abuse of discretion? The total cost in order to support all these expenses had increased significantly averaging \$9,000.00 on a month to month basis while his take home pay was averaging \$5,000.00 a month.

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

This without question is should be considered with regards to financial circumstances where Mr. Kulesza was required to provide, were unjust and inappropriately ordered. Time proved this declaration to be true and unmanageable. It can be declared with certainty that the order was unfair of the courts to put Mr. Kulesza in such a position as majority of the decision lacked any justifiable reason and merely based off Ms. Anthony's domestic violence accusation. An accusation with no supportive evidence, provided Mr. Kulesza's profession as a Nuclear Criticality Safety Engineer, let alone any record to provide any type of history for this type of behavior to allow someone to assume potential validity.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Marriage of Littlefield, 133 Wn.2d 39,47, 940 P.2d 1362 (1997).

In Re the Marriage of: Janette R. WELLS, fka Peacock, Respondent, v. William R. PEACOCK, Appellant., 2015 WL 4404955 (Wash.App. Div. 1), 4

"(ASSIGNMENT OF ERROR NO. 1, AND NO. 2)"

Resolution and conclusion of the dissolution might have been sooner, if Ms. Anthony had invested any effort, however in review and with consideration of the dominant matter in the dissolution being the

ongoing child custody which is as of September 20, 2019 still ongoing in the courts case number 15-3-00151-6. Ms. Anthony from the beginning of the dissolution and throughout her motions encompassed numerous false accusations which is the true reason for all the delays incurred in this case. Though the case number 15-3-00151-6 is still in progress, there is ample evidence now surfacing and being provided for the record to show that Ms. Anthony's behavior is malicious with numerous examples of perjury.

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

On the date of August 19, 2015 during mediation an agreement was established, that the entirety of community debt accumulated during marriage would be paid off using Mr. Kulesza's Vanguard account. During the mediation it was said that the approximate time to execute the QDRO would be approximately eight weeks. Mr. Kulesza was addiment in voicing his greatest concern on issues in mediation regarding the severity of the financial circumstances and hardship pushing the need for a resolution. Ms. Anthony was aware of the community debts as they were first presented in Respondents Financial Declaration (CP 58-63) filed with the Benton County Superior of Washington on March 12, 2015. Resultant of knowledge gained during mediation; Mr. Kulesza agreed to transfer his Vanguard Account funds to Ms. Anthony by way of a qualified domestic relations order upon learning that there was an exclusion on 10% early

withdrawal fees. The agreement was that upon performing the transfer that Ms. Anthony would pay the entirety of the community debt with those funds for the overall best interest of our family. The remainder of the funds, after fully paying off community debts would be for Ms. Anthony to utilize in buying a home including a means for a financial start. This was assessed and discussed during the mediation which (upon considering all of the unknowns) was estimated to be approximately \$18,000. Mr. Kulesza felt this would be a reasonable amount for a down payment on a home that Ms. Anthony could afford given her income. Mr. Kulesza was felt 8 weeks was still feasible in his fiscal abilities and was interested in an amicable solution to the financial problems and this was a very sensible solution.

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

On October 6, 2015 the financial hardships were brought up again by Mr. Kulesza requesting the courts to review and adjust support provided to Ms. Anthony in his declaration (Declaration of Konrad Kulesza, CP 64-70). Mr. Kulesza's financial situation was once again detailed out in Respondents Financial Declaration (CP 114-119) filed with the Benton County Superior of Washington on October 6, 2015 which provided a total debt of \$65,867.10 without accounting for the debt against the Vanguard account. An Amended Respondents Financial Declaration

(CP 128-133) was filed with the Benton County Superior of Washington on October 8, 2015 which provided the credit and loan debts reported totaled \$68,152.54 where the debt against the Vanguard account was \$27,388.13. This debt now, less than eight months after the date of separation, totaled \$95,540.70 (\$24,092.04 more than the initial debt on February 13, 2015) This debt does not include the monies Mr. Kulesza borrowed from family and friends to substation and cover expenses as ordered and allotted to him on April 23, 2015, which further proved to be significantly disproportional and inappropriately assigned. Mr. Kulesza's income and already existing financial responsibilities was once again not addressed during this case with the due diligence it deserved.

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

Shortly after on October 26, 2015 Mr. Kulesza brought up the fact that he was still living in an apartment because Ms. Anthony and her attorney refused to sign the drafted CR-2A agreement inclusive of the terms agreed during mediation on August 19, 2015 (Declaration of Konrad Kulesza, CP 147-152). Mr. Kulesza repetitively voiced concern regarding the financial hardship he was struggling with. A portion of the initial mediated agreement was filed with the court on October 28, 2015 (*Proposed Order Re: CR-2A Mediated Agreement (Partial Agreement)*, CP 153-154).

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

As time passed and the 8-week time frame Mr. Kulesza was financially able to sustain; as it was what he planned for in regard to the discussions during mediation; due to Ms. Anthony, the QDRO had not yet been executed nor was it signed. After the 8-week time frame had long past, provided it was now mid-December, lack of involvement from the courts in getting Ms. Anthony to address the progression of finalizing the divorce, Mr. Kulesza’s repetitive efforts to bring this matter to the court’s attention going unanswered, Mr. Kulesza felt it was necessary to start handling financial responsibilities personally such that he would not be driven to file for bankruptcy, which was not in his children’s best interest.

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

On December 22, 2015 Mr. Kulesza decided to begin restructuring the fiduciary situation (8 months into the dissolution process) by first paying off the loan against the Vanguard account using the Vanguard account funds. With no end in sight to the dissolution, assessing the pros and cons of breaking the orders, the decision to move without the courts permission was justified in that the loan against the Vanguard account had a 4.25% APR where a total interest of \$735.46 had accrued (money lost without purpose) during this time on the loan pulled against the Vanguard account. Furthermore, it is important to consider the principal and interest payments made on this loan during this time which totaled \$4,971.68.

This financial transaction outweighed the losses incurred from the 10% early withdrawal penalty to a gain by means of no longer having this payment included in the monthly expenditures nor the accruing interest associated with the debt which allowed those monies to be allocated towards paying other ongoing debts with much higher interest rates. In retrospect given the actual date of the QDRO rolling over from the Vanguard account to Ms. Anthony's account proved to be a financially sound decision.

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

On 02/13/2016, when the decree having an incorrect CR-2A attached, since it was not updated as it should have been, was finally filed with the Benton County Superior of Washington, the Vanguard account had a value of \$73,557.84 and a debt against the account paid off. From the date of Separation 02/13/2015, Mr. Kulesza continued to contribute to the Vanguard account where the total contributions between DOS, and when mediation took place August 19, 2015, Mr. Kulesza's contributions totaled \$4,181.32. Mr. Kulesza, providing his intentions were to support and provide the mother of his children to be as successful as possible, essentially awarded value to Ms. Anthony would equate to \$69,376.50. However, further calculations in subtracting the community debt ($\$71,448.66 - \$30,568.99 = \$40,879.70$) from the available amount in the

Vanguard account (\$65,950.40-\$40,879.70) would leave \$25,070.70 for Ms. Anthony without accounting for any taxes yet. It is important to note and understand that the \$40,879.70 needed to be withdrawn, would have undergone normal federal taxation. Another aspect to consider is the difference of the Vanguard account value and the Federal taxes withheld due to Mr. Kulesza's action regarding the 10% early withdrawal penalty and market fluctuations.

The parties' CR2A Agreement is a contract and should be analyzed in accordance with contract law. Paragraph 31 of the Agreement provides as follows (CP at 463 and 464):

Independent Status as Contract. Notwithstanding that the provisions of this contract may be included and merged into a decree of dissolution or legal separation, if one is obtained, it is also the intention of the parties that this contract retain its status independently as a contract between the parties, each party to enforce their rights as they arise from this contract by contract law, as well as those remedies available for the enforcement of judgment and marital law, specifically including the use of the contempt power of the court, in the event a decree of dissolution or legal separation is granted.

Karen V. AGARS, Petitioner/Appellant, v. Rolland M. WATERS, Respondent/Respondent, CRAY, INC., Garnishee., 2010 WL 9462555 (Wash.App. Div. 1), 8

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

Mr. Kulesza faced with the total debt at this time and having incurred significant expenses for a criminal lawyer and a family lawyer, along with numerous other expenses associated with the divorce proceedings, Mr. Kulesza refinanced his home. The \$17,923.31 debt

having a 6.74% APR US Bank Equiline (account number 0000-3000-922-003) was closed in March 25, 2015 and the debt was incorporated into the refinanced mortgage which now had a 4.64% APR. This reduced the monthly payment of two debts into a lower single payment and reduced the monthly interest being accrued on the \$17,923.31 debt at 6.74% APR to 4.64% APR. The Court understands that the home equity line of credit account acquired during the marriage was not the same home equity line of credit account enumerated in the CR-2A agreement table of debts. (RP 212-213)

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

Thus, Mr. Kulesza should receive credit for the home equity line of credit debt of \$17,923.31 because this was a fiscally responsible transaction, and he should not be punished for doing so without obtaining court permission. The proof of the account closure had been provided to the court along with the associated mortgage statements which show the reallocation of the debt incurred during the marriage which is inarguably part of the party's community debt and was basis of and included in the mediation discussions and agreement. The new line of credit against the mortgage accrued after March of 2015, with intentions of providing better financial support being Mr. Kulesza's responsibilities, is a separate debt

and is acknowledged by the court that it is the one for which he is responsible for.

Additionally, the properties that Ms. Anthony continues to argue as being awarded with the support of the argument in the judgement on February 13, 2018 stating "The Decree states, in relevant part, that "[h]usband will be awarded the family home at 109 Ogden, Richland, WA." as a basis for support of judgement. These are were and are separate property which I owned 3 years prior to our marriage. My home at 109 Ogden St. was purchased on September 18 of 2007 with a down payment of \$36,830.10. The 2383 and 2387 Morency investment properties were purchased on August 31 of 2007 and they were paid in full. When Ms. Anthony was employed and had an income, she never once contributed to the living expenses when she lived with me at the Ogden home, short time prior to marriage, during the marriage, and for the 11 months after separation.

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

The court failed to take into consideration the number of incurred expenses due to the courts oversight of the orders imposed on and the impact on Mr. Kulesza's financial situation. The courts must recognize the simple FACT that the community debts were ultimately paid off and not how or if there is a direct and traceable path for showing that the monies had a direct path from the retirement account to the debtor. As listed Mr.

Kulesza's debts he was prior to the separation was at 12 with the delicately balanced expenses already being juggled regarding mortgage, utilities and other home associated bills where upon separation under false pretense he then had another location for which he had to accommodate financially in addition to the courts mandated child support and spousal maintenance. As argued during trial held on September 14, 2007 that Mr. Kulesza's expenses were almost twice the income he was earning.

In a dissolution action, the trial court must make a just and equitable distribution of the property and liabilities of the parties after considering all relevant factors, including the nature and extent of the separate and community properties, the duration of the marriage, and the economic circumstances of each spouse. RCW 26 .09.080.

In re Marriage of Bowman, 168 Wash. App. 1003 (2012)

The trial court's paramount concern when distributing property in a dissolution action is the economic condition in which the decree leaves the parties. *In re Marriage of Williams, 84 Wash.App. 263, 270, 927 P.2d 679 (1996).*

In re Marriage of Bowman, 168 Wash. App. 1003 (2012)

Findings of fact are reviewed under the substantial evidence standard. Substantial evidence exists where there is evidence of a sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *State v. Halstien, 122 Wash.2d 109, 129, 857 P.2d 270 (1993).* Mixed questions of law and fact are reviewed in terms of the substantial evidence test for quantitative determinations and de novo as to the legal aspects of the issue. *Harris v. Urell, 133 Wash.App. 130, 137, 135 P.3d 530 (2006).* Issues involving the discretion of the court are reviewed for

an abuse of discretion. *State v. Bourgeois*, 133 Wash.2d 389, 406, 945 P.2d 1120 (1997). A court abuses its discretion when it acts on untenable grounds or for untenable reasons. *In re Marriage of Gillespie*, 89 Wash.App. 390, 398–99, 948 P.2d 1338 (1997).

In re Marriage of Bowman, 168 Wash. App. 1003 (2012)

In view of the trial court's discretion, a trial court's distribution of property will not be reversed on appeal absent a showing of manifest abuse of discretion. *Id.*

In re Marriage of Bowman, 168 Wash. App. 1003 (2012)

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

Ms. Anthony was provided with the opportunity to start anew financially given she ultimately received sum of \$18,435.00 which is far more than she would have received if Mr. Kulesza had not taken actions for which he is now under scrutiny. Also, if the accrued interest on the community debt were to be credited to Mr. Kulesza, then Ms. Anthony would have ultimately received less or owe Mr. Kulesza monies. Again, the amounts incurred from the 10% early withdrawal penalty are less than the accrued interest of the community debts over the time span they existed. This is a logically and sound argument presented within this document against the amounts awarded to Ms. Anthony by Order on Motion to Enforce Decree of Dissolution dated February 13, 2018, and provides reasoning not reviewed with the due diligence it should have received during the trial.

Court of Appeals will not disturb the trial court's approval of a property distribution unless there is a clear and manifest abuse of discretion, and an abuse of discretion does not exist unless it can be held that no reasonable person would have ruled as the trial court did.

In re P'ship of Rhone & Butcher, 140 Wash. App. 600, 166 P.3d 1230 (2007)

A court may modify the terms of a contract on the basis of "mistake," which is a belief not in accord with the facts.

In re P'ship of Rhone & Butcher, 140 Wash. App. 600, 166 P.3d 1230 (2007)

The elements of mistake permitting avoidance of a contract are: (1) it must be held at the time the contract is made, (2) it must relate to a basic assumption of the contract, (3) it must have a material effect on the agreement, and (4) the party seeking avoidance must not have borne the risk of the mistake.

In re P'ship of Rhone & Butcher, 140 Wash. App. 600, 166 P.3d 1230 (2007)

Additionally if the review consider all the factors regarding this matter from the date of separation, little attention has been given to the fact that Ms. Anthony's community assets were not truly presented. The \$18,435.00 Ms. Anthony received from the Vanguard account is just a portion of the separation of community assets and the judgments against Mr. Kulesza from February 13 of 2017 fail to consider many of the facts presented in this brief. Likewise, there is a lack in considering the financial awards Ms. Anthony was given in the beginning and other community property Ms. Anthony walked away with from the short-lived

marriage of 4 ½ years such as Ms. Anthony's 401k, the Ford Escape vehicle that Mr. Kulesza was left with to pay off on the U.S. Bank credit card which was reassigned from the CR-2A to Mr. Kulesza by the Superior Court of Washington, Benton County in case #15-3-00151-6 Order dated February 13, 2018, such as her 401k and initial withdrawal, 10k diamond ring, and numerous other assets attained during marriage. The Court adopted as an accounting the version 2 report drafted by Mr. Paul Neiffer, CPA. However, there are several inaccuracies and errors in the accounting performed. The accounts calculations cannot feasibly apply nor can it consider a valuation to attribute gain or loss due to the nature of the monies nor is there any account for interest and payments made to upkeep the "good standing" of existing debts associated with the QDRO and primary reason it was established regarding the future distribution to payoff of community debt. Furthermore, in regard to the conclusively calculated amount used in the judgement on February 13, 2018, numerous values of the community debts used in the calculation are not consistent with the statement that they are from the date of separation, as they do vary between the date of separation, the CR-2A, and other dates in financial documents on record. Moreover, some consideration and weight should be placed on the fact that after Ms. Anthony gained employment, she did not contribute to the community debt or the expenses

being covered by Mr. Kulesza as help to support our children's well-being.

VI. CONCLUSION

First and foremost, Mr. Kulesza had a fiduciary duty as a father of two children, who (without turning this motion into a novel) were the priority above all other matters. Provided Mr. Kulesza's vested efforts in adhering to the orders and getting the courts to address the financial matters, the court chose to ignore and not address them when they were brought up. Mr. Kulesza was left with a difficult decision and under the circumstances it is difficult to argue that his reason was driven by bad faith. Mr. Kulesza could either allow foreclosure on the home in which his children resided in by continuing to incur debt due to accrued interest from a sizable debt beyond the point of manageable balance (which again was not considered fully in the financial duties bestowed upon me to support Ms. Anthony while she chose and refused to work for the sake of contributing to the well-being of our children's future), or disobey the court orders and save the home and attempt to maintain some aspect of financial balance and stability by means of withdrawing from the Vanguard account he built over the years to pay off debts which after

mediation and established agreement August 19, 2015 should have been the responsibility of Ms. Anthony.

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

It is inappropriate of the Courts to consider Mr. Kulesza’s actions as the embodiment of bad faith, and that the actions were intransigent. If consideration on the assignment of the early withdrawal penalty taxes incurred were to be quantified as the portion as unnecessarily expended monies from any of Mr. Kulesza’s actions, then just as fairly the assignment of accrued interest should be equally considered. However, Mr. Kulesza is requesting that the Appeals Court either fully dismiss or reverse the Judgment and Order and remand the case to the trial court to modify the Judgment and Order to correct the errors made.

The party was married on August 7, 2010 and separated on February 13, 2015 which means the duration of the marriage was a short 4 ½ years. This is a fact.

The Courts should look behind the date of the Decree for a variety of reasons in this motion. There are two substantial reasons which are that (1) the debts were listed and presented several times which provide the premise of the QDRO verbiage “*wife shall withdraw from the IRA account a minimum of \$70,000.00 in order to pay the outstanding community debts of the parties*” discussed earlier , (2) and between

discussions with Ms. Anthony throughout the divorce proceedings along with the earlier mentioned attempts for relief provided in my declarations to the courts regarding financial struggles and hardships clearly identifying my income to expenses were significant and disproportionately or inappropriately assigned.

We will seldom modify a trial court's distribution decisions upon appeal; the spouse who challenges such a decision bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46–47, 940 P.2d 1362 (1997). A decision is manifestly unreasonable “if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Id.* at 47. If substantial evidence supports the court's findings of value, it will be affirmed. *Gillespie*, 89 Wn.App. at 403–04. To determine whether substantial evidence exists to support a court's finding of fact, we review the record in the light most favorable to the party in whose favor the findings are entered. *Id.*

In re Marriage of Triggs, 163 Wash. App. 1016 (2011)

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

Lawyers and accountants agree that the QDRO should be based off the actual separation date of February 13, 2015 through the date until Ms. Anthony had the QDRO transferred over into her account (sum of \$18,435.00). The debts on 02/13/2015, date of the party's separation,

totaled \$71,448.66. Where at that time the Vanguard account had a value of \$89,512.66 and a debt of \$30,568.99. The CR-2A was incorrect from the very beginning due to severe oversights.

“(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)”

It is important to note the specific verbiage of “wife shall withdraw from the IRA account a minimum of \$70,000.00 in order to pay the outstanding community debts of the parties” which entails that there was at minimum \$70,000.00 of community debts identified during the mediation. Thus in recalling the basis in the Judgement rendered February 13, 2018 a basis used, which has been used repetitively, states “*Attached to the CR-2A agreement and Decree was a list of community assets and debts, with a total of 11 debts listed for Petitioner to pay with a total of approximately \$26,000.00.*” is skewed in differs significantly for the verbiage in the CR-2A agreement. It is difficult to understand the basis reached by the courts and per the judgement on February 13, 2018, which states “After the Decree was entered, \$82,978.00 was withdrawn from the Vanguard IRA Retirement Plan ("IRA"). Mr. Kulesza actually received \$58,096 after applicable taxes and fees. Mr. Kulesza paid community debts totaling \$17,300.00 from the monies he received.” and use as a basis for the awarded amount of \$45,120 on appeal. There is a lack of justification for how this value was attained and frankly does not align

with the facts. In review of the amounts and the associated dates of the listed debts, the financial information is incorrect in the CR-2A attached to the Decree of Dissolution. The CR-2A was supposed to have been corrected and updated to reflect the debts that were first presented in Respondents Financial Declaration (CP 58-63) filed with the Benton County Superior of Washington on March 12, 2015, but this never took place.

Additionally, review of the amounts and the associated dates of the listed debts, clearly confirms that financial information is incorrect in the CR-2A attached to the Decree of Dissolution. The CR-2A was supposed to have been corrected and updated, but this never took place. The CR-2A was incorrect from the very beginning due to severe oversights and this is a fact.

"(ASSIGNMENT OF ERROR NO. 1, NO. 2, NO. 3, NO. 4, NO. 6, AND NO. 7)"

The order of the Court in the Judgment and Order (CP 550-553) was to enforce the Divorce Decree, but in actuality was an impermissible modification of the Decree. A similar issue was heard by this Court in *In re Marriage of Oscarson*, No. 21966-8-III (WA 8/12/2004) (unpublished, but by order of the court "filed for public record"). In the *Oscarson* case the dissolution decree awarded Ms. Oscarson an amount from Ms. Oscarson's 401(k) plan. When nothing was done, on an Order to Show

Cause the trial court decided that the parties should share the loss on the plan since the decree and awarded a percentage to Ms. Oscarson. The Court of Appeals reversed on the grounds that this was an impermissible modification of the dissolution decree. The following excerpt from the case describes how a trial court should approach the interpretation of the decree, and how the court is limited in what it may do:

"Here, as in *Thompson*, Mr. Oscarson is correct that the decree is ambiguous for lack of a transfer date of monies from a particular 401(k) plan funded with securities that fluctuated with market conditions. Moreover, a decree is supposed to definitely and finally determine each party's property interests by a 'specific disposition of each asset which informs the parties of what is going to happen to the asset and upon what operative events, e.g., that a set sum or formula of money will be paid upon the sale of certain property.' *Byrne [v. Ackerlund]*, 108 Wn.2d [445,] at 451 [(1987)]. The operative event here was apparently to be entry of a QDRO, so that Invesco administrators could determine whether the **domestic relations order** was '**qualified**' in order to liquidate the funds into Ms. Oscarson's chosen retirement account. But the decree made no mention of a QDRO or any other operative distribution event. The decree failed to assign responsibility to either party to effect a fund transfer. Together, the above defects render the decree latently ambiguous when the decree is applied to the parties' mutual failure to take action on the transfer of funds over an extended time. See also [*In re Marriage of Chavez*, 80 Wn.App. [432,] at 434-35 [(1996)](decree awarding wife '50% of Respondent's military retirement pension' deemed ambiguous for failure to specify how, and at what point in time, pension was to be divided in half). The ambiguous decree was thus properly subject to the trial court's interpretation, using general rules of construction applicable to statutes, contracts, and other writings. [*In re Marriage of Thompson*, 97 Wn.App. [873,]

at 878 [(1999)] (citing [*In re Marriage of Gimlett*, 95 Wn.2d [699,] at 704–05) [(1981)]).

"But since Ms. Oscarson only sought enforcement of the original decree and no one sought to reopen it, the court only had authority to clarify, but not modify, the ambiguous decree. RCW 26.09.170(1); *Thompson*, 97 Wn.App. at 878 (citing *In re Marriage of Greenlee*, 65 Wn.App. 703, 710, 829 P.2d 1120 (1992)). A decree is modified when a party's rights are either extended beyond the scope originally intended or reduced. In contrast, a clarification merely defines rights already given and spells them out more completely if necessary. *Thompson*, 97 Wn.App. at 878 (citing *Rivard v. Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677 (1969)).

In re Oscarson, pages 4-5.

Ultimately, through the divorce proceedings, Mr. Kulesza paid off the bulk of the marital debt leaving the remaining community debts of the US Bank credit card account number ending in 3095 in the sum of \$4,450.00 and the Citi credit card account number ending in 9259 in the sum of \$1,230.00. These being the only debts not paid off means that throughout the extremely complicated juggling and allocating of community debts initially totaling \$71,448.66, that it is false for the trial court to declare that the Vanguard account withdrawals were not used in essence to pay off \$65,950.40. This amount does not include the interest accrued on the community debts.

Findings of fact are reviewed under the substantial evidence standard. Substantial evidence exists where there is evidence of a sufficient quantum to persuade a fair-

mindful person of the truth of the declared premise. *State v. Halstien*, 122 Wash.2d 109, 129, 857 P.2d 270 (1993). Mixed questions of law and fact are reviewed in terms of the substantial evidence test for quantitative determinations and de novo as to the legal aspects of the issue. *Harris v. Urell*, 133 Wash.App. 130, 137, 135 P.3d 530 (2006). Issues involving the discretion of the court are reviewed for an abuse of discretion. *State v. Bourgeois*, 133 Wash.2d 389, 406, 945 P.2d 1120 (1997). A court abuses its discretion when it acts on untenable grounds or for untenable reasons.

In re Marriage of Gillespie, 89 Wash.App. 390, 398–99, 948 P.2d 1338 (1997).

“(ASSIGNMENT OF ERROR NO. 5)”

Mr. Kulesza’s actions were out of necessity and the decision to act were beneficial to the support of Ms. Anthony and our children. So, if credit for accrued interest were to be added to the community debt then Ms. Anthony would likely owe Mr. Kulesza’s monies, as the amount of accrued interest outweighs the total monies lost to the 10% early withdrawal penalties incurred. For this reason, Mr. Kulesza’s should not be reprimanded with Ms. Anthony’s attorney’s fees and costs as the reason for applying such award has no grounds to stand on, nor given the presented facts within this brief, are any of the previously utilized, applicable reasons in comparison.. Ms. Anthony has been abusing judicial resources with the frivolous accusations (always lacking supporting evidence of any kind) are false. Ms. Anthony has knowingly committed fraud in the numerous statements made under oath as well as the

declarations and documents she has provided the courts. The most prevalent and boldly put, first-of-a-kind, by nature abuse of judicial resources is currently being built on the current trial which began June 22, 2019 and is awaiting continuance to startup on October 22 with case # 15-3-00151-6. This type of behavior should not be allowed, nor should it be rewarded.

Lastly, consideration should be applied to the unreasonable expectations to support and sustain two households resultant of Ms. Anthony's accusations, the lack of help from Ms. Anthony in timely addressing pertinent issues in the dissolution matters, the delays resulting from her numerous filings, the parental kidnappings and alienation inflicted on Mr. Kulesza in essence should be to some extent taken under consideration.

September 20, 2019

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Konrad P. Kulesza", written in black ink.

Konrad P. Kulesza, Appellant
109 Ogden St.
Richland, WA 99352
konrad.p.kulesza@gmail.com
503-869-1812

**SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON**

Jerrie R. Anthony (f.k.a. Kulesza),

Plaintiff,

CASE №: 358887

v.

BENTON COUNTY SUPERIOR COURT

Konrad P. Kulesza,

Defendant.

№: 153001516

**DECLARATION OF SERVICE
(AFSR)**

I, Konrad Patrick Kulesza, hereby declare as follows:

1. I am over the age of 18 years and not a party to this action. My residence address is:

109 Ogden St. Richland, WA 99352

2. On 09/20/2019, I served Jerrie Anthony with the following document:

BRIEF OF APPELLANT

Address(es) of service:

2555 Duportail St. Apt. H157
Richland, WA 99352-4903

4. Service was made as indicated below:



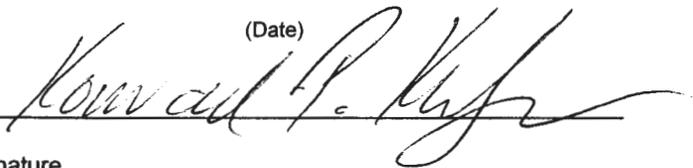
By mailing to the persons named at the address(es) of service.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Richland, Washington on 09.20.2019

(Place)

(Date)



Signature

Konrad Patrick Kulesza

Type or Print Name