

FILED

DEC 09 2019

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Case #358887

**The Court of Appeals of the
State of Washington
Division III**

In Re. The Marriage of:

Jerrie R Kulesza(Anthony), Respondent

and

Konrad P Kulesza, Appellant

Respondent's Brief

Jerrie Anthony
2555 Duportail St H157
Richland, WA 99352
beeanthony11@gmail.com
509-222-9666

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- I. Reference to Mr. Kulesza's "Issues On Assignment Of Error".
1. The trial court used facts to determine that Mr. Kulesza absolutely acted in bad faith and continues to do so. He states that the QDRO took 11 months to complete. The divorce was completed February 3rd, 2016 and the QDRO was completed in May 2016. The only delay was that Mr. Kulesza refused to pay his half of the \$600 fee until paying it in May (RP 176-179). Mr. Kulesza further delayed the release of funds to Ms. Anthony by ignoring the transfer paperwork (RP 187). Also in the original trial court he states that he used the funds to pay his home equity line of credit.(RP 144-146) Now in this filing with the appeals court he states that he refinanced the home equity line of credit into his new mortgage and did not use any funds from the IRA towards that.
 2. All facts of the case have and were submitted to the courts. The motion at hand was in fact a motion to enforce a contract within a decree of dissolution dated February 3, 2016. (CP 219-236)
 3. The CR-2A was a binding contract as the appellant stated in his filing.
 4. The amount of the judgment is completely in line with the calculations and evidence provided. The only figure that can't be obtained is the over 3 years of lost investment income that Ms. Anthony would have received had Mr. Kulesza not broken the contract and stole all the money.

5. Ms. Anthony had to obtain attorney's to enforce the contract and therefore all calculated attorney's costs should definitely be awarded to Ms. Anthony as was provided in the cost bill from Gravis Law.
6. Mr. Kulesza took out \$82,978.70 five disbursements from the wife awarded IRA after the divorce decree was final (RP 133-135) (CP723-727) . Yet can only account for using \$11,691 going towards community debts. After taxes were paid this leaves \$46,405.39 left unaccounted for that Mr. Kulesza benefited from . By his own choosing he did not pay community debt with the funds he stole(VR 182-184). Therefore the judgment by the trial court was in line and appropriate;
7. Mr. Kulesza tried to submit false evidence to the trial court to confuse them and tried to hide the fact that he never used the IRA funds to pay the home equity line of credit. This in itself was his debt, not community debt per the CR-2A. As he sates in his Opening Brief here, he refinanced some home equity line into a new mortgage. Yet on page 5 of his opening brief he also says that he provided evidence to the trial court showing that he paid it off with funds from the IRA. He also states in trial that he used IRA funds to pay off the Home Equity Line of Credit not that he refinanced it.(RP 145,168-169)

II. Statement of the Case

- I. Mr. Kulesza falsely represented several pieces of the Statement of the Case. It is true that the parties were married for 4 years and 6 months prior to separation, but he fails to provide the whole picture. Prior to marriage the parties had been living together since 2003. Ms. Anthony paid a portion of all bills, including the mortgage throughout the entirety of cohabitation. So in total they were living together for 12 years and 6 months. In 2007 Ms. Anthony and Mr. Kulesza were declared domestic partners so she could be covered by Mr. Kulesza's work insurance.
 - vi. Mr. Kulesza referenced the year 2015, but it was actually 2016.
 - vii. Mr. Kulesza referenced the year 2015, but it was actually 2016.

III. Objection to Argument

Ms. Anthony agrees with the trial courts decision plus the 12% per annum awarded to her. The motion brought before the trial court was to enforce the CR-2A contract attached to the divorce decree. Ms. Anthony agrees with the trial court's decision that due to her having to bring the motion to trial that Mr. Kulesza be responsible for all of her attorney fees submitted to the court via the cost bill. It is simple and not complicated as he is trying to make it look. (CP550-553) Mr. Kulesza is trying to justify stealing.(VR 181-187)

1. Fact: There was a contract Mr. Kulesza agreed to and signed(CP 219-236).
2. Fact: Mr. Kulesza did not adhere to that contract.(RP 133-135,181-187) (CP723-727, 769-772)
3. Fact: This has caused harm to Ms. Anthony for 4 years.(VR 32-34) (CP769-772)

Ms. Anthony and Mr. Kulesza both willfully negotiated and signed the CR-2A agreement that was ultimately prepared by only his attorney after Ms. Anthony could no longer afford one. The debt listed in the final signed CR-2A (CP 219-236) was final as of the date of separation and there was no other debt (VRP 133-135). Mr. Kulesza has never provided any evidence of additional debt that was obtained prior to separation on February 13, 2015. Furthermore, the trial court awarded what was owed and Mr. Kulesza's ability to pay that should not be taken into consideration at all. The separation of assets awarded to Ms. Anthony was not given to her as agreed but was spent by Mr. Kulesza for his own personal gain.

The court system has not treated Mr. Kulesza unfairly in the motion to enforce proceedings due to his committing domestic violence against Ms. Anthony and their children. At which time (February 13, 2015), Ms. Anthony and the children went to stay with her brother in Pullman Washington and Mr. Kulesza was made aware of this immediately upon his release from jail. Mr. Kulesza was ultimately convicted of a domestic violence related charge under which Ms. Anthony allowed him to take a plea bargain under duress from Mr. Kulesza. Ms. Anthony has maintained a No Contact Order protecting her from Mr. Kulesza and his harassing and threatening behavior since 2016. (CP 333-337)

Mr. Kulesza gives false examples of his alleged unfair treatment by referencing a contempt hearing held on December 21, 2015 that was actually held February 15, 2017 (CP315-317) and was filed by Ms. Anthony for unpaid daycare for October 2016 and November 2016. By evidence Ms. Anthony showed that she was forced to pay the daycare costs of \$2,000.00 in order for her child to not be shut out of the facility. Mr. Kulesza refused to pay her back and paid an additional \$2,000.00 to the daycare before the hearing on February 15, 2017. The trial court ordered that Mr. Kulesza owed Ms. Anthony for the daycare expenses that she had paid. Mr. Kulesza has not followed that court order to date. This was not unfair treatment by the trial court.

Mr. Kulesza continues in his summary of argument to include various false dollar amounts of supposed community debt that are not proven in evidence previously provided to the trial court by him and there is no truth to any of them. (page 12 of the appellants brief) He also is providing more false information that is irrelevant to a motion to enforce a decree of dissolution referencing the temporary orders predating the decree as they are not at question on this appeal. What is relevant is that the divorce decree was signed and agreed on by all parties and it was not ordered by the court under duress or judgment (CP 219-236). Ms. Anthony did not play on the sympathies of the court as Mr. Kulesza alleges and this should not be considered for grounds to appeal this judgment.

The facts of the summary are that on August 19, 2015 during mediation an agreement was established and was included in the final orders of dissolution as a CR-2A agreement.(CP 219-236) Mr. Kulesza wasted no time extracting money from the IRA that was agreed on to become Ms. Anthony's property in the division of assets. Mr. Kulesza was proven to have invaded the IRA on multiple separate occasions both prior to and after the final dissolution was filed.(CP723-727) The trial court did not err in calculating only the funds that Mr. Kulesza stole after the dissolution was finalized even though he had taken more than \$80,000.00 in total.(CP 769-772, 723-727)

Mr. Kulesza became voluntarily unemployed from July 2015 until June 2016, and again from March 2017 to present (VR171). Mr. Kulesza continues to blame financial hardships as his justification for breaking court orders and the law in general. He broke court orders prior to the decree by admitting that he refinanced the family home, pulling out equity for his own use and illegally signing as an already divorced or single person to sidestep Ms. Anthony's required signature on the refinance documents. In this appeals document he continues to justify his decision as fiscally responsible but failed to inform the appeals court that he gained financially during that transaction and Ms. Anthony who was entitled to half of those funds at the time, once again she did not receive any of it. Ms. Anthony helped purchase the family home at 109 Ogden and was

actively involved in remodeling the entire home. The “short term marriage” was only on paper as Mr. Kulesza and Ms. Anthony were in a domestic partnership beginning in 2007 and had been sharing a home and financial responsibilities since 2002. The checking accounts remained separate by Mr. Kulesza’s insistence and Ms. Anthony was required to pay specific house bills and at some points over 85% of the bills were paid by Ms. Anthony including vehicle insurance, credit cards, utility bills and the mortgage. In May 2011, Mr. Kulesza refused to allow Ms. Anthony to work outside the home and insisted that she make her career as a stay at home mother. After this date, Ms. Anthony had no income of any kind to contribute to the expenses. Ms. Anthony did not have gainful employment again until after the separation at which time she took the first available job offered to her in order to support herself and the two children in September 2015 at which time Mr. Kulesza had refused to pay the temporary order of support (CP94-97) and the utility bills for the residence resulting in the electricity being shut off and Ms. Anthony no longer able to maintain a lawyer to represent her in the dissolution.

The court made no error in calculating community debts and also did not err in not considering the impact of Mr. Kulesza’s financial situation at the time that decree of dissolution was filed in the court, once again, he agreed to the binding contract of the CR-2A and was fully aware of his and her financial

situation and declared that he was choosing to not seek employment as it was his intention to be a stay at home dad and have his parents pay for his expenses.

(VR171) The court used accurate discretion by choosing to only calculate the monies owed to Ms. Anthony dating back to the date of dissolution and not before that date. The court also did not err in calculating that Mr. Kulesza had received funds well over the calculated community debt and should receive no credit for paying more monies toward the financial debt than that was calculated in the CR-2A.(CP 769-772)

IV. Conclusion

Mr. Kulesza has continued to harass Ms. Anthony and abuse the court system in order to get away with the money and to further his own agenda with the parenting plan which is in the trial courts again currently.(CP 333-337) In the current trial, it is Mr. Kulesza who has perjured himself, attempted to and actually entered false evidence in effort to malign Ms. Anthony. This type of behavior should not be allowed, nor should it be rewarded.

The facts are that from the date that Ms. Anthony filed for dissolution in February 2015 until current, Mr. Kulesza has lied, stole, cheated, maligned, harassed and drained Ms. Anthony of all financial assets, stability and safety. The issue at hand has proven that he acted in bad faith when he invaded the IRA to satisfy his own personal gain. Furthermore, to affirm his continual choice of bad faith, his last withdrawal from the IRA was dated June 27th, 2016 to total \$39,774.00(CP763), nearly 5 months after the final dissolution was filed and merely a few weeks after the QDRO was completed, and just days before he finally signed the required Vanguard documents to release the funds to Ms. Anthony. This effectively drained the account from approximately \$128,000.00 that was proven to be in the account at the time of mediation of the CR-2A (CP744) to just over \$18,000.00(CP723-727). According to this appellant brief, by his own words, this is what Mr. Kulesza now deemed fair in the separation of assets. Mr. Kulesza took it upon himself to be the final say in what Ms. Anthony was to receive and was indeed intransigent in doing so. Mr. Kulesza's justification as to why he thinks the amount awarded in judgment to Ms. Anthony to be inappropriate are completely irrelevant. All of the facts of the case were presented, the financial information in the CR-2A were provided by Mr. Kulesza. The specific verbiage of "the wife shall withdraw from the IRA account a minimum of \$70,000.00" was the understanding by Ms. Anthony to be the remaining balance in the IRA after the calculated community debt of

approximately \$26,000 was paid off. Should the appeals court review all of the evidence entered, the transcript of testimony and this brief in objection to appeal, then that court should rule in favor of Ms. Anthony and maintain the ruling of both the trial court and the previous appellate court award of an additional \$10,000.00 in sanctions against Mr. Kulesza for filing a frivolous and moot appeal that has no basis on facts or evidence.

December 2nd, 2019

Respectfully submitted,



Jerrie Anthony
2555 Duportail St. #H157
Richland, WA 99352
BeeAnthony11@gmail.com
509-222-9666

The Court of Appeals of the State of Washington Division III

In re:

Petitioner:

Jerrie Anthony (FKA Kulesza)

And Respondent:

Konrad Kulesza

No. 358887

Proof of Mailing or Hand Delivery
(for documents after Summons and Petition)
(AFSR)

Proof of Mailing or Hand Delivery

I declare:

1. I, Andrew Schmitt, am over 18 years of age. I am not a party to this case and am competent to be a witness in this case.

2. On (date): *December 4th, 2019*, I served the documents listed in **3** below to

Appellant: *Konrad Kulesza* by:

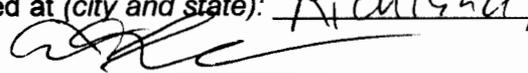
mail (check all that apply): first class certified other

109 Ogden St Richland WA 99352
mailing address city state zip

3. List all documents you served: Respondents Brief

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (city and state): Richland, WA Date: 12/4/19

▲  Andrew Schmitt
Signature of server Print or type name of server