

FILED  
Court of Appeals  
Division III  
State of Washington  
12/5/2018 8:42 AM

COA No. 36051-2-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

---

In re the Marriage of:

DENNIS J. ARTMAN,

Respondent,

v.

GWENDOLYN A. ARTMAN,

Appellant.

---

BRIEF OF APPELLANT

---

Kenneth H. Kato, WSBA # 6400  
Attorney for Appellant  
1020 N. Washington St.  
Spokane, WA 99201  
(509) 220-2237

TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR.....1

1. The court erred by enforcing the separation contract, incorporating it into the final decree of dissolution, and awarding Dennis Artman obligations advanced and fees under the contract.....1

*Issues Pertaining to Assignment of Error*

A. Did the court err by enforcing the separation contract, incorporating it into the final decree of dissolution, and awarding \$3460.88 to Mr. Artman for paying Gwendolyn Artman’s obligations under the contract and attorney fees to him for enforcing it when the court applied the wrong legal standard in determining the validity of the contract? (Assignment of Error 1).....1

B, Did the court err by entering the following findings in support of its decision to enforce the separation contract and finalization of dissolution? (Assignment of Error 1).....1

C. Did the court err by making the following oral findings and conclusions of law in support of its decision to enforce the separation contract and finalization of dissolution? (Assignment of Error 1).....2

II. STATEMENT OF THE CASE.....6

III. ARGUMENT.....7

A. The court erred by applying the incorrect legal standard for determining whether the separation contract was unfair at the time of its execution.....7

B. The court’s written and oral findings of fact are superfluous as they do not address the proper

inquiry when determining whether the separation contract should be enforced.....	12
C. Ms. Artman should be awarded attorney fees on appeal under RCW 26.09.140 and RAP 18.1.....	13
IV. CONCLUSION.....	14

TABLE OF AUTHORITIES

Table of Cases

<i>In re Marriage of Cohn</i> , 18 Wn. App. 502, 569 P2d 79 (1977).....	8, 13
<i>In re Marriage of King</i> , 66 Wn. App. 134, 831 P.2d 1094 (1992)...	13
<i>In re Marriage of Shaffer</i> , 47 Wn. App. 189, 733 P.2d 1013, review denied, 108 Wn.2d 1024 (1987)...	8, 11, 12, 13
<i>Shaw v. Dep't. of Ret. Sys.</i> , 193 Wn. App. 122, 371 P.3d 106 (2016).....	13

Statutes

RCW 26.09.070(3).....	7
RCW 26.09.140.....	13

Rules

RAP 18.1.....	13
RAP 18.1(c).....	14

## I. ASSIGNMENT OF ERROR

1. The court erred by enforcing the separation contract, incorporating it into the final decree of dissolution, and awarding Dennis Artman obligations advanced and fees under the contract.

### *Issues Pertaining to Assignment of Error*

A. Did the court err by enforcing the separation contract, incorporating it into the final decree of dissolution, and awarding \$3460.88 to Mr. Artman for paying Gwendolyn Artman's obligations under the contract and attorney fees to him for enforcing it when the court applied the wrong legal standard in determining the validity of the contract? (Assignment of Error 1).

B. Did the court err by entering the following findings in support of its decision to enforce the separation contract and finalization of dissolution?

- 1) The settlement contract was fair in the manner in which it was signed.
- 2) It contained a full disclosure of assets and liabilities. Ms. Artman signed the settlement contract knowingly voluntarily. Ms. Artman had the opportunity to seek counsel. Ms. Artman knew the amount and character of the property. There is no evidence that Ms. Artman was under duress or undue influence. She is a professional woman and the parties were living separate and apart. All other oral findings are incorporated by reference. (CP 64). (Assignment of Error 1).

C. Did the court err by making the following oral findings and conclusions of law in support of its decision to enforce the separation contract and finalization of dissolution?

Um, so he's claiming you were living separate and apart and you – you may see each other, but uh the burden is kind of – it's kind like undue or kind of coercion, undue influence, duress uh things like that and often to do that you kinda need clear and convincing evidence to – to – the burden is pretty high on you to do that. Um you know, cause if you're saying he's forcing – he's forced me like Ms. Shields indicated, a gun to your head, how did he force you and you may mentally felt that, but you've – you've not given me, through the declaration, I could see where you're under his control. I can see you have a master's you have your own business, you live over there, you see them over – you see them over here. He might have been in control of the finances it sounds like, very well, but was he – you are the divorce is filed, you are accepting it. Your declaration did indicate well, I – he wanted it and you did know how, you didn't have a reason, but again, divorces don't have to show a reason. You just – if you want out, you're out. And I think both parties accepted it. You are over there, he's over here um and you know westside – okay. . .

Okay, so [RCW 26.09.070] starts with shall and then it says unless it finds after considering the economic circumstances of the parties and any other relevant evidence produced by the parties on their own motion or [inaudible] with the court at the separate – that the separation contract was unfair at the time of execution.

So, initially, okay, unfair. You're alleging it's not fair that assets were values and he had the benefit of certain things or timeshares or whatnot. . .

But what I'm trying to get to is the definition of unfair is not quite the definition you're gonna understand it to be, okay? Um, for example, the court uh to be unfair you're talking about the manner. It has to be unfair in the manner in which it was signed, not the terms itself, okay? So, things can be 60/40, it can be 70/30, it can be different. It doesn't have to be 50/50 if, okay, for example, the parties have full disclosure has been made by the parties of the assets, okay, is there full disclosure of the assets? I see a lot of details here. The amount, character and value of this property. And so if we know what the assets are uh and agreement was then again to fully and voluntarily. Okay, so were you voluntarily sign it at the time, not now, but at the time you signed it was it fully and voluntarily signed and there is a reference to independent uh advice. In this case, often the case is now opportunity for independent legal counsel. Were you told not to get counsel, were you said – were you told it was unnecessary or threatened or forced to sign it. . .

But, what I was trying to get at is uh independent legal advice or opportunity for independent legal advice uh and did you do that? Well, you did have fourteen days once you got it to consider it. It does say full knowledge of your rights and full knowledge – that's more of a – you know, um you're not presumed to be an attorney, but uh you – there's some issues, I suppose, where you made a reference about his separate property is his. He claimed he has a right to it and of course in courts I have a right to divide separate legal and separate and community property as I see just and equitable. . .

I'm not saying quicker as much as if you needed time, but the thing is that we are here. You are – the law – you made declarations about being forced and duress and how you're under his control and the fact that the

parties may see each other but haven't – have lived separate and apart and the fact is that you've been separated at least since the time of the petition, so you've had months to or over a month plus uh let's see here. One more time, you – . . .

This was filed on the 1<sup>st</sup>. He says – well, he signed the petition on the 1<sup>st</sup> and you signed on the contract on the 28<sup>th</sup> so um I'm not quite sure that that would do – I don't think that that would do any good frankly, because the – there's just no evidence where he was controlling you. He didn't dictate that you sign. He mailed it to you fourteen days later you signed it and mailed it back, I assume. So, and I just have a hard – let's see here. So, I do find that you know the amount of the property, you know the character, the value, you had your own values unless he misrepresented them, which I have not seen. Um and you're basically claiming force, undue influence and stress and um emotional abuse or something. But uh by the parties living separate as long as they have and seeing each other occasionally even three times or eighteen times or twenty or whatever you still maintain separate homes. It's just difficult to fathom how you could be under his control living in a separate home with a separate – with your degree and your – your earning, for him to dictation – and I also am aware that he's sixty-nine it sounds like so he's been – he's been together with you, retired the entire time so the issue of community property earnings is – from him is not an issue, uh that I'm aware of. I understand that you're the one that's working, which may or may not have community ,property earnings which would be actually against your interest . . .

Because if you're living together all these times then half your salary would be considered his. Um so I just – . . . I just don't see.

Well, you presented – I only went through the facts. I kind of went through your declaration and write things out where you felt he had controlled – you had feared

anger. He was – you were under his control, you had fear and you had anger. That's of course your conclusion, it doesn't tell me how that – how that came about. So, I got to question – no proof there. Not received any financial earnings from eleven years of marriage. I'm not quite sure, cause that's – he's retired. . .

Not quite sure what that meant. Um how that would affect your signing of the contract. Uh divorce of course I indicated earlier you don't have to. You're afraid of him. I didn't see anything with his reply brief um reply declaration about his – he's forcing you or he's assaulted you. He's – protection order, law enforcement, or manipulation somehow. Based upon the emails I've seen too I didn't see that. People were cordial. Uh did not have an opportunity to review documents, that's not true. It looks like you did, but the attorney – one attorney elected not to, but there are thousands out there. Uh eleven years of emotional abuse or fear and then the conclusion that I need to find from the facts um and to show clear and convincing evidence, I just don't see undue influence. We spoke every day, morning and evenings, if that was even true. I doubt it was since the petition was filed. And so that's really, again, the parties get along great or whatever. They get separated and what happens after separation and what they do is what I'm looking at.

So, uh, with that, I don't – I just don't see any way that I can invalidate the agreement. . .

Right and I'm saying you haven't and there's just no text – you know, if it's like uh if you don't do this I'm gonna turn you into the IRS or if you don't do this of some threats, some manipulation and you know, what you may feel just because he controlled the finances or you'd let him tell you what to do, but you also are an intelligent woman, you've been living kind of hundreds of miles apart. So, the control is so much like not gonna – so much unlikely where you didn't have – where you cannot decide for yourself. Having buyer's remorse on something you signed

really doesn't – you know, cause people can stew on things. You buy a car, you think about it, you buy a house, you think about it, or you have a contract. God, maybe I should have gotten better. Um we're – like [counsel] has indicated, the Court, the law, the cases, we want finality of these things. We don't want to keep things going and keeping the wound out. These things are often emotional and they can last awhile. So, once we're through the agreement portion, unless you can show the duress portion um then to invalidate the contract because again, the contract doesn't have to be 50/50 if you agree to it. Now, if you don't agree to it, then I will review it and see if it's 50/50 because it very well be if there was duress and I looked at the values, I could still say it's enforceable just because it's – uh close enough. But, I don't – I don't look to the 50/50 I look to the agreement first and that's how I'm – how I get to look at it.

And then, because of that, um the term that he paid on the contract for personal property that is now yours according to the contract, would be your debts. That's his – that's his part of the enforcement of the agreement. Not damages as much as enforce the agreement and Um which is damages I guess.

Uh and then, because of the contract, I believe that specifically let's look at the last pages. Uh pages let's here. Binding agreement and entire agreement and uh paragraph twenty, there it is. Each part is responsible for their own fees, but any action to enforce any terms should be filed in this county uh if litigation is necessary. Uh it says the prevailing party may be awarded reasonable attorney's fees and costs. . . (4/18/18 RP 20-31). (Assignment of Error 1).

## II. STATEMENT OF THE CASE

On December 7, 2017, Mr. Artman filed a petition for

dissolution of his marriage to Ms. Artman. (CP 1). Three weeks later, on December 28, 2017, she signed a joinder that was filed March 6, 2018. (CP 11). On March 13, 2018, Ms. Artman filed a response to petition about marriage. (CP 27).

Mr. Artman filed a motion to enforce a separation contract prepared by his lawyer that he signed on March 6, 2018, and Ms. Artman signed on December 28, 2017. (CP 13-26, 37). At an April 18, 2018 hearing, the court considered Ms. Artman's response to petition about a marriage as her response to the motion to enforce. (4/18/18 RP 9-10). That day, the court entered an order enforcing the separation contract and finalization of dissolution, findings and conclusions about a marriage, and a final dissolution order. (CP 64, 67, 72). This appeal follows. (CP 78).

### III. ARGUMENT

A. The court erred by applying the incorrect legal standard for determining whether the separation contract was unfair at the time of its execution.

RCW 26.09.070(3) provides in relevant part:

If either or both of the parties to a separation contract shall . . . petition the court for dissolution . . . , the contract, . . . shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced

by the parties on their own motion or on request of the court, that the separation contract was unfair at the time of its execution.

Under this statute, the only question for the trial court reviewing a separation contract is whether the agreement was unfair when it was executed. *In re Marriage of Shaffer*, 47 Wn. App. 189, 194, 733 P.2d 1013, *review denied*, 108 Wn.2d 1024 (1987).

The *Shaffer* court adopted the test articulated in *In re Marriage of Cohn*, 18 Wn. App. 502, 506, 569 P.2d 79 (1977), to be applied in determining whether a separation agreement is “unfair”:

(1) whether full disclosure has been made by respondent of the amount, character and value of the property involved, and (2) whether the agreement was entered into fully and voluntarily on independent advice and with full knowledge by the spouse of her rights.

This is the appropriate standard for determining whether a settlement agreement should be incorporated into a dissolution decree. *Shaffer*, 47 Wn. App. at 194.

In her response to petition about a marriage, Ms. Artman stated:

[With respect to the real property,] respondent agreed to the Phoenix, Arizona property at 3131 East Legacy Drive; was advised by the petitioner to begin making payments on the property before the divorce documents were submitted and court decisions was completed. The respondent

requests the Petitioner to pay the balance of the Phoenix property, based on his decision to keep the Lake property, which is three times the value of the Phoenix property. The property division is not equally being divided between the parties. Petitioner is receiving the largest property at 2575 Pend Oreille Road, Colville, Wash 99114. He is also receiving the property, address unknown across the street valued at 90K. Respondent requests rights to use the summer home until the divorce is finalized. . .

Petitioner agreed to quick claim Arizona property 3131 East Legacy Drive 1114, Phoenix Arizona with the balance paid in full at time of divorce settlement, with rights to use until divorce decree is finalized. . .

[With respect to other requests,] respondent is objecting to the original written decree based on intimidation and petition was dishonest in stating the divorce documents had been filed and respondent was responsible for assuming mortgages and all fees associated with the property. Respondent was giving less than a weeks notice, to begin assuming mortgages. Respondent felt under duress to follow his commands. Petitioner also stated in the documents that parties had been separated, which they were not. Parties have been living in separate homes based on work – he works and resides in Spokane, Washington. Respondent works and resides in Tacoma, Washington. (CP 29).

Ms. Artman also requested a new divorce settlement agreement and opportunity to seek counsel. (CP 31). At the hearing on the

motion to enforce, the court considered her response to the petition as her response to the motion. (4/18/18 RP 9-10).

Ms. Artman alleged intimidation, undue influence, and dishonesty by Mr. Artman. She also felt under duress to follow his commands. (CP 29). The court's written and oral findings focused on these allegations. (4/18/18 RP 20, 21, 24, 25, 27, 28, 29, 30, 31). It found in the order enforcing the settlement contract that Ms. Artman was not under duress or subject to undue influence. (CP 64). The court also found the settlement contract was fair in the manner in which it was signed in that it contained a full disclosure of assets and liabilities. (*Id.*).

To the contrary, there was no full disclosure of the asset values as Ms. Artman disputed them, which were shown by Mr. Artman himself to be different from those in the contract:

I didn't really get a full disclosure of the – of the dollar amount of the assets. The reason why I stated is there's a handwritten information that's on the back page that was sent to me last Monday and that shows the true amount. If you put that dollar amount [inaudible] in December, it is different. It is higher and so I wasn't aware of the full disclosure of the amount and we are talking about a lake cabin's that's probably worth [inaudible] I had a thousand dollars where I'm getting something for two hundred and sixty. (4/18/18 RP 24; CP 13, 63).

The value of the real property assets was misstated in the separation contract as evidenced by Mr. Artman's own handwritten values dated October 15, 2017, that were attached to his April 19, 2018 supporting declaration. (*Compare* CP 13 to CP 63). That handwritten document by Mr. Artman indisputably shows and acknowledges there was no full disclosure of the asset values in the separation contract. Ms. Artman told the judge exactly that.

As stated in *Shaffer*, not only must the agreement be entered into fully and voluntarily with full knowledge by the spouse of her rights, but also with full disclosure of the amount, character, and value of the property involved. 47 Wn. App. at 194. Here, the value of the property involved was not fully disclosed in the separation contract so that essential element is lacking. *Id.*

The court used the wrong legal standard for determining whether the settlement contract was unfair at the time of its execution. *Shaffer, supra*. In addressing the issue of asset values, the oral decision reflects it misapprehended the issue:

Okay and well, you probably don't know this part.  
Um, you – if you have a business or an asset and  
you know what the asset is and a person say it's  
for three hundred thousand . . .

You feel it's five hundred thousand. . .

The fact that you don't have an actual number that you like in there . . . doesn't make it invalid. The – you don't have to have an independent appraiser do it. . .

*He doesn't have to tell you value which you know, he just has to say this is the asset.* (Italics added, 4/18/18 RP 24).

The court had also indicated the unfairness had to be in the manner of signing, not the terms themselves. (4/18/18 RP 22). But the value of the asset does indeed matter and is necessary for full disclosure. The court used the wrong legal standard to determine the contract's fairness at its execution by stating (1) the value of the asset was not the issue as long as the asset itself was disclosed and (2) he did not have to tell her the value of the asset. This ignores the test in *Shaffer*. There was no full disclosure in any event because Mr. Artman had valued the assets differently than in the separation contract. Contrary to the court's finding, this is evidence of misrepresentation. (4/18/18 RP 27). The court erred by using the wrong legal standard and its decision should be reversed. *Shaffer*, 47 Wn. App. at 194.

B. The court's written and oral findings of fact are superfluous as they do not address the proper inquiry when determining whether the separation contract should be enforced.

To the extent the court found there was full disclosure, the court erred because it made a finding using the wrong legal standard where no substantial evidence supports it. This is an error of law requiring remand. See *Shaw v. Dep't. of Ret. Sys.*, 193 Wn. App. 122, 134, 371 P.3d 106 (2016).

As for the rest of the court's written and oral findings on the order enforcing the separation contract and finalizing dissolution, they are superfluous in that they only address one prong of the *Cohn* test adopted in *Shaffer* and do not address at all the first prong requiring full disclosure of the value of assets. Again, the court used the incorrect legal standard for determining the validity of the separation contract as the findings do not address the critical element of asset value. *Shaffer*, 47 Wn. App. at 194.

The award of \$3460.88 for amounts paid by Mr. Artman for Ms. Artman's unfulfilled obligations under the separation contract and the award of attorney fees to him for enforcing the separation contract should be reversed as well since the court used the wrong legal standard in determining its validity. Remand is the remedy. *Shaw*, 193 Wn. App. at 134.

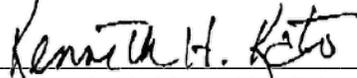
C. Ms. Artman should be awarded attorney fees on appeal under RCW 26.09.140 and RAP 18.1.

Ms. Artman is entitled to an award of attorney fees on appeal because she has the need and Mr. Artman has the ability to pay. *In re Marriage of King*, 66 Wn. App. 134, 139, 831 P.2d 1094 (1992). As required by RAP 18.1(c), Ms. Artman will submit a timely declaration of financial need.

#### IV. CONCLUSION

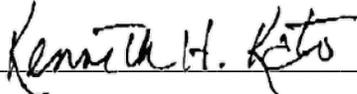
Based on the foregoing facts and authorities, Ms. Artman urges this court (1) to reverse the order enforcing the separation contract, incorporating it into the final decree of dissolution, and awarding advanced obligations and fees under the contract and (2) remand for further proceedings.

DATED this 5<sup>th</sup> day of December, 2018.

  
\_\_\_\_\_  
Kenneth H. Kato, WSBA # 6400  
Attorney for Appellant  
1020 N. Washington St.  
Spokane, WA 99201  
(509) 220-2237

#### CERTIFICATE OF SERVICE

I certify that on December 5, 2018, I served a copy of the brief of appellant through the eFiling portal on Jason R. Nelson at his email address.

  
\_\_\_\_\_

**December 05, 2018 - 8:42 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36051-2  
**Appellate Court Case Title:** In re the Marriage of: Dennis J. Artman and Gwendolyn A. Artman  
**Superior Court Case Number:** 17-3-02277-7

**The following documents have been uploaded:**

- 360512\_Briefs\_20181205084111D3027872\_8749.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was artman brief 360512.pdf*

**A copy of the uploaded files will be sent to:**

- Jasonnelsonlaw@gmail.com
- constance@constanceshieldslaw.com

**Comments:**

---

Sender Name: Kenneth Kato - Email: khkato@comcast.net  
Address:  
1020 N WASHINGTON ST  
SPOKANE, WA, 99201-2237  
Phone: 509-220-2237

**Note: The Filing Id is 20181205084111D3027872**