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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III**

**NO. 36051-2**

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**IN RE:**

**DENNIS J. ARTMAN,**

**PETITIONER**

**AND**

**GWENDOLYN A. ARTMAN,**

**RESPONDENT/APPELLANT**

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**RESPONSIVE BRIEF OF PETITIONER**

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### I. TABLE OF CASES AND STATUTES

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## II. STATEMENT OF THE CASE

Mr. Artman filed for dissolution of the parties marriage on December 7, 2017 in Lincoln County, Washington. (CP 1) The pleadings, along with a written separation contract were submitted to Ms. Artman who executed the separation contract and joined in the petition on December 28, 2017. On March 13, 2018, Ms. Artman filed a response to the petition previously filed and in which she had joined. (CP 27)

On April 18, 2018, a hearing was held on a motion filed by Mr. Artman to enforce the separation contract and to enter a decree of dissolution incorporating that agreement. (RP 33, lines 3-25, RP 34, lines 1-20) Mr. Artman was present with his attorney Constance Shields and Ms. Artman was present representing herself. (RP 5, lines 1-7) Prior to the start of the hearing, Ms. Artman did not request a continuance of the motion. (RP 18, lines 21-23). Because Ms. Artman did not file responsive pleadings to the the motion, the Honorable John Strohmaier, Superior Court Judge, considered her previously filed response to the petition. (RP 9, lines 21-25, RP 10, lines 1-18).

The court heard argument from Ms. Shields in support of Mr.

Artman's motion to enforce the separation contract. (RP 5-9) In her response to the motion to enforce the separation contract, Ms. Artman first stated,

“So, what I did is that I did agree to everything. I absolutely did and so I signed it and I agreed to it and then within a couple of months that went by I started to — um get a better understanding of exactly what I had signed. At the time I did not really understand. I got a new job. I had moved into a new apartment and also too I had filing for a divorce.” (RP 11, lines 19-25)

Additional statements were made by Ms. Artman that were excluded by the court as they had not been made as part of her response to the petition. Ms. Artman stated that “pretty much everything that I have is information that I have not shared . . .” (RP 12, lines 10-12)

Substantially all of the argument made by Ms. Artman concerned her disagreement with the separation date alleged by Mr. Artman. (RP 13, lines 2-25, RP 14, lines 9-14, RP 14, lines 22-25, RP 16, lines 8-16, RP 44, lines 4-25) Ms. Artman then requested the court grant her a continuance to allow her an opportunity to prove the parties were in a “committed marriage” since October 4, 2017. (RP 45, lines 8-13). During the proceedings, Ms. Artman further stated, “And so, I'm not saying that I

don't agree to all of this, but I'm saying that there's information in there that's not correct. It's a play on words. To say we are separate is that I lived in one home and he lived in another and yet both of our names were on both of those leases." (RP 16, lines 9-14)

As part of her response to the petition, Ms. Artman did allege duress and undue influence on the part of Mr. Artman but no evidence was offered in her oral response to the motion and no such evidence was offered when Ms. Artman testified the same day regarding entry of the final documents. (RP 43, lines 23-25, RP 44, lines 1-25, RP 45, lines 1-15)

Ms. Artman did testify that she did not "really get a full disclosure of the — of the dollar amount of the assets." (RP 23, lines 23-25) She further testified that she may disagree with some of the values given. (RP 24, lines 1-6). The court found that the separation contract contained details regarding the amount, character and value of the property. (RP 22, lines 22-24) The court went on to explain to Ms. Artman that she had not been required to agree to the values proposed by Mr. Artman when she reviewed the agreement; that she had the opportunity to determine the values independently. (RP 24, lines 21-25, RP 25, lines 1-12) No specific

testimony was presented by Ms. Artman regarding any differences in values. The court found that because Ms. Artman chose to accept the values proposed by Mr. Artman when she signed the agreement, it was now a separate matter. (RP 25, lines 9-12)

During the proceedings, the court also inquired of Ms. Artman whether or not she had consulted with independent counsel regarding the separation contract. (RP 23, lines 4-8). Ms. Artman testified that she had phoned an attorney's office but that she was unable to meet with them as it was around the holidays. (RP 23-lines 9-15) Ms. Artman did not testify that prior to the filing of the motion by Mr. Artman to enforce the separation contract and finalize the dissolution, she attempted to consult with any other attorneys. Ms. Artman did testify that she consulted with an attorney about the motion after it was filed but that attorney was unable to represent her. (RP 14, lines 15-22) She did not testify about attempting to hire, or even consult with, any other attorney thereafter.

The court found that there was no evidence that Mr. Artman was controlling Ms. Artman, nor did the court find evidence of force, undue influence, stress or emotional abuse surrounding the signing of the separation contract. (RP 27, lines 3-22). The court also found that Ms.

Artman was mailed the separation contract and chose to sign it and mail it back fourteen days later, giving her sufficient opportunity to review the document (RP 27, lines 4-6, RP 28, lines 23-25, RP 29, line 1) The court further found that after reviewing the declarations and text messages of the parties, the court could not find that Mr. Artman was emotionally abusive or that Ms. Artman was fearful of him. (RP 28, lines 17-25, RP 29, lines 1-3) At the conclusion of argument on the motion to enforce the agreement, the court concluded that it could not invalidate the separation contract. (RP 29, lines 10-11) The court further found that an award of attorney fees to Mr. Artman was appropriate considering the terms of the separation contract. (RP 31, lines 3-7)

Thereafter, the court heard testimony from the parties regarding entry of the final pleadings. After Ms. Artman requested a continuance before final documents were entered, the court asked her what prejudice she could show beyond her position on the separation contract. (RP 37, lines 4-6) In response, Ms. Artman stated that she wanted more time to gather evidence regarding the separation date of the parties. (RP 37, lines 7-18) The court denied the continuance request and took testimony from the parties. In her testimony, Ms. Artman offered no testimony regarding

her claims concerning duress, etc. (RP 44, lines 1-25, RP 45, lines 1-25, RP 46, lines 1-25, RP 47, lines 1-25, RP 48, lines 1-25, RP 49, lines 1-25). Regarding her opposition to the separation contract and her position on the separation date, Ms. Artman did make the following statements during her testimony:

“And that is the reason why I did not agree with the — with the settlement, do I have the opportunity to at least, before we finalize, to come to Court and at least fight for myself as far as why did change my mind? It was because of that date. That date was incorrect. It wasn’t — it wasn’t the right date. And that’s — that’s the crux of all of this.” (RP 47, lines 4-10)

“The reason I why I did not agree with settlement was because the separation date was incorrect. That’s the reason why.” (RP 47, lines 16-18)

When asked by the court about her other issues regarding the separation contract raised in her response to the petition, Ms. Artman stated, “No, that’s the main issue. That’s why I had information of all these stacks of papers to prove that we were in a committed relationship based on that.” (RP 48, lines 6-8)

When questioned further about her other claims in the response, Ms. Artman went on to state,

“Sir, maybe I didn’t write it correctly. I wrote in here that petitioner also stated in the documents that parties have been separated, which they were not and that’s - I did not make that clear. That’s the number one concern that I have. That was not correct. We were not separated since 2015. (RP 48, lines 19-24)

At the conclusion of testimony, the court signed the dissolution decree, incorporating the separation contract. (RP 50, lines 24-25, RP 51, lines 1-2) The court also adopted the separation date as proposed by Ms. Artman. (RP 49, lines 19-21)

### III. ARGUMENT

An appellate court reviews a trial court’s relocation decision for abuse of discretion. **In re Marriage of Horner**, 151 Wn.2d 884 (2004) A trial court abuses its discretion when the trial court's decision is manifestly unreasonable or made on untenable grounds or for untenable reasons. **In re Marriage of Crump**, 175 Wn. App. 1045 (2013). As set forth in **In re Jannot**, 110 Wn. App. 16, 22, affirmed in part, 149 Wn.2d 123 (2002):

**The abuse of discretion standard is not, of course unbridled discretion. Through case law, appellate courts set parameters for the exercise of the judge's discretion. At one end of the spectrum the trial judge abuses his or her discretion if the decision is completely unsupportable, factually. On the other**

**end of the spectrum, the trial judge abuses his or her discretion if the discretionary decision is contrary to the applicable law.**

And as stated in **In re Marriage of Littlefield**, 133 Wn.2d 39, 47 (1997),

**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.**

The trial court's challenged findings are reviewed for a determination of whether there is a sufficient quantity of evidence to persuade a fair-minded, rational person that the premise is true. **In re Marriage of Griswold**, 112 Wn. App. 333 (2002).

**The court did not err in determining the separation contract should be enforced.**

The two applicable tests regarding the validity of a separation contract have been defined as “1) Whether full disclosure has been made 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 his or her rights.” **Marriage of Cohn**, 18 Wn. App. 502 (1977) The burden rests on the party seeking to enforce the agreement. **Friedlander v. Friedlander**, 80 Wn.2d 293 (1972). It is not required that the spouse know the exact financial status of the other spouse and even circumstantial evidence may be sufficient. **Marriage of Cohn** at 507. Further, there is no legal requirement that each spouse have independent legal advice before executing a separation contract; only that each spouse know that they have the right to obtain independent counsel and that there has been no “fraud, undue influence, pressure, coercion or misrepresentation” by one party towards the other other party. **Marriage of Cohn** at 509.

#### **Full Disclosure**

The trial court specifically reviewed the separation contract signed by the parties and found that it contained a detailed listing of the amount, character and value of the property. (RP 22, lines 22-24) In her testimony, Ms. Artman did not specifically challenge any of the values listed nor did she assert that there was undisclosed property. (For the first time at hearing, Ms. Artman did attempt to assert that there were handwritten values written on a document that contradicted those values

within the separation contract but the court did not admit the handwritten values into evidence. (RP 24, lines 1-7)

The testimony at the proceedings before the trial judge was that Ms. Artman was a “professional woman with a stellar resume”. (RP 8, lines, 16-18) The court further found that she has a Master’s Degree. (RP 21, line 3) No evidence was presented to show that Ms. Artman was incapable of understanding the amount, character and value of the property owned by the parties. In fact, in her response to the petition, Ms. Artman demonstrated her knowledge of the amount, character and value of the property, specifically referring to pieces of real estate by the specific addresses, asserting her position on the value of various parcels and referencing mortgages against the properties. Further demonstrating her knowledge on these issues, in her response Ms. Artman goes on to assert that the property division in the separation contract does not result in an “equal” division of property. (CP 29)

In her opening brief, Ms. Artman argues that the trial judge erred when the trial judge stated that Mr. Artman was not required to tell Ms. Artman the value of each asset. (RP 21-23) However a full review of that section of the transcript shows that the trial judge referred to Ms. Artman’s

ability to seek an independent review as to values that she disagreed with, (RP 24, lines 24-25), and that she had been free to assert her own values. (RP 25, lines 3-4). What the trial court determined, however, was that it became a separate issue when Ms. Artman signed the separation contract, accepting the values listed by Mr. Artman. (RP 25, lines 11-12)

There is sufficient evidence to conclude Ms. Artman had sufficient knowledge of the amount, character and value of the property at issue. The parties lived together during their marriage and according to Ms. Artman, they continued to live in a “committed marriage” until October 2017. (RP 44, lines 24-25, RP 45, line 1). She reviewed, initialed and signed the detailed separation contract before returning it to Mr. Artman. In her response, she demonstrated her detailed knowledge of the property at issue. Finally, as found persuasive in **Marriage of Cohn**, there was no evidence of deliberate concealment on the part of Mr. Artman. **Marriage of Cohn** at 508.

Finally, in her testimony, Ms. Artman made clear that her real concern was not about the validity of the disclosures made in the separation contract. She repeatedly stated that she did not agree with signing the final documents because she did not agree with the separation

date listed by Mr. Artman and requested additional time to present evidence on that issue. (RP 47, lines 4-10) At no point did Ms. Artman request additional time to challenge the validity of the disclosures within the separation contract. As she stated, "The reason I did not agree with the settlement was because the separation date was incorrect. That's the reason why." (RP 47, lines 16-18)

#### **Independent Legal Advice**

Ms. Artman had the ability to seek independent legal advice. Mr. Artman forwarded the initial dissolution pleadings and the proposed separation contract to Ms. Artman after the dissolution action was filed on December 7, 2017. There was no legal requirement for Ms. Artman to sign and return the separation contract. She chose to initial the individual pages and return the separation contract along with a signed joinder, admitting in her testimony that she did agree to everything at the time that she signed it. (RP 11, lines 19-21)

Ms. Artman testified that upon receiving the documents she did contact an attorney's office to get advice but that she was unable to get in to see someone as it was around the holidays. (RP 23, lines 9-15) She did not testify that she made any other attempt to contact legal counsel before

signing the separation contract. There was also no testimony that Mr. Artman compelled her to return the separation contract by any particular date.

Ms. Artman also testified about her ability to contact other attorneys about issues in her case. Specifically she testified about consulting with an attorney regarding the proceedings that have led to this appeal before the proceedings took place. (RP 14, lines 15-22)

As stated in **Marriage of Cohn**, there is no requirement that each party obtain legal advice before executing a separation contract. **Marriage of Cohn** at 509. The requirement is that each party have the right to do so. Ms. Artman had the right to consult with independent counsel and the opportunity to do so before signing the separation contract. She chose not to do so. That was not the result of any action of Mr. Artman.

**There was no fraud, coercion, undue influence, pressure or misrepresentation**

Ms. Artman has not alleged fraud on the part of Mr. Artman. She has alleged that she was unduly influenced and acted under duress. The

only misrepresentation alleged by Ms. Artman concerns her claims regarding the listed values of assets. The trial court correctly determined that the evidence did not support Ms. Artman's claim.

Regarding the claim of duress, there must be evidence of wrongful or oppressive conduct on the part of the person alleged to have placed the other under duress. **Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc**, 96 Wn.2d 939 (1982). Further, the mere fact that a party may be under stress or acting out of financial necessity is not sufficient to establish duress. **Retail Clerks** at 944. As to the issue of undue influence, it requires a showing that the unfair persuasion overcomes the will of the other person. **Ferguson v. Jeanes**, 27 Wn. App. 558 (1980)

In the present case, Ms. Artman was mailed a separation contract along with the initial dissolution filings. Ms. Artman testified that she also wanted to dissolve the marriage. (RP 11, line 4). She further testified that at the time of signing the separation contract she agreed to it. (RP 11, line 20-22) There was no testimony that Mr. Artman put any pressure on Mr. Artman to sign the separation contract; in fact there was no testimony

that the parties discussed the separation contract at all between the date that it was mailed to Ms. Artman and the date she initialed the pages of the contract and signed it. At that time, the parties were living on opposite sides of the state. (RP 20, line 4) Although Ms. Artman did allege that there was emotional abuse during the marriage, she testified that after the parties began living apart, they continued to have daily telephone contact, spent three weeks in Hawaii together and spent other occasions together. (RP 13, lines 11-25) Other than the vague testimony of Ms. Artman, no other evidence was admitted to support the claim of emotional abuse.

Finally, Ms. Artman ultimately abandoned her claims of duress and undue influence in her own testimony when she repeatedly testified that her reason for refusing to sign the final documents was that she disagreed with the separation date as alleged by Mr. Artman. When specifically asked by the trial judge about her other claims in her response, Ms. Artman stated, "Sir, maybe I didn't write it correctly. I wrote in here that petitioner also stated in the documents that parties have been separated, which they were not and that's — I did not make that clear. That's the number one concern that I have. That was not correct. We were not separated since 2015."

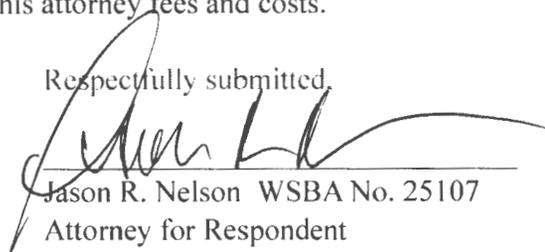
### ATTORNEY FEES

Pursuant to RAP 18.1(c) Mr. Artman requests an award of attorney fees on appeal based on his need and Ms. Artman's ability to pay.

### IV. CONCLUSION

The trial court did not err in enforcing the separation contract and incorporating it into the decree. The trial court's legal findings were supported by substantial evidence and the trial court correctly applied the law. The separation contract was entered into voluntarily with full disclosure and knowledge of both parties, after the opportunity to consult with independent counsel. Further, Ms. Artman's objection to the incorporation of the separation contract was based on her position as to the separation date of the parties, a provision not material to that agreement. Mr. Artman respectfully requests that the appeal be denied and that Ms. Artman be ordered to pay his attorney fees and costs.

Respectfully submitted,

  
\_\_\_\_\_  
Jason R. Nelson WSBA No. 25107  
Attorney for Respondent

**DECLARATION OF SERVICE**

I, Cheryl Growt, under penalty of perjury pursuant to the laws of the State of Washington, declare that on this 19th day of February 2019, I sent out via messenger service a copy of this brief to be delivered to respondent's attorney Kenneth Kato, 1020 N. Washington St., Spokane, Washington 99201 and to attorney Constance Shields, 900 N. Maple St., Suite 200, Spokane, WA 99201-1807.

Signed at Spokane, Washington on this 19th day of February, 2019.

  
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CHERYL GROWT, Legal Assistant