

No. 86130-7

SUPREME COURT OF THE STATE OF WASHINGTON

---

VANESSA CONDON, Petitioner,  
v.  
FELY CONDON, Respondent.

---

PÉTITIONER'S REPLY  
TO RESPONDENT'S ANSWER TO  
THE MOTION FOR DISCRETIONARY REVIEW

---

Gordon Arthur Woodley

Attorney for Petitioner

Woodley Law

14929 SE Allen Road

Bellevue, WA 98006

(425) 453-2000

WSBA # 7783

CLERK  
DONALD R. CARPENTER  
2011 SEP -9 AM 8:17  
STATE OF WASHINGTON  
SUPERIOR COURT

PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO  
THE MOTION FOR DISCRETIONARY REVIEW -1

**A. RESTATEMENT OF THE NATURE OF THE CASE**

Respondent misstates the nature of this case. It is not about defense counsel's Bar Association vendetta against petitioner's counsel. It is about the limitation on judicial authority to impose onerous financial obligations upon a former party after the case has already been dismissed with prejudice. It is about a case where there is no Washington case law which supports post-dismissal imposition of new financial burdens upon plaintiff petitioner which she never agreed to assume and which were not included by respondent in the Civil Rule 2A settlement. It is about a case where the May 13, 2011 decision to unilaterally impose these never-agreed-to financial burdens substantially altered the status quo between the parties. RAP 2.3(b)(2). By making this extraordinary imposition after the case had already been dismissed, the superior court so far departed from the accepted and usual course of judicial proceedings as to call for

appellate court review. RAP 2.3(b)(3).

Respondent's counsel attempts to make this case personal with his unfounded *ad hominem* arguments. This is not the place for that. The Bar Association will properly handle those matters.

**B. DISCUSSION OF ISSUES RAISED BY RESPONDENT**

Respondent asks whether petitioner has waived the right to appeal the superior court's extraordinary decision to add financial burdens upon petitioner after the case was already dismissed. The short answer is "no". The May 13, 2011 order is separate and apart from the March 2011 CR2A settlement reached by the parties, put on the record by respondent's counsel, and complied with by petitioner. Respondent's belated payment of the CR2A settlement was applied to the petitioner's judgment against Farmers Insurance in the open King County case of *Farmers Insurance Company of Washington v. Vanessa Condon, Insured*, No. 11-2-03245-1, where petitioner successfully

obtained a UIM award which was confirmed and reduced to judgment and where she also obtained a judgment for prevailing party attorney fees and costs against Farmers Insurance. Vanessa Condon never waived any of the rights she has to appeal the separate Kitsap County decision which sought to impose new financial burdens upon her in the Kitsap County case.

Respondent also seeks sanctions against petitioner for referring to the 2003 unpublished case of *Thurston v. Godsil*. The case was not cited as precedent, but was referred to as an example where the parties should be able to rely on the finality of their CR2A agreement. As petitioner has pointed out in her motion for discretionary review, petitioner has not located any Washington precedent permitting the Kitsap County Superior Court to take the extraordinary step of unilaterally imposing new financial burdens upon a former party after the case has already been dismissed with prejudice. Sanctions are inappropriate.

Respondent also claims that counsel made a misrepresentation to the trial court about not having clients sign releases under the circumstances of this case. There was no misrepresentation. Once the case is dismissed, there is no need for a release to be signed. Before the case is dismissed, there are times when a release will be requested and the terms agreed to. However, this case is unusual in that respondent asked the trial court to impose a release, hold harmless agreement, and indemnity agreement upon a former party [petitioner] *after* the agreed-upon order of dismissal was entered and *after* the case had already been dismissed with prejudice. It is so unusual and so far a departure from how things are done that no Washington case law has been located even discussing such a maneuver, much less approving of such an unorthodox tactic by respondent.

The sworn declaration of personal injury attorney John Acheson informed the trial court that:

PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO  
THE MOTION FOR DISCRETIONARY REVIEW -5

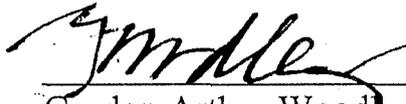
Entry of a stipulated Order of Dismissal with prejudice ends the case. Once the case is dismissed with prejudice, all claims that might have been brought in that case are concluded. . . . Once the Order is signed and entered, that's the end of the matter. Nothing further is required of plaintiff.

Sworn Declaration of John Acheson, WSBA 9162, dated April 18, 2011, 1-2, attached as Appendix 15-16.

The April 1, 2011 Order of Dismissal, A-7, ended the case. There is no Washington precedent approving the unilateral imposition of new financial burdens upon a former party. Vanessa Condon had every right to believe that the matter was over between the parties with the Court's approval of the CR2A settlement and the entry of the stipulated Order of Dismissal with prejudice. The extraordinary step the superior court took almost six weeks later substantially upset the status quo and violated

petitioner's right to be free from further litigation in the Kitsap County case. Our Supreme Court should restore the parties to the status quo as of April 1, 2011. Petitioner's Motion for Discretionary Review is well grounded in the appellate rules RAP 2.3(b)(2) and 2.3(b)(3), is well grounded in fact; and should be granted.

Respectfully submitted this 8<sup>th</sup> day of September, 2011



\_\_\_\_\_  
Gordon Arthur Woodley, WSBA 7783  
Attorney for Petitioner Vanessa Condon

#### **APPENDIX**

**Sworn Declaration of Attorney John Acheson**  
dated April 18, 2011

A-15 to A-16

*Return @*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RECEIVED

APR 20 PM 1:41

KITSAP COUNTY  
COURT

RECEIVED FOR FILING  
KITSAP COUNTY CLERK

APR 20 2011

DAVID W. PETERSON

The Honorable Ted Spearman  
Motion to Compel Release  
Friday, April 22, 2011

IN THE SUPERIOR COURT FOR KITSAP COUNTY  
STATE OF WASHINGTON

VANESSA CONDON, )  
Plaintiff, )  
)  
)  
v. )  
FELY CONDON, )  
Defendant. )  
\_\_\_\_\_ )

No. 05-2-02872-8

**DECLARATION OF  
JOHN ACHESON**

I, JOHN ACHESON, under penalty of perjury, make the following  
declaration:

1. I am an attorney continuously licensed to practice law in the state of Washington since 1979 and I am otherwise competent to make this declaration.
2. Entry of a stipulated Order of Dismissal with prejudice ends the case. Once the case is dismissed with prejudice, all claims

DECLARATION OF JOHN ACHESON -1

*A-15*

**WOODLEY  
LAW OFFICES**

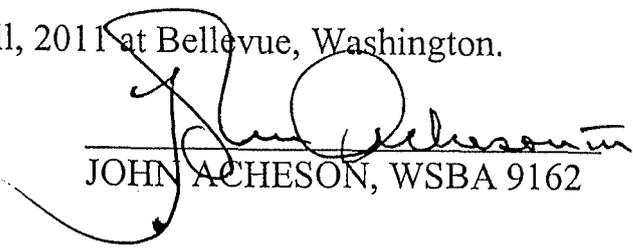
14929 SE Allen Road • Bellevue, Washington 98006  
(425) 747-0202 • Fax (425) 747-3073

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

which might have been brought in that case are concluded. This is why it is unnecessary and superfluous to provide a written release of claims when one has already stipulated to an order of dismissal with prejudice.

- 3. I do not have my personal injury clients agree to sign a release when there is an active case filed and where the parties have already agreed to a stipulated order of dismissal with prejudice. Once the Order is signed and entered, that's the end of the matter. Nothing further is required of plaintiff.

Dated this 18<sup>th</sup> day of April, 2011 at Bellevue, Washington.

  
\_\_\_\_\_  
JOHN ACHESON, WSBA 9162

A-16

No. 86130-7

SUPREME COURT OF THE STATE OF WASHINGTON

---

VANESSA CONDON, Petitioner,  
v.  
FELY CONDON, Respondent.

---

PROOF OF SERVICE

---

Gordon Arthur Woodley

Attorney for Petitioner

Woodley Law

14929 SE Allen Road

Bellevue, WA 98006

(425) 453-2000

Washington State Bar Association 7783

PROOF OF SERVICE -1

I, GORDON ARTHUR WOODLEY, declare under penalty of perjury that the following statements are true and correct:

1. I am the attorney for petitioner in this matter and make this declaration from personal knowledge.
2. On September 8, 2011, I placed "Petitioner's Reply to Respondent's Answer to the Motion for Discretionary Review" and this Proof of Service for filing and service with the Clerk of the Supreme Court by posting the same in the United States Postal Service and for service upon opposing counsel by emailing and faxing the same to Mr. Wall at 360-876-1216.

Declared this 8th day of September, 2011 at Bellevue, Washington

  
Gordon Arthur Woodley, WSBA 7783