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SUPREME COURT  
STATE OF WASHINGTON  
2012 MAY 24 P 2:57  
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No. 86130-7

SUPREME COURT OF THE STATE OF WASHINGTON

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**FILED**  
MAY 24 2012  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

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

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REPLY BRIEF

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Vanessa Condon replies to Respondent's Brief:

1. **A Fundamental and Urgent Issue of Broad Public Import Exists.**

At stake are Vanessa Condon's Article I, Section 3 Personal Rights that "No person shall be deprived of life, liberty, or property, without due process of law." Constitution of the State of Washington (1889).

Since when does the deprivation of constitutional guarantees not present a "fundamental and urgent issue of broad public import"? Since when does unwarranted governmental intrusion upon a citizen's right not to be deprived of her liberty or property without due process of law not present a "fundamental and urgent issue of broad public import"? Since when does a court's exercising non-existent jurisdiction not present a "fundamental and urgent issue of broad public import"?

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When constitutional guarantees are disregarded, by the very judiciary whose highest purpose is to protect the constitution and the constitutional rights of its citizens, that presents an “fundamental and urgent issue of broad public import” which this Court is well-equipped to address and remedy.

There is no “due process of law” when a lower court without jurisdiction enters a post-dismissal order that impinges upon a citizen’s right to contract, a citizen’s right to be free from unwarranted government intrusion, and a citizen’s right to be free from judicial coercion regarding her personal property.

The judiciary is essential to maintaining the rights and liberties of all Washington citizens. Deprivation of due process for one adversely affects all of us. The lower court’s extra-judicial order reflects poorly on the integrity of the judiciary. The trampling of constitutional guarantees, by a court without jurisdiction to even consider the insurer’s untimely request to impose its agenda of adding financial and legal burdens upon a

citizen, requires the soonest possible correction and restoration of that citizen's constitutional rights. Such restoration helps restore the integrity of our judiciary. For these reasons, Vanessa Condon asked this Court to accept direct review.

**2. There Was No Express or Implied Waiver of Vanessa Condon's Appellate Rights.**

There has been no waiver of Vanessa Condon's appellate rights. Since there was no express, knowing waiver of her rights, respondent and her insurer seem to argue that she has impliedly waived her rights to appeal the unwarranted trampling of her fundamental rights, done without due process by a court that lacked jurisdiction. Respondent offers no legal authority or even cogent reasoning for this radical assertion, as one would expect in light of the constitutional guarantees that are at issue.

RAP 2.5(b) does not assist respondent in meeting its burden of establishing that there has been a waiver of Vanessa Condon's right to appeal the trampling of her constitutional rights. "Regardless of the result of the review", RAP 2.5(b)(iii), Vanessa Condon was always entitled to collect \$100,000; she already had a \$108,000 judgment against Farmers in King County Superior Court arising from the same misconduct which gave rise to the Kitsap County case. This is why the parties' CR 2A agreement in the Kitsap County case specifically stipulated that the Kitsap County case \$100,000 settlement would be directly applied to reduce the \$108,000 King County judgment.

Even if there had been no monetary settlement in the Kitsap County case, Vanessa Condon was still entitled to recover her \$108,000 judgment involving Farmers and its insured. She could have garnished Farmers' bank account or had the Sheriff attach Farmers' assets in King County to obtain the more than \$100,000 that was owed to her, without regard to the CR 2A agreement in

Kitsap County.

Respondent's assertion at page 9 that "appellant was not going to receive this money unless a receipt and release was signed" is plainly false. She was always going to receive the money by way of her existing King County UIM benefits judgment against Farmers. Respondent's CR 2A Kitsap County settlement agreement recognized this fact and provided some protection to Farmers that its assets would not be attached or its bank account garnished. Farmers elected to pay the \$100,000 as a credit to pay down the \$108,000 King County UIM benefits judgment.

Farmers' attempt to now cut off appellant's rights of appeal with false statements is disingenuous. Farmers [respondent] simply does not want the Court to reach the merits of this appeal. What respondent and Farmers did in bringing the unauthorized post-dismissal motion to change the terms of the CR 2A settlement is indefensible.

**3. There is No Defense For Farmers Urging the Lower Court To Reopen A Case That Had Already Been Dismissed With Prejudice. Respondent Avoids the Central Issues.**

Once a case is dismissed with prejudice, the case is over.

Respondent does not squarely address this basic concept nor does the respondent address the strong, broad public interest in having finality in civil disputes. Instead, respondent talks about RCW 26.12.010 and how courts retain jurisdiction in dissolution cases under to enforce domestic relations property settlements. Respondent Brief, pages 10-13. But, obviously, this is not a domestic relations case where a court retains jurisdiction and there is no statute which gives the courts' continuing jurisdiction over civil cases which have already been dismissed with prejudice.

Other than questioning the *Cork Insulation* decision at page 12, respondent does not address or attempt to distinguish the

long-standing case law of *Eddleman v. McGhan*, 45 Wn.2d 430, 432, 275 P.2d 729 (1954) (RCW 2.44.010 and the predecessor rule to CR 2A “give certainty and finality to settlements and compromises”) *Cook v. Vennigerholz*, 44 Wn.2d 612, 615, 269 P.2d 824 (1954) (open court stipulation “is binding upon the parties and the court”), *Seattle-First National Bank v. Earl*, 17 Wn.App. 830, 835, 565 P.2d 1215 (1977) (“It is a longstanding rule that courts cannot, and ought not, make a contract for the parties which they did not make for themselves or impose upon one party an obligation which was not assumed.”), and *Washington Asphalt v. Kaeser*, 51 Wn.2d 89, 91, 316 P.2d 126 (1957) (stipulated entry of order of dismissal with prejudice “operates to end all controversy between the parties within the scope of the judgment”), all discussed in Appellate Brief pages 24-28.

Respondent ignores the express public policy of the state of Washington to encourage compromise of civil disputes and to

recognize that court-approved settlements are binding on the parties and the court and bring an end to the litigation so that there can be finality; “If the rule were otherwise, the judicial process would be fouled with uncertainty.” *Snyder v. Tompkins*, 20 Wn.App. 167, 174, 579 P.2d 994 (1978). This strong public policy must not be disregarded in order to advance an insurer’s private agenda.

Yet, respondent disregards long-standing Washington law, choosing to keep the Court in the dark, just like it did when it urged an ailing superior court judge to turn a blind eye to Vanessa Condon’s fundamental rights. Respondent’s failure to discuss or distinguish this applicable, long-standing case law also underscores respondent’s failure to meet the basic requirements of CR 11, when it brought its unwarranted and unauthorized post-dismissal motion three weeks after the case had already been dismissed.

Not only does respondent avoid these central cases and the

principles they stand for, but when respondent does discuss the unpublished *El-Fady* opinion at page 8 of Respondent's Brief, respondent's analysis is misplaced and in error: *El-Fady* was not "on point" and did not say that trial court may enforce implied terms of a settlement agreement after the case is already dismissed, as claimed by respondent's counsel.

Unlike our case, the parties in *El-Fady* had agreed that there would be a signed release and that case had not already been dismissed when the motion to enforce the settlement agreement was brought. Even then, the California court in *El-Fady* refused to compel the claimant to release claims which he had not specifically agreed to release.

*El-Fady* did not support imposing a settlement on a former party after the case was already dismissed and did not support a court compelling an indemnification agreement, a hold harmless agreement, and a release of any and all claims, including those against her insurer, and deeming all agreements signed against the

free will of the former claimant. So, contrary to respondent's assertion, *El-Fady* was not factually "on point" and did not even support the proposition that a claimant in an ongoing case, that was not dismissed, could be compelled to release claims which he never voluntarily agreed to release.

Respondent's failure to address long-standing Washington case law and its erroneous, misplaced discussion of the *El-Fady* case does not assist it in supporting its bare assertion that "The trial court's decision was correct".

4. **CR 11 Sanctions Should Be Imposed and May Deter Future Baseless Pleadings By Respondent's Counsel.**

Instead of supporting its argument, respondent counsel's briefing further illustrates why CR 11 sanctions should be imposed for his failure to satisfy the minimum requirements that the unprecedented post-dismissal motion be "well grounded in fact" and "warranted by existing Washington law or by a good faith argument for the extension, modification, or reversal of existing law". CR 11, discussed on page 20-29 of the Brief of Appellant. Respondent's motion was not permitted to be brought

after the case was already dismissed and respondent's counsel did not show either the lower court or this Court how his post-dismissal motion was warranted and in compliance with the minimum requirements of CR 11.

Respondent's counsel argues without support that CR 11 sanctions should not be levied against him and that appellant should not be entitled to recover her attorney fees and expenses incurred as a result of embroiling her, Farmers' UIM insured, in post-dismissal litigation which had the effect of Farmers delaying payment of Vanessa Condon's UIM benefits.

Respondent's counsel interjects the straw argument of bad faith at pages 14-15. The UIM insured's recovery of attorney fees incurred in this post-dismissal litigation has nothing to do with claims of bad faith; it has everything to do with being forced to incur litigation expenses to obtain the agreed-upon payment of \$100,000 of her UIM benefits set forth in the court-approved CR 2A settlement agreement, an agreement which respondent's counsel himself outlined in open court.

Yet, instead of getting the promised prompt payment of her UIM benefits, Vanessa Condon gets a new fight. She now has to fight against her own insurer's post-dismissal, unprecedented assault on her constitutional and contractual rights. This assault delayed her receiving UIM benefits. With the CR 2A settlement which specifically directed that Farmers' payment would pay down her UIM benefits judgment in King County, she had every right to expect that she would receive UIM benefits without further delay and without a fight from her own UIM insurer.

She should not have been involved with this vexatious litigation by her insurer to obtain the promised UIM benefits payment. It is now fair and equitable that she be reimbursed her litigation expenses for this post-dismissal litigation, in order to preserve her UIM benefits and the CR 2A agreement which called for the payment of her UIM benefits.

Respondent counsel's plea at page 15 to "give no consideration" to appellant's fee request is misplaced. Contrary to his assertion, Vanessa Condon is both a party and express

beneficiary of the CR 2A agreement, including being an express beneficiary of the CR 2A provision that Farmers will pay \$100,000 toward her UIM benefits.

So, when respondent and Farmers embroil Vanessa Condon in vexatious post-dismissal litigation which delays her receipt of her UIM benefits, Farmers is liable for her *Olympic Steamship* attorney fees and cost, as discussed in her opening Brief at pages 43-45. These litigation expenses should be allowed. Conversely, respondent's request for attorney fees and CR 11 sanctions should be denied.

5.

### **Conclusion**

Respondent through her insurer Farmers brought this unprecedented assault upon the fundamental rights of Vanessa Condon, rights guaranteed by Article I, Section 3 of the Washington State Constitution. After the stipulated order of dismissal with prejudice had already terminated the lower court's jurisdiction, the post-dismissal motion caused the payment of the UIM benefits to be further delayed.

The post-dismissal litigation initiated by respondent's counsel has upset the strong public policy of ensuring finality in civil disputes and ensuring that the judiciary does not exceed its authority or trample upon the rights of citizens to be free from unwarranted intrusion into their liberty and property rights, including their right to freely enter into binding contracts which settle civil disputes.

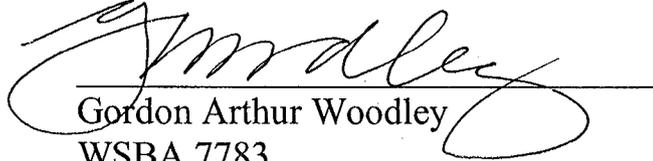
Respondent attempts to misdirect the court in its briefing and avoids serious discussion of the CR 11 ramifications of bringing a post-dismissal motion that was not well grounded in fact and was not warranted by existing Washington case law. Respondent misstates the nature and holding of the *El-Fady* case and misstates the basis of appellant's entitlement to recover *Olympic Steamship* attorney fees.

The Court should accept direct review of this unprecedented post-dismissal litigation and restore to Vanessa Condon her constitutional rights to her liberty and property, taken from her without due process and without jurisdiction by the

lower court and its post-dismissal order.

Respectfully presented this 20<sup>th</sup> day of May, 2012.

WOODLEY LAW

A handwritten signature in cursive script, reading "Gordon Arthur Woodley", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

Gordon Arthur Woodley

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No. 86130-7

SUPREME COURT OF THE STATE OF WASHINGTON

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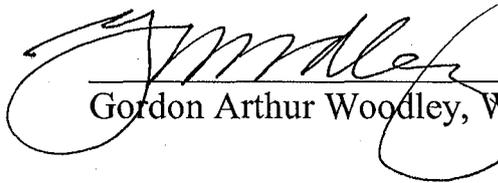
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I, GORDON ARTHUR WOODLEY, declare under penalty of perjury that the following statements are true and correct:

1. I am the attorney for appellant in this matter and make this declaration from personal knowledge.
2. On May 21, 2012, I placed Appellant's "Reply Brief" and this Proof of Service for filing and service with the Clerk of the Supreme Court by placing the same with ABC Legal Messengers and for service upon opposing counsel by faxing the same to Mr. Wall at 360-876-1216.

Declared this 21st day of May, 2012 at Bellevue, Washington

  
Gordon Arthur Woodley, WSBA 7783