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Court of Appeals, Division I
Of the State of Washington

In re the Marriage of:

Janie Lynn Block, Respondent

And

Dennis L. Block, Appellant

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STATE OF WASHINGTON
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BRIEF OF RESPONDENT

Cynthia R. First
Attorneys for Respondent
SCHWIMMER | FIRST, LLP
1721 Hewitt Avenue, Suite 600
Everett, WA 98201
425.259.5000

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I. SUMMARY OF ARGUMENT

On October 22, 2008, Dennis and Janie Block (“Dennis” and “Janie”), with counsel and a professional mediator, agreed to the terms and conditions to end their marriage. The Civil Rule 2A (CR 2A) Agreement they entered into, CP 63-91, which disposed of all the issues in their dissolution, was valid and enforceable. The trial court did not err on March 3, 2009 when it found that it should be enforced. There are no genuine issues of material fact regarding the purpose, enforcement or material terms of the CR 2A Agreement. There were no misrepresentations made by Janie at any time relevant to this case.

Janie should be granted attorney fees for having to defend this appeal.

II. ARGUMENT

A. The trial court did not abuse its discretion when it ruled that the October 22, 2008 CR 2A Agreement was enforceable.

A stipulation reached pursuant to CR 2A is generally binding on the parties, but the court has the discretion to relieve a party

from a stipulation when relief is necessary to prevent injustice and granting relief will not put the adverse party at a disadvantage. *Baird v. Baird*, 6 Wn.App. 587, 494 P.2d 1387 (1972). When parties have executed a CR 2A agreement, the trial court's function is to ascertain that the parties understood it when it was entered into. *Id.* The trial court's decision to enforce a settlement agreement under CR 2A is reviewed under the abuse of discretion standard. *Morris v. Maks*, 69 Wn.App. 865, 868, 850 P.2d 1357, 1358 (1993). An abuse of discretion occurs when a decision of the trial court is manifestly unreasonable or based on untenable grounds or reasons. *Holbrook v. Weyerhaeuser Co.*, 118 Wash.2d 306, 315, 822 P.2d 271 (1992); *Baird*, 6 Wn.App. at 591, 494 P.2d at 1396. Snohomish County Superior Court Judge Fair's March 3, 2009 decision to enforce the CR 2A was neither.

1. **The CR 2A Agreement met the statutory requirements to be enforceable.** Civil Rule 2A provides a mechanism for parties to settle their disputes in a binding and enforceable manner. CR 2A provides as follows:

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court

on the record, or entered in the minutes, or *unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.*

(emphasis added). The CR 2A Agreement of which Dennis now complains was (1) in writing, and (2) signed not only by Dennis's attorney, but by Dennis himself¹.

2. CR 2A Agreement contained all material terms. The CR 2A Agreement was comprehensive and contained finalization of all material terms for a dissolution (property [personal and real] and debt division, parenting plan, child support including worksheets, maintenance, attorney fees)². Contrary to Dennis' assertion that "[t]he parties had not worked out the details" (Brief of Appellant at 10), and that none of the documents were "created or signed" (Brief of Appellant at 13), with very few exceptions (e.g. the exchange times for special occasions), *all details* were included in the CR 2A itself, or through the fully

¹ RCW 2.44.010 further provides that an attorney has the authority to bind his client to an agreement. However, in this case, since Dennis was present at the mediation, and authorized the agreement, application of CR 2A is more appropriate. *LaVigne v. Green*, 106 Wn. App. 12, 17, 23 P.2d 515 (2001).

² Subsequently, on May 21, 2009, Judge Fair noted in her Order Denying [Dennis's] Motion to Stay Proceedings, CP 353 – 354 that "The CR 2A agreement divides assets, liabilities and properties of the parties, including a provision regarding the family home. The CR 2A agreement also covers maintenance, child support, and includes a parenting plan agreed to by the parties."

“created” and initialed exhibits appended thereto and incorporated therein as if fully set forth (i.e. Agreed Parenting Plan, CP 76-84, Child Support Worksheets, CP 85-90, and Asset and Liability Chart, CP 91). Dennis apparently concedes this point. Brief of Appellant at 10.

3. There are no genuine issues of material fact which preclude enforcement of the CR 2A Agreement. The Washington Supreme Court explicated the circumstances when a CR 2A is legally disputed within the meaning of the Rule in *In re Patterson*, 93 Wn.App. 579, 583-584, 969 P.2d 1106 (1999):

An agreement is disputed within the meaning of CR 2A only if there is a genuine dispute over the existence or material terms of the agreement:

On its face, CR 2A says that the “purport” of the agreement must be disputed. According to Black’s Law Dictionary, the “purport” of something is its meaning, import, substantial meaning, substance, legal effect. According to *Webster’s Third New International Dictionary*, the “purport” of something is the meaning it conveys, professes or implies, or its substance or gist. The substance, gist, or legal effect of an agreement is found in its existence and material terms, and it follows that the “purport” of an agreement is disputed only when its existence or material terms are disputed.

[And], the dispute must be a genuine one. The purpose of CR 2A is not to impede without reason the enforcement of agreements intended to settle or narrow a cause of action; indeed, the compromise of litigation is to be encouraged. Rather, the purpose of CR 2A is to insure that negotiations undertaken to avert or simplify trial do not propagate additional disputes that then must be tried along with the original one. This purpose is served by barring enforcement of an alleged settlement agreement that is genuinely disputed, for such a dispute adds to the issues that must be tried. It is not served by barring enforcement of an alleged settlement agreement that is not genuinely disputed, for a nongenuine dispute can be, and should be, summarily resolved without trial. [citing *In re Marriage of Ferree*, 71 Wn.App. 35, 40-41, 856 P.2d 706 (1993)].

The existence and material terms of an agreement are a question of fact. *Barnett v. W.S. Lincoln*, 162 Wash. 613 617, 229 P. 392 (1931). However, the question is not *genuinely* disputed when reasonable minds can reach only one conclusion. *Scott Galvanizing, Inc. v. Northwest EnviroServices Inc.*, 120 Wn.2d 573, 582, 844 P.2d 428 (1993).

a. **In this case, there is no genuine dispute about the purport of the agreement.** Unlike an oral agreement, or a series of letters that may or may not document an agreement, the existence of the settlement agreement relating to the Block's marriage is not in dispute. A written CR 2A, signed

by the attorneys and the parties, was executed after mediation.

There is no dispute that this document exists and that it purports to settle all issues related to the Blocks' marriage.

b. There is no genuine dispute about the material terms of the settlement agreement. There is no argument that all the issues that need to be determined in a dissolution mediation and agreement were addressed in the CR 2A: property, parenting, maintenance, child support, and attorney fees are all set forth in the CR 2A agreement.

The fact that the parties had issues to determine subsequent to the CR 2A Agreement does not render the CR 2A Agreement invalid. Undoubtedly, in a case this litigious, post-agreement issues will arise. But Dennis attempts to invoke his own sort of smoke and mirrors to suggest *genuine* issues of dispute relating to the CR 2A Agreement itself.

First he set forth a "dispute" that never arose until his corrected appellate brief was filed:

- That the parties apparently "forgot" that they had a special needs/Downs Syndrome child when agreeing to the parenting plan (Brief of Appellant at 1, 2). While there may be special tasks each parent must perform while the child is in his or

her care, there is no evidence that either parent needed to be court ordered to do so or that the parties had any dispute at all about how to care for their child.

Next he required the use of the mediator to resolve an issue related to the parenting plan, and claims that this issue is a genuine dispute related to the Agreement itself:

- Dennis misinterpreted the agreed parenting plan regarding alternating weekends when a holiday took priority over “his” weekend. CP 103-105. This issue was resolved – *pursuant to the CR 2A* – by the mediator. CR 106-107. Again, this issue is not a genuine issue of material terms in the agreement: interpretation of the Agreement is a “normal” post-trial matter.

Third, Dennis *created his own issues* by refusing to act in good faith after negotiation and execution of the CR 2A Agreement.

- Dennis refused to pay his proportionate share of the cost of his daughter’s glasses, and became “livid”, which his domestic violence³ treatment provider acknowledged was “not ok” CP 101-102. When Janie raised these issues before the mediator, Dennis claimed this was a genuine issue of dispute.

³ The domestic violence is summarized at CP 6-7, at footnote 2.

Fourth, Dennis raised issues that *were agreed to by Janie* and are therefore not disputes at all, much less genuine:

- Amount in judgment summary should be changed (CP 136); no objection by Janie (CP 138).
- Time frames for special occasions (CP 136); no objection by Janie (CP 138).
- Timing re exchanges (CP 136); no objection by Janie (CP 138).

None of these issues are *genuine* disputes within the meaning of CR 2A and applicable case law. They are, as the *Ferree* court describes, “nongenuine” disputes that “should be [] summarily resolved without trial,” perhaps through the mediator or on the Family Law Motions Calendar.

Perhaps most significantly, Dennis finally argues that his “buyer’s remorse” several months after the CR 2A creates a “genuine issue of material fact”. He asked the mediator to change the material terms of the agreed parenting plan (CP 76-84) as follows:

- At CP 114, delete the RCW 26.09.191 limitations in the parenting plan despite the fact that horrific domestic

violence took place during the marriage and that the limitations were agreed to in the mediation;

- At CP 115, reword winter vacation to meet his needs;
- At CP 115, reword holiday schedule to meet his needs;
- At CP 115, reword restrictions section of the parenting plan because there should be no .191 limitations; and
- At CP 115, change decision-making from sole to joint.

As the court in *Lavigne*, 106 Wn.App. at 19, 23 P.2d at 519 commented, “A litigant’s remorse or second thoughts about an agreement is not sufficient [to create a dispute as to the existence of material terms of a settlement agreement].”⁴ Indeed, Dennis does not get a “do over” because he changed his mind regarding an agreed parenting plan.

B. There was no misrepresentation by Janie in any aspect of the negotiations in the mediation – or at any time---to the trial court.

Dennis alleges that Janie moved well before the mediation without telling him, a fact “hidden” from him⁵. Brief of Appellant at

⁴ The court went on to find that the litigant’s “second thoughts about the amount of the settlement and his desire not to abide by it do not make the agreement disputed within the meaning of CR 2A.” *Lavigne*, 106 Wn.App. at 20.

⁵ Dennis’s “proof” that Janie moved prior to the mediation is that the last payment for propane was in July 2008 (Brief of Appellant at 13, note 4),[which is to be

12. Accordingly, he believes that this “misrepresentation” voids the CR 2A, as well as the court’s subsequent enforcement of same, because there was “no true meeting of the minds.” Brief of Appellant at 14. Interestingly, nowhere does he show how he was damaged, or how the results of the CR 2A would have been different, if he had in fact “known” that Janie did not reside in the family home.

In fact, at the time of the mediation on October 22, 2008, Janie and the children resided at the family home on Camano Island. Janie did not move from the family home until early January, 2009, as contemplated by the parties in the October 22, 2008 mediation when they specifically negotiated the date by which she would vacate the Camano Island home and Dennis would take possession. CP 67 (“Wife will retain possession of the family home until 9:00 am on Saturday, January 3, 2009.”). Janie relied on the CR 2A Agreement in making plans to vacate the family home, CP

expected because the tank was full, and there was no need to heat the home in the summer]. Dennis also notes that the cable was discontinued (a financial decision made by Janie) and electrical and water use was low (again, a conservation decision within Janie’s purview). Utility usage does not determine the occupancy of a house. There are no declarations from neighbors, family members, school officials, etc. that suggest that the family had moved or that the house was abandoned.

53, because she needed the equalizing payment from Dennis to survive financially post-dissolution.

But even if Janie had moved from the family home before the mediation, it would not have changed the terms of the CR 2A agreement (or the subsequent order to enforce same), and is therefore irrelevant. As for parenting issues, nothing would have changed due to Janie's residence. The parenting plan was agreed, and made Janie the primary custodial parent, regardless of where she and the children resided. There were RCW 26.09.191 limitations against Dennis because of his horrific domestic violence, CP 6-7, footnote 2, so an argument could be made that her address should remain confidential. And although Dennis attempts to amplify the fact that he did not know where the children were going to school (not that this is evidence of where the children actually lived), the argument is disingenuous because he knew from at least November 6, 2008 that the children would be attending school in Arlington after Janie moved. Therefore, none of the parenting provisions would have been different had Janie changed her residence.

Neither would the financial aspects of the agreement have changed. Dennis paid the mortgage on the family home as partial

family support while Janie and the children resided there. After she moved out, Dennis was still required to pay Janie maintenance and child support. Since Dennis decided to reside in the family home rather than selling it, he was still responsible for paying the mortgage. Accordingly, it is difficult to see how Dennis was damaged financially depending on where Janie resided.

The trial court did not abuse its discretion when it determined there was a valid and enforceable CR 2A Agreement.

C. Janie Should Be Awarded Attorney Fees. Janie requests attorney fees for having to defend this action, in an amount to be provided consistent with the RAP 18. First, she is wholly dependent on Dennis for her financial security, having negotiated a property settlement (that has not been paid by him) which is (ostensibly) the subject of this appeal. Accordingly, she is without funds to pay for this appeal, or the second appeal in this case (Linked Case 644416-I). Given the factual and legal questions involved, the unremitting litigation imposed on her by Dennis, the substantial amount of time necessary for preparation of briefs and motions in this case (including the motion to strike pleadings, which Dennis basically conceded by filing a new brief), and the fact that the largest asset in this case (the house and the

equalizing payment to Janie that would be made from the refinance or sale of same) is being held hostage by Dennis, Janie first requests relief under RCW 26.09.140, need versus ability to pay. *See also In re Marriage of Ayyad*, 110 Wn. App. 462, 467, 38 P.3d 1033, *review denied*, 147 Wn.2d 1016 (2002); *In re Marriage of Foley*, 84 Wn. App. 839, 846, 930 P.2d 929 (1997); *In re Marriage of Knight*, 75 Wn. App. 721, 730, 880 P.2d 71 (1994), *review denied*, 126 Wn.2d 1011 (1995).

Janie's second prayer for relief re attorney fees is brought under RCW 4.84.185 because Dennis has pled no grounds on which relief can be granted. His continued prosecution of this, and the linked appeal, is advanced purely for harassment, delay, nuisance or spite. *Skimming v. Boxer*, 119 Wn. App. 748, 756, 82 P.3d 707 (2004).

Finally, Dennis's refusal to refinance or sell the family home to cash Janie out (further evidence of his continued domestic violence through economic coercion) and his refusal to execute final papers in this case because he had "buyer's remorse" should result in attorney fees to Janie because of his intransigence. *In re Marriage of Wallace*, 111 Wn. App. 697, 708, 45 P.3d 1131 (2002),

review denied, 148 Wn.2d 1011 (2003); *Schumacher v. Watson*, 100 Wn. App.208, 212, 997 P.2d 399 (2000); and *In re Marriage of Crosetto*, 82 Wn. App. 545, 550, 918 P.2d 954 (1996).

III. CONCLUSION

The relief requested by Dennis Block, that all orders should be vacated and the matter remanded for trial, should be denied by this court. A valid and enforceable CR 2A Agreement was negotiated and executed in writing by the parties and their counsel on October 22, 2008. All material terms were included in the agreement. There are no genuine issues of material fact related to the existence of the agreement or the terms therein. The fact that issues arose subsequent to the agreement does not render the agreement itself invalid. Dennis's "buyer's remorse" does not qualify as a "genuine issue of fact" in interpreting the CR 2A Agreement. There was no misrepresentation involved in the mediation – or at any time - or before the trial court.

Janie should have her attorney fees paid under any of myriad legal theories, and pursuant to RAP 18.4.

Respectfully submitted this ____ day of January, 2010.

SCHWIMMER | FIRST, LLP

Cynthia R. First

Cynthia R. First, WSBA 18092
Attorneys for Respondent Janie Block

Respectfully submitted this 9th day of January, 2010.

SCHWIMMER | FIRST, LLP

Cynthia R. First

Cynthia R. First, WSBA 18092
Attorneys for Respondent Janie Block

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