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No. No. 64441-6-I

Court of Appeals, Division I
of the State of Washington

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In Re the marriage of:

Janie L. Block, Respondent,

and

Dennis L. Block, Appellant

BRIEF OF APPELLANT

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Assignments of Error

1. Commissioner Bedle erred when he ignored Judge Fair's ruling of March 3, 2009, and case law, by entering final pleadings in this dissolution action, but still sent issues back to the Arbitrator under the CR2A agreement signed by the parties on October 22, 2008. CP 52 and CP 142 and 144.
2. Both the Court and the Arbitrator erred when they ignored the plain language of the CR2A agreement which removed

the Arbitrator from this case upon entry of final pleadings.

CP 79.

3. The Arbitrator exceeded his authority under RCW 7.04A.230(d) when he continued to work as an arbitrator in direct conflict of Section X of the CR2A agreement which terminated his authority upon entry of the final pleadings.

CP 79.

4. Commissioner Bedle erred when he adopted the arbitration award when it was demonstrated by the respondent that they desired to bring a proper motion to vacate and when the statute allows for ninety days bring such a motion under RCW 7.04A.230. CP 7.

5. Commissioner Bedle erred on both July 20, 2009 and October 20, 2009 when he ignored the fact that both issues raised and sent back to arbitration which gave rise to the August 21, 2009 Arbitration Award, had previously been ruled upon by the Arbitrator and such previous ruling should have been entered, per the March 3, 2009 ruling by Judge Fair, into the final pleadings on July 20, 2009.

A. Summary of Argument

The trial court erred on July 20, 2009, when it entered the final documents for dissolution but then reserved for further arbitration three issues, raised by Janie¹ for the first time at the hearing, without a motion for either entry of final pleadings or other requests. These three issues were: (1) to change the value of a CD; (2) to award pre-judgment interest on that CD; and, (3) for attorney fees. All three of these issues had been previously decided by the Arbitrator and therefore, the previous awards by the Arbitrator should have been entered at the time of final pleadings in accordance to Judge Fair's ruling of March 3, 2009.

The Court further erred when it ignored the agreement between the parties in the October 22, 2008, CR2A agreement, as upheld by Judge Fair on March 3, 2009, as the agreement stated that upon entry of final pleadings, the Arbitrator's role automatically ceased.

Dennis argues that the Arbitrator exceeded his boundaries under RCW 7.04A.230(d) by ignoring the agreement the Arbitrator himself drafted in Section X of the

¹ For clarity purposes only, both Dennis Block and Janie Block shall be referred to by their first names. No disrespect is intended.

CR2A agreement signed by him on October 22, 2008, and when he ruled contrary to Judge Fair's ruling that demanded his previous rulings be incorporated into the final pleadings.

Dennis argues that Commissioner Bedle further erred on October 20, 2009, when he confirmed and modified the arbitration award before the statutory ninety (90) days had expired and thus prevented the Appellant from bringing his own proper motion to vacate the arbitration award that was handed down on August 21, 2009.

Dennis also argues that the Arbitrator, in the August 21, 2009 ruling, abused his powers and went beyond his legal boundaries when it awarded \$7,500.00 for attorney's fees in what appears to be punitive in nature without any articulated basis for awarding punitive damages and or without a finding that such award be based upon either intransigence, need or ability or any other legal basis in accordance with RCW 7.04A.210.

It appears that this decision of the arbitrator to award attorney's fees is based upon the fact that the Appellant had filed an Appeal in this case five months earlier; and, it

contradicted his previous ruling just three months earlier which was subsequent to the filing of Appeal.

B. Statement of the Case – Factual Background and Trial Court Proceedings.

On or about October 14, 2008 Mr. Canfield, attorney for the Appellant, Dennis received an “agreement to mediate” which was signed and returned on or about October 16, 2008 to Mr. Shipman, the mediator. CP 219-221.

On October 22, 2008, nearly a year after the petition for dissolution was filed, and with no issues settled prior to this date, the parties met to mediate in order to limit or settle issues as trial was quickly approaching on November 6, 2008. The parties, after three and a half hours (3 ½) of mediation, signed a CR2A agreement. CP 303-330. This CR2A agreement purportedly resolved all issues (house, pension, child support, parenting plan, personal property, assets such as the CDs and debts of the community). This agreement cites, on the first page (CP 303), that it is the full and final agreement of all issues, but then Section X sets out an arbitration clause (CP 310) which appoints Mr. Shipman as the Arbitrator. This

agreement also states that the parties agree to no more attorney fees. CP 312.

However, it was later discovered by the Dennis that the wife had charged \$4,000.00 to the community credit card of attorney fees that he was allocated to pay the full amount of the balance in the mediation. (First linked appeal)

Both parties had issues that continued, as evidenced by numerous letters and emails back and forth, which then give rise to a request to the arbitrator (the first was a letter ruling of December 16, 2008 regarding visitation and the parenting plan) for an additional ruling that led to the January 21, 2009 ruling. CP 229-38.

On January 21, 2009 the arbitrator submitted a second letter ruling (CP 230) which relates back to the January 13, 2009 letter from Respondent's counsel (CP 229-232), and that ruling states, *inter alia*, that "the parties are in agreement with section 5 of her letter." CP 227. Section 5 of Ms First letter cites among other things that the parties agreed that the value for the CDs under the CR2A agreement is "\$1,510.10." CP 230. This ruling also does not ascribe any pre-judgment interest regarding the CDs. CP 332-334.

Janie then brought a motion to enforce CR2A agreement and requested that the court to deal with new issues raised by Janie. The new issues raised by Janie for the March 3, 2009, hearing were sent back to Arbitration. CP 336-338.

On March 3, 2009, the court specifically ruled in section 2 of its order that “[t]he mediator’s decisions on drafting and interpretation issues which were to be binding arbitration decisions pursuant to CR2A, *shall be incorporated into the final documents.*” CP 65. Emphasis added. This order was drafted by Janie. Janie was also awarded \$1,000.00 in attorney fees for bringing her motion to enforce the CR2A agreement.

As a direct result of the motion and order on March 3, 2009, the Arbitrator issued a third ruling on June 18, 2009. CP 43-51. This ruling (award) states no more attorney fees. CP 354. Dennis timely filed his Notice of Appeal on March 30, 2009, regarding the order enforcing the CR2A agreement by Judge Fair on March 3, 2009. This Appeal has been linked with that previous appeal.

On July 20, 2009, Janie sought to enter final documents. Janie only filed a calendar note setting the time and date of the hearing. The attorney for Dennis only received a set of final

pleading which had no conforming stamp, so it was never known if the pleadings received (as there had been several sets produced by Janie since the mediation) were the same that the court received. CP 333-34.

In his objection to the entry of final pleadings (CP 212-342), Dennis noted that Janie failed to submit either the CR2A agreement, the court order of March 3, 2009 and all of the arbitration rulings which were to be incorporated into the final pleadings. CP 30.

Dennis also noted in his objection that the pleadings were substantially not in conformance with the CR2A and or the several rulings of the Arbitrator. It was of particular interest that Ms First chose to “redraft” the parenting plan in whole rather than use the one that had been signed off with no changes on October 22, 2008 by all parties and the Mediator. (Compare CP 201-211 with CP 316-323 and note CP 310 of the CR2A agreement which states “[s]ee attached parenting plan, which is agreed to by the parties.”)

Then on July 20, 2009, Janie argued (after Dennis points out the corrections that need to be changed back to the CR2A agreement and Order of March 3, 2009 in the hallway)

before the court a new, and for the first time (RP I, page 3, lines 11-25), request for the CD amount to be changed, prejudgment interest and a request for additional attorney fees.² All without proper notice to Dennis.

The court aptly noted that the case should be set for trial, however, then it ruled that the parties should submit these two remaining issues to the Arbitrator in spite of the language of the CR2A agreement that states that “upon entry of final orders” the role of the Arbitrator shall cease. (CP 310).

On August 21, 2009, the Arbitrator submitted another ruling (CP 139-140), and without explanation as to why, he changed his January 21, 2009 ruling on the amount of the CDs; the Arbitrator changes this amount to \$1,686.90 (note that in the final pleadings on July 20, 2009, Janie asserts in the decree this amount is \$1,698.10 (CP 142) and the Arbitrator also adds 12% interest from October 22, 2008 for the first time.)

The Arbitrator then awarded attorney fees against Dennis in favor of Janie in the amount of \$7,500.00 which appears to be solely based on the fact that Dennis had filed an

² Report of the Proceedings I is for July 20, 2009. Report of the Proceedings II is for October 20, 2009.

appeal on March 30, 2009 although there were no more attorney fees awarded in the June 18, 2009 ruling just two months after filing the appeal.

Finally, the only hearing between March 3, 2009 and October 20, 2009 was the July 20, 2009 entry of final pleadings hearing, so it is questionable as to what actions by Dennis was considered to give rise to such a large amount of attorney fees award. Furthermore, there were no financial documents which were exchanged to demonstrate “need and ability” as an award for attorney fees.

On October 20, 2009, Janie brought a motion to confirm and reduce to judgment the August 21, 2009 Arbitration award. The court adopted the amount awarded of \$1,686.90 (CP 6), but then held that the pre-judgment interest should not start on October 22, 2009, but should instead be from the January 21, 2009 letter ruling. Although the amount of the CDs on the date of January 21, 2009 was undisputed as being \$1,510.10, the court awarded such pre-judgment interest for the full amount of \$1,686.90.³

³ It should be noted that Dennis has disputed owing any of this amount to Janie as he was forced to pay the taxes on the family

On October 20, 2009, Dennis argued to the court that the attorney fees were arbitrary and capricious and clearly punitive in awarding them as the Arbitrator already awarded just prior to the July 20, 2009 hearing no more attorney fees in his June 18, 2009 ruling.

Also on October 20, 2009, Dennis argued that he was denied his right to the full 90 days to bring a proper motion to vacate under RCW 7.04A. 230 and felt that his objection to Janie's motion to reduce to judgment was then forced to be a motion to vacate by the court and finally, Dennis, although not directly, argued that both the Arbitrator and the Court had acted outside the scope of their authority based upon statute and the ruling of March 3, 2009.

home (for 2008 although he didn't learn this until early 2009) because Janie had abandoned the house in the middle of 2008 without telling him. Because of this violation of a court order (Temporary orders gave Janie the family home but she was to maintain it and all bills except Dennis paid the mortgage), Dennis was forced to maintain two homes because of Janie's bad faith and violation of court orders.

However, for the purposes of this appeal, Dennis is only arguing that the amount owing was changed from \$1,510.10 to the amount of \$1,686.90 (or \$1,698.10 depending on which document you read submitted by Ms First) without explanation and without a basis and that nearly a year later pre-judgment interest is now being attached on the \$1,686.90.

C. Standard of Review

Arbitrability of an issue is reviewed de novo. *Mount Adams Sch. Dist. V. Cook*, 113 Wn. App. 472, 477, 54 P.3d 1213 (2002) *rev'd on other grounds* 150 Wn.2d 716 (2003); *Tjart v. Smith Barney, Inc.*, 107 Wn. App. 885, 893, 28 P.3d 823 (2001), *review denied*, 145 Wn.2d 1027, and *cert. denied*, 537 U.S. 954 (2002).

When the record consists entirely of written material, an appellate court stands in the same position as the trial court and reviews the record de novo. *Housing Auth. v. Pleasant*, 126 Wn. App. 382, 387, 109 P.3d 422 (2005); *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994); *Amren v. City of Kalama*, 131 Wn.2d 25, 32, 929 P.2d 389 (1997).

Issues of statutory interpretation are reviewed de novo. *Hartson P'ship v. Goodwin*, 99 Wn. App. 227, 231, 991 P.2d 1211 (2000). The meaning of a statute is a question of law reviewed de novo. *State v. Ammons*, 136 Wn.2d 453, 456, 963 P.2d 812 (1998).

A trial court's conclusions of law are reviewed de novo. *City of Seattle v. Megrey*, 93 Wn. App. 391, 393, 968 P.2d 900 (1998).

D. Argument

1. The trial court erred when it sent to arbitration, at the entry of final pleadings, two contested issues in contradiction with case law and Judge Fair's ruling of March 3, 2009.

On July 20, 2009, Janie brought a motion by calendar note only (CP 343-345), to enter final pleadings in this case before the Commissioner Arden Bedle. The presented pleadings were purported to be in conformance with the order on Judge Fair's ruling of March 3, 2009 (CP 336-338) that confirmed the October 22, 2008 CR2A agreement. CP 303-330).⁴

⁴ This cite to the record is for the whole CR2A agreement which includes agreed final parenting plan, the child support worksheet and a distribution of assets and debt spreadsheet that the parties did agree to on October 22, 2009 and upheld by the court on March 3, 2009.

The Appellant alleges that Janie submitted completely different pleadings at presentation of final orders so Ms First, and Dennis' attorney met in the hallway and made many of the corrections back to the original agreement on all the documents except, Ms First would not agree to strike the language regarding the CDs, prejudgment interest and attorney fees. Therefore, Attorney for Dennis was forced to argue on the spot,

The Order of the Court on March 3, 2009 clearly states that it incorporates the rulings of the Arbitrator. CP 337.

As demonstrated by the objection to entry of the final pleadings submitted by Dennis, he was forced to guess as to which of the many final pleadings which had been repeatedly drafted by Janie that she was attempting to be entered as she does not submit copies to Dennis that were clearly marked and conformed as being either filed or submitted as working copies to the Court.

Furthermore, Janie did not submit a motion demonstrating what issues she is moving the court to enter so it was unclear what is being asked of the court regarding the final pleadings.

It was not until the morning of hearing that Dennis received the opportunity to view the pleadings presented to the court.

After a substantial amount of time in the hallway conferences, and after several corrections were made to the documents, Janie made it clear that she was seeking the court to

without preparation, these three issues that morning of July 20, 2009.

enter a different amount for the CDs, to add prejudgment interest and to enter additional attorney fees. RP I - 4, lines 1-5. These requests were first heard the morning of July 20, 2009 and the Attorney for Dennis had to argue on the spot that such requests had already been arbitrated, including the Attorney fees request just a month prior. RP I-2, lines 19-22, RP I-3, lines 17-22, RP I -4, line 15 –page 5 line 19.

Dennis objected to the entry of the amount of the CDs as being \$1,698.10⁵ and fully informed the court both in his pleadings (CP 212-342 and CP 345-396) and in argument, that the amount of the CDs, *without interest*, had been fully set at the time of the January 21, 2009 ruling of the Arbitrator to which was fully incorporated into the ruling of Judge Fair on March 3, 2009 when she enforced the CR2A agreement and the prior rulings of the Arbitrator. CP 26.

The Court had before it a copy of the CR2A agreement which contained the language of Section X and the role and

⁵ It should be noted that Counsel for Janie has changed this number throughout this case and what was plead for at final pleadings on July 20, 2009 is different from what was awarded on October 20, 2009, not including interest. Furthermore, Mr. Block has been consistent that the value of the CD was \$1,510.10.

powers of the Arbitrator which was to cease upon the entry of final pleadings. CP 279.

However, the court entered final pleadings reserving the two issues raised for the first time by Janie's attorney without a motion, to arbitration in violation of the CR2A agreement and in violation of case law. *Little v. Little*, 96 Wn.2d 183, 634 P.2d 498 (1981). Dennis attempted to argue that the court should not send back to arbitration anything and should just enter final pleadings with the original arbitration rulings in conformance with the March 3, 2009 ruling of Judge Fair.

In the *Little* case, the court addressed two cases dealing with the issue of bifurcating issues at trial. In that case the court dealt with apparent conflicts of common law, the Dissolution act of 1973 and the legislative intent behind this act. More important, the court in the *Little* case pointed out how parenting issues, which are subject to change, are allowed further court intervention as contrasted with property issues which are considered final at the time of dissolution. In that case the court held:

Finding in the act no expression of an intent to change the existing law regarding the Superior Court's power in disposing of ancillary matters

in a marriage dissolution proceeding, and the language of the new act being consistent with past policy, we presume that it intended to continue the policy expressed in the prior statute as construed by this court. Under that policy, it is the duty of the Superior Court to rule upon ancillary matters at the time it enters the decree. A party to a marriage dissolution has the right to have his interest in the property of the parties definitely and finally determined in the decree which dissolves the marriage. *Shaffer v. Shaffer*, 43 Wash.2d 629, 262 P.2d 763 (1953); *Bernier v. Bernier*, 44 Wash.2d 447, 267 P.2d 1066 (1954). The court may enter a temporary custody order, retaining jurisdiction to modify the order at a specified date, where the best interests of the child require such action. ****505***Phillips v. Phillips*, 52 Wash.2d 879, 329 P.2d 833 (1958); *Potter v. Potter*, 46 Wash.2d 526, 282 P.2d 1052 (1955).

Little v. Little, 96 Wn.2d 183, 634 P.2d 498 (1981). Emphasis Added. See also, *Byrne v. Ackerlund*, 44 Wn. App. 1, 719 P.2d 1363 (1986).

As has been most of the case with Dennis, since the court would not allow him to stay the proceedings subsequent to his filing of his first appeal on March 30, 2009, which is linked with this appeal, he has been forced to participate in legal actions repeatedly brought by Janie. Therefore, he had no alternative but to accept the ruling of the court on July 20,

2009, which bifurcated some of the property issues which should have been completely resolved at entry of final pleadings on July 20, 2009.

This bifurcation further gave Janie “two bites of the apple” allowing her to re-litigate issues that had already been ruled upon by the Arbitrator, although there was no new evidence or anything that would demonstrate a legal basis for a second chance to re-litigate the very same issues.

However, since the Arbitrator had just ruled on June 18, 2009, that no further attorney fees were warranted (using almost the same language used in the August 21, 2009 letter to substantiate the \$7,500.00 award of attorney fees (CP -353-354) and had ruled previously about the value of the CDs and the prejudgment interest (CP 388)), Dennis had felt confident that the Arbitrator would be at the very least consistent in his rulings.

Needless to say, Dennis was surprised to learn of the Arbitrator’s unexplained basis for changing both rulings, especially the attorney fees request since there was no exchange of any additional information regarding intransigence and/or

need and ability and neither the court nor the Arbitrator made written findings as to either legal basis for such an award.

More importantly was the fact that Commissioner Bedle erred, not only on July 20, 2009, but then again on October 20, 2009 when he did not follow the order of March 3, 2009 of Judge Fair who ruled specifically and clearly that the arbitrator's decisions were to be incorporated into the final pleadings. CP 337.

Neither time did Commissioner Bedle have either the jurisdiction or any authority to side step the Judge's ruling to this effect. The Judge had ruled and Commissioner Bedle abused his discretion when he failed to follow the court's direction.

Although this fact was not heavily argued at the hearing on July 20, 2009 (remember he was ambushed by having to argue these issues that morning on the spot) by Dennis' attorney, his attorney did provide attached to his objection to final pleadings a complete record of all of the ruling to date by the Arbitrator and a true and actual copy of the court's ruling on March 3, 2009 and a true and actual copy of the ruling of the Court denying a Stay of Proceedings as a complete and separate

pleading filed on June 16, 2009). (CP 345-396). The court also had that day a copy of the January 13, 2009 letter of Janie's counsel to which the Arbitrator referred back to in his January 21, 2009 ruling. CP 235-238.

Therefore, the court, on July 20, 2009 erred both when it entered final pleadings without resolving all issues and when the court entered final pleadings that did not incorporate the prior rulings of the Arbitrator as ruled upon by Judge Fair on March 3, 2009.

2. Both the Court and the Arbitrator erred when they ignored the plain language of the CR2A agreement which removed the Arbitrator from this case upon entry of final pleadings.

In this case, the parties, with their attorney and the Mediator, who was to become the Arbitrator by the terms of the CR2A agreement signed on October 22, 2008 agreed in Section X that:

Any disputes in drafting or interpretation of the final documents or as to other unresolved and unaddressed issues shall be submitted to James Shipman for binding arbitration as authorized by RCW 7.04. *Unless the parties otherwise agree in writing, all authority of James D. Shipman terminates upon entry of the final documents.* Costs for arbitration fees shall be divided in the same proportion as they were divided for the settlement conference which resulted in this CR-2A Settlement Agreement, but shall be subject to reallocation by the arbitrator. In addition, the

arbitrator shall have the power to award reasonable attorney fees for fees incurred in conjunction with the arbitration as deemed appropriate by the arbitrator.

Emphasis added. CP 79.

The Court on July 20, 2009 had a full and complete copy of this Agreement before him and therefore should have not sent anything back to the Arbitrator as the court was aware that the Arbitrator would have no authority to act after entry of final pleadings.

Furthermore, when the Arbitrator received the new request to arbitrate knowing that the final pleadings had been entered, as the drafter of the document including the above agreement, he should have denied the request to further rule unless he received a further agreement from the parties as required.

Dennis objected to these items as being already arbitrated at the hearing on July 20, 2009. His attorney felt that she was forced to have to re-litigate these issues with the Arbitrator and in submissions to the Arbitrator which are sealed, made his objections clear. Again, because the Arbitrator had already ruled and because so little had occurred

between the rulings, Dennis believed that the Arbitrator would remain with his previous rulings and was shocked when the Arbitrator came back radically different with no explanation as to why he made such changes.

3. The Arbitrator exceeded his boundaries under RCW 7.04A.230(d) when it continued to work as an arbitrator in direct conflict of Section X of the CR2A agreement which terminated his authority upon entry of the final pleadings and when it awarded attorney fees and costs in violation of RCW 7.04A.210.

The first error that the Arbitrator made was when he did not send back to the parties a request that his boundaries should be expanded to exceed beyond the plain language of Section X of the CR2A agreement where his powers automatically ceased upon entry of final pleadings as his powers had already automatically ceased on July 20, 2009. The court did not have the authority to modify or change an agreement made by the parties, especially without a proper motion before it on July 20, 2009.

Furthermore, although Commissioner Bedle erred in sending issues to the Arbitrator to begin with, the Arbitrator wrote the CR2A agreement and he had arbitrated several issues for the parties prior to the July 20, 2009 hearing so he was

intimately aware of this language and the contents of the CR2A agreement so the burden of seeking permission to continue to act as the Arbitrator should have been at the feet of the Arbitrator.

Therefore, the Arbitrator exceeded his authority under RCW 7.04A.230(d) when he continued to work as an Arbitrator when the agreement signed by all parties clearly stated his role was to cease upon entry of final pleadings.

The second error of the Arbitrator in exceeding his authority is when he awarded excessive attorney fees without explanation as to the basis. As with all arbitrations, the bulk of such cases are sealed and considered confidential. Therefore, on the face of an award, it should be evident the basis of why such an award is made. RCW 7.04A.210 covers the powers of an arbitrator in awarding fees and expenses. In relevant part it states:

Remedies — Fees and expenses of arbitration proceeding.

(1) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized under the applicable law in a civil action involving the same claim and *the*

evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award attorneys' fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim

(5) If an arbitrator awards punitive damages or other exemplary relief under subsection (1) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

RCW 7.04A.210. Emphasis added. The Court ruled on July 20, 2009, that this matter be sent back to the Arbitrator again over the objections of Dennis who clearly pointed out to the court that such issues had been ruled upon previously and those awards should have been entered on that day into the final pleadings.

However, even still on August 21, 2009 when the Arbitrator issued an award he did not provide any insight in his ruling as to why he substantially changed his position on the amount due for the CDs as well as now ordering pre-judgment interest. Nor did he cite as to the basis as to why he was now ordering \$7,500.00 in attorney fees.

RCW 7.04A.210, in the sections referenced above, clearly state that the arbitrator is mandated to justify an award for fees and costs as to being authorized by law and in a civil action involving the same claim. In this case, the civil claim is a dissolution. There are only four ways in which an award of attorney fees can be awarded in a dissolution: (1) by agreement; (2) need and ability; (3) intransigence; and, (4) contempt.

Dennis did not agree to this award. The record is devoid of any thing demonstrating that Janie had the need for attorney fees and or that Dennis had the ability to pay such attorney fees.

The record is similarly devoid of any claim to intransigence. In fact, since the ruling of June 18, 2009 where the Arbitrator had previously stated that there should be no further attorney fees, the only legal occurrence between that date and August 21, 2009, was the motion to enter final pleadings brought by Janie. Therefore such ruling would have no legal basis if claimed to be intransigence.

What does appear to be the basis of the arbitrator's ruling is the fact that on March 30, 2009, Dennis had filed an appeal. But again, this was prior to the June 18, 2009 ruling of

the Arbitrator. What is interesting to note in the June 18, 2009 ruling where the Arbitrator rules no further attorney fees, is that the Arbitrator uses almost the exact same language or basis for no attorney fees as he does in his award of attorney fees on August 21, 2009. CP 353-354.

Therefore, the Appellant argues that the Arbitrator exceeded his powers under RCW 7.04A.210 (1), (2) and (5).

The Arbitrator also appears to be awarding attorney fees as punitive since there was no finding of any “need or ability” which would require a finding of both need for the fees and the ability to pay such fees. Nor was there a finding of intransigence, which would require a finding of what acts Dennis had done that gave rise to such a basis for intransigence.

The ruling on the face of this award merely appears to state that Dennis, although he had a right to do so, has used extraordinary measures, although it is unclear what these measure were other than contesting the entry of final pleadings as not being in conformance with the CR2A agreement as required by the Court's ruling of March 3, 2009 which forced issues back to the Arbitrator brought by Janie and by participating in the July 20, 2009 hearing on final pleadings.

How this could be viewed as “extraordinary measures” warranting a huge attorney fee award against him is baffling. If anything, Janie’s actions of attempting to enter pleadings not in accordance to the CR2A agreement and the arbitration awards as well as their repeated requests for additional remedies should be considered extraordinary measures.

Further, RAP 18.1 provides the procedure for an award of attorney’s fees on appeal, if appropriate. This should not be decided by the arbitrator whose authority ceased upon the entry of final orders (as discussed infra).

For the arbitrator to award attorney’s fees for the pending appeal to Janie, it punishes Dennis for appealing the wrongful decision of the arbitrator. This award could be viewed as the arbitrator penalizing Dennis for appealing the Arbitrator’s decision and rewarding Janie by paying her attorney’s fees on appeal, thereby making Dennis the losing party (financially) out of the starting block. By awarding attorney’s fees greater than the disputed amounts, Dennis is penalized merely because he disputes the arbitrator’s authority,

Most importantly, the Arbitrator did not have the jurisdiction, legal power or authority to supersede the ruling of

Judge Fair that incorporated the “all” rulings of the arbitrator on March 3, 2009. Therefore, the March 3, 2009 ruling had already incorporated the award of January 21, 2009 which held the value of the CDs was \$1,510.10 and no prejudgment interest. (CP 26 section 2) and it by virtue of the language demanding the awards to be in final pleadings, Judge Fair had already deemed the June 18, 2009 award of no attorney fees to be entered in the final pleadings.

4. Commissioner Bedle Erred when he adopted the Arbitration Award when it was demonstrated by the respondent that they desired to bring a proper motion to vacate and when the statute allows for ninety days bring such a motion under RCW 7.04A.230.

Dennis should have been allowed ninety (90) days to bring a proper motion to vacate an arbitration award when it was brought to the court’s attention on October 20, 2009 that such a right was allowed under RCW 2.04A.230.

Janie did not wait the ninety days to bring her motion to confirm. Although Janie is not prevented from bringing such a motion, Dennis argues that when it presented to the court that it wished to seek such a proper motion to vacate, the court should have continued the hearing until after the 90 days had expired.

RCW 7.04A.230 allows a motion to be brought to vacate an Arbitration Award within ninety (90) days and in relevant part states:

A motion under this section must be filed within ninety days after the movant receives notice of the award in a record under RCW 7.04A.190 or within ninety days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award under RCW 7.04A.200, unless the motion is predicated upon the ground that the award was procured by corruption, fraud, or other undue means, in which case it must be filed within ninety days after such a ground is known or by the exercise of reasonable care should have been known by the movant.

RCW 7.04A.230(2).

This statute does not state that such a motion has to be brought to the arbitrator. In fact, by the plain language of the statute it is clear that such motion shall be brought to the court. The award was signed on August 21, 2009 and received on or about August 24, 2009 by Dennis' attorney. Therefore the motion on October 20, 2009 was exactly sixty (60) days out and thirty (30) days was plenty of time for Dennis to thoroughly research and present a motion on the merits for vacation of the arbitration award without prejudice to Janie.

Instead, Commissioner Bedle ordered that day in court that the objection submitted by Dennis be deemed a motion to vacate, thereby prejudicing Dennis from bringing his own thoroughly researched and proper motion subsequently.

E. Conclusion

Several errors occurred by both Commissioner Bedle and by the Arbitrator in this case. Commissioner Bedle erred when on July 20, 2009, he entered final pleadings but sent three issues back to arbitration for rulings. Commissioner Bedle then erred on both July 20, 2009 and October 20, 2009 when he ignored the fact that both issues had already been ruled upon previously by the Arbitrator on January 21, 2009, and June 18, 2009 respectively. Commissioner Bedle then further erred when he ignored the plain language of the CR2A agreement which mandated that the Arbitrator's role ceased automatically when the court entered final documents on July 20, 2009.

Commissioner Bedle also erred when he denied Dennis' request for the full ninety (90) days for the opportunity to bring a proper motion to vacate the Arbitrator's ruling on October 20, 2009 as allowed under the statute.

Finally, Commissioner Bedle erred when he failed to enforce the March 3, 2009 order of Judge Fair which clearly stated that the final documents were to include all of the arbitration awards and since both issues had already been decided previously by the Arbitrator as pointed out by Dennis, the Court on July 20, 2009 was mandated to incorporate those rulings into the final papers and should not have sent them back to the Arbitrator for further ruling.

The Arbitrator also erred and went beyond his boundaries when he ignore the CR2A plain language which extinguished his authority. As the drafter of this document, he was fully aware that he had no authority to rule on any issue after the final pleadings had been entered.

Finally, the Arbitrator erred when he expanded his boundaries when he changed his previous rulings without explanation and when he awarded excessive attorney fees against Dennis which appear to be punitive in nature as well as fees to Janie to fight Dennis on appeal.

In conclusion, in the first linked appeal (No. 63244-2-I), Dennis asked this court to rule that Judge Fair erred and didn't follow the legal standards for enforcing a CR2A agreement. If

this Court holds that the CR2A agreement was valid, Dennis seeks as the sole purpose, that this Court remand to the Superior Court the direction to amend the Final Pleadings of July 20, 2009 to incorporate the March 3, 2009 ruling of Judge Fair which directs that the arbitration awards shall be included in final pleadings which would therefore include the January 21, 2009 ruling dictating that the amount of the CDs is \$1515.10 with no prejudgment interest and the June 18, 2009 award which held that there was to be no further attorney fees awarded to either party.

If this Court holds in the linked case that the CR2A agreement is not enforceable, then the arbitrator's rulings are moot.

Respectfully submitted May 3, 2010



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