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64441-6

No. 64441-6-I  
Linked with No. 63244-2-I

Court of Appeals, Division I  
Of the State of Washington

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In re the Marriage of:

Janie Lynn Block, Respondent

And

Dennis L. Block, Appellant

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BRIEF OF RESPONDENT

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ORIGINAL

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## I. SUMMARY OF ARGUMENT

Mr. Block's request that this case be remanded to the trial court for further proceedings should be denied.

Commissioner Bedle acted properly when he entered final orders in the dissolution proceeding subject to a notice of presentation of same being filed. He acted within his authority when he reserved three issues for later determination by an arbitrator pursuant to RCW 7.04A, especially because this ruling was consistent with the parties' agreement. Mr. Block was not "forced" to arbitrate.

The arbitrator had the authority to decide the reserved issues after entry of final orders because he was ordered to do so and the parties agreed he would so do. He was specifically authorized by statute to correct his previous awards, and to determine attorney fees. He was not required to set forth the rationale for his decisions.

The commissioner had only limited authority to review the arbitrator's award. His decision to grant Ms. Block's Motion to Confirm the Arbitrator's Award and to Deny Mr. Block's Motion to

Vacate or Correct the Award was proper. There was no error on the face of the arbitrator's award that would justify a correction or vacation of the award.

Ms. Block is entitled to her fees for defending this appeal under several legal theories. The appeal should be dismissed with prejudice and fees should be awarded to her.

## II. ARGUMENT

### A. Entry of Final Orders on July 20, 2009 Was Proper.

On July 1, 2009, Ms. Block noted for July 20, 2009 presentation of final orders in the dissolution, CP 240, and delivered copies of her proposed orders to Mr. Block's counsel and the arbitrator. CP 242-315. On July 10, 2009, Mr. Block filed *130 pages* of objection, CP 212-342, *but did not provide a redlined or marked up copy of the proposed final orders* with his objections, as is customarily done when specific provisions of an order are contested. Nonetheless, on July 15, 2009, Ms. Block filed her strict reply to Mr. Block's objections, CP 205-211, and included the redlined changes.<sup>1</sup>

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<sup>1</sup> Until she received Mr. Block's "objection," Ms. Block had no idea what Mr. Block's objections to the final orders were. She made changes to the

At the presentation hearing, the court entered the final orders in the dissolution. It reserved for determination by the arbitrator three narrow issues relating to a judgment, prejudgment interest, and attorney fees.

1. *The parties agreed to arbitrate the limited, reserved issues.*

The court's order to arbitrate the three reserved issues was the result of the parties' *agreement* that those issues would be determined by the arbitrator in binding fashion under RCW 7.04A. Despite Mr. Block's protests now to the contrary, his attorney specifically agreed to reserve the limited issues and send them back to arbitration. See, e.g. RP I at 6:16-25. See, also, RP I at 7:2.

2. *Mr. Block's Argument That He Was "Forced" To Arbitrate is Not Supported By the Record.*

Mr. Block's argument that because his motion to stay the proceedings below was denied, CP 394-396, he was "forced" to participate in legal actions and that he "had no alternative but to accept the ruling of the court on July 20, 2009", Appellant Brief at

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final orders consistent with some of Mr. Block's objections, which left the final three issues that Commissioner Bedle ultimately reserved. It is not true that these issues were first presented to Mr. Block at the hearing on presentation, as he alleges in his brief. In fact, he raised them, and Ms. Block responded to them.

15, is nothing short of preposterous. The court denied the motion to stay because “no supercedeas bond or cash [was] posted under RAP 8.1.” CP 395. Had that technical issue been corrected, he would have been free to bring the same motion again, almost certainly with different results. Mr. Block agreed to arbitrate the reserved issues, and participated fully in the arbitration process. He cannot now complain that he was “forced” to do so, and that, accordingly, he is entitled to remand the case for a “mulligan.”

3. *The superior court commissioner had the authority to order arbitration of reserved issues.*

The real question is whether the superior court commissioner had the authority to order arbitration of the remaining disputed issues, *especially when the parties had already agreed to utilize that method of dispute resolution.* At the presentation of the final orders on July 20, 2009, and with the parties’ agreement, the court reserved the limited areas of dispute because **there was no issue** (and no objection by Mr. Block) that the parties wanted to be divorced, the agreed parenting plan should be entered, the agreed child support and maintenance provisions should be ordered, and most financial issues were agreed and should be reduced to final

orders.<sup>2</sup> Commissioner Bedle simply ordered what the parties in effect agreed to get closure and finality on their relationship and other matters, and move to alternate dispute resolution on the few remaining issues. Even in family law matters, arbitration is often used to resolve disputes instead of the traditional courtroom litigation, primarily because of its relaxed rules of evidence and lower cost. See e.g. Allen R. Koritzinsky, Robert M. Welch, Jr., & Stephen W. Schlissel, *The Benefits of Arbitration*, 14 *Family Quarterly* 45 (1992).

As to whether Commissioner Bedle had the legal authority to order this *agreed* method of dispute resolution, there can be no valid argument to the contrary. Superior court commissioners are authorized by the constitution and by statute to perform limited functions delegated by the superior court. Wash. Const., Article IV, §23 (commissioners “have the authority to perform like duties as a

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<sup>2</sup> At the time the final documents were entered on presentation it had been nine months since the CR2A was completed (October 22, 2008), and four months since Judge Fair ordered that the CR2A was valid and enforceable (March 3, 2009). The parties had been before the arbitrator three times. CP 205 at 21-24. And because the three issues remaining were narrowly proscribed, the parties agreed to disagree on those items, reserve them, and send them to arbitration.

judge of the superior court at chambers”<sup>3</sup>); RCW 2.24.010, RCW 2.24.040. The commissioner’s authority to determine alternative dispute resolution, or to convert parties’ agreements re same to a court order, is ostensibly included in this authority unless specifically limited.

**B. The Arbitrator Had The Authority to Act After Final Orders Were Entered Because The Court Ordered Him to Do So.**

Mr. Block argues that the arbitrator did not have the authority to arbitrate matters after entry of the final documents, because his involvement in the case terminated at that point pursuant to the terms of the CR2A agreement. This argument is disingenuous: the arbitrator continued his role *not pursuant to the CR2A agreement*, but pursuant to the court commissioner’s July 20, 2009 *order*. The terms of the CR2A agreement are irrelevant to the arbitrator’s involvement in the case post entry of final orders.

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<sup>3</sup> This language refers to the duties given judges at the time the constitution was adopted, and has been interpreted to mean nearly every judicial function except trial by jury. *State v. Karas*, 108 Wn.App. 692, 32 P.3d 1016 (2001). Commissioner Bedle also had the explicit statutory authority granted him under RCW 26.12.010 as a family law commissioner.

**C. The Court Acted Properly By Granting Ms. Block's Motion to Confirm and Denying Mr. Block's Motions to Vacate/Correct the Arbitrator's Award.**

After the final orders were entered and the three narrow issues sent to arbitration, the arbitrator rendered his opinion in a letter dated August 21, 2009. CP 140. Ms. Block received the decision on August 24, 2009. *Id.* On October 7, 2009, Ms. Block moved to confirm the arbitrator's decision, CP 134, consistent with RCW 7.04A.220<sup>4</sup>. On October 13, 2009, Mr. Block filed an "Objection to Entry of Judgment and Response to Motion," which consisted of 124 pages. CP 10-134.

**1. Ms. Block's Motion to Adopt the Arbitrator's Award Required the Court to Adopt the Award Unless it was Vacated.**

Because of the strong public policy favoring finality of arbitration awards<sup>5</sup>, an appellate court can vacate, modify, or correct the award in accordance with a narrow set of circumstances. Kenneth W. Brooks Trust v. Pacific Media LLC, 111 Wash.App. 393, 44 P.3d 938 (2002). With regard to confirming the

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<sup>4</sup> No motion to change the award had been made to the arbitrator in accordance with RCW 7.04A.200, which requires that such motion be filed within 20 days after the moving party receives the award. In this case, that motion would have had to be filed not later than September 13, 2009.

<sup>5</sup> See also Rent-A-Center, West v. Jackson, Docket 09-047, decided June 21, 2010, in which the United States Supreme Court restricted the court's role in deciding the fairness of arbitration agreements.

arbitrator's award, the court is **required** to do so unless it decides – on motion of the party who does not want the award confirmed – that it will vacate the award.

Pursuant to RCW 7.04A.220:

After a party to the arbitration proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court **shall** issue such an order unless the award is modified or corrected under RCW 7.04A.200 or 7.04A.240 or is vacated under RCW 7.04A.230.

(emphasis added). In this case, the court was *required* to adopt the arbitrator's ruling because Mr. Block did not move to modify or correct.

2. *Mr. Block's "Objection" to the Arbitrator's Award Was In Fact a Motion to Vacate or Correct the Award.*

Commissioner Bedle generously characterized Mr. Block's 134 page "objection" as a motion to vacate under RCW 7.04.230, or to correct under RCW 7.04A.240. Had he not done so, Mr. Block's concerns would not have been heard because under RCW 7.04A.220, the court was *required* to confirm the arbitrator's award. **Mr. Block's counsel readily accepted this characterization of**

the “objection.”<sup>6</sup> Mr. Block’s subsequent argument that he was not given the opportunity to file a “proper” motion is without merit because his counsel conceded that the objection was a motion to vacate or correct under RCW 7.04A.230 and .240.

3. *The Motion to Vacate/Correct Was Properly Denied Because the Court’s Review of the Arbitrator’s Decision is Narrow, and the Arbitrator Acted within his Authority in Deciding the Reserved Issues.*

a. The court’s review of an arbitration occurring under RCW 7.04A is exceptionally limited.

Unlike mandatory arbitration under RCW 7.06, where a trial *de novo* is permitted, review in the trial court is limited to vacating, modification, or correction of the award. Godfrey v. Hartford Cas. Ins. Co., 142 Wash.2d 885, 16 P.3d 617 (2001). See also Expert Drywall, Inc. v. Ellis-Don Const., Inc., 86 Wash.App. 884, 939 P.2d 1258 (1997), *rev. denied*, 134 Wash.2d 1011, 954 P.2d 276 (trial court’s review of arbitration award is confined to question of whether any of statutory grounds for vacation of award exists.) Similarly, appellate review of an arbitration proceeding is restricted to grounds identified in statute. Barnett v. Hicks, 119 Wash.2d 151,

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<sup>6</sup> See, RP II at 7:1-19; 8:11-9:16; 10:13-15 (“THE COURT: But we’re reviewing your objection as a motion under [RCW 7.04A].230 and [RCW 7.04A].240, right? MS. HENDRICKS: Correct.”)

829 P.2d 1087 (1992). The appellate court's review of arbitrator's award is limited to review of decision by court which confirmed, vacated, modified or corrected that award. *Expert Drywall, Inc.*, supra.

Judicial scrutiny of arbitration award does not include review of arbitrator's decision on merits. ACF Property Management, Inc. v. Chaussee, 69 Wash.App. 913, 850 P.2d 1387, review denied 122 Wash.2d 1019, 863 P.2d 1353 (1993). See, also, Dayton v. Farmers Ins. Group, 124 Wash.2d 277, 876 P.2d 896 (1994)(statutes governing arbitration strictly limit superior court's authority to review arbitration award, limiting court to either confirming, vacating, modifying or correcting award for specific reasons set forth in statute; court must confirm award if it is not modified, vacated or corrected, and court does not have collateral authority to go beyond face of award and determine whether additional amounts are appropriate); Boyd v. Davis, 75 Wash.App. 23, 876 P.2d 478, recon. denied, review granted, 125 Wash.2d 1014, 890 P.2d 19, *affirmed* 127 Wash.2d 256, 897 P.2d 1239 (1994) (trial court, in ruling that arbitrator had exceeded his power in granting piecemeal rescission of contract, went beyond face of arbitration award and independently interpreted contractual

provisions and contractual intent of parties, thus exceeding scope of court's review and authority).

b. Only If Error Appears in the Face of the Arbitration Award Can The Court Review the Arbitrator's Decision.

In deciding a motion to vacate arbitration award, a court will not review the merits of the case, and ordinarily will not consider the evidence weighed by an arbitrator. It can review an alleged error only if it appears on the face of the award; the error should be recognizable from the language of the award. Federated Services Ins. Co. v. Personal Representative of Estate of Norberg, 101 Wash.App. 119, 4 P.3d 844, recon. denied, rev. denied 142 Wash.2d 1025, 21 P.3d 1150 (2007).

There was no such error on the face of the arbitrator's August 21, 2009, award, which is short and to the point. CP 138. In it, the arbitrator found that Mr. Block's "extraordinary efforts to set aside the final agreement" cost Ms. Block "substantial additional attorney fees." Ms. Block's July 14, 2009 Strict Reply to Mr. Block's Objection to entry of final pleadings documented total fees and costs *since settlement on October 22, 2008, just nine months earlier* of \$12,944.67 (compared to a reasonable \$5,535.75 before

the mediation). CP 205:18–206:3, and footnote 1<sup>7</sup>. Ms. Block asked for over \$12,000 in additional fees and costs in that motion *because of Mr. Block’s extraordinary resistance to any agreement or resolution of even the simplest matters*. She was awarded just \$7,500 of her request. CP 138. It is most likely that the arbitrator ultimately saw the accumulation of the continued litigation costs brought about by Mr. Block’s intransigence – even nearly a year after settlement – through motions and four decisions by the arbitrator, and decided that “enough was enough”. At a minimum, the arbitrator acted within his authority to correct his previous rulings regarding attorney fees pursuant to RCW 7.04A.210.

The only argument Mr. Block can possibly raise under the circumstances is that the arbitrator exceeded his authority under the statute. In fact, the arbitrator acted well within the authority granted to him by the state constitution, the superior court commissioner, and RCW 7.04A.

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<sup>7</sup> This brief—as was Mr. Block’s Objection to Entry of Final Pleadings--was sent to the arbitrator for ruling when the issues were reserved by Commissioner Bedle on July 20, 2009 when final pleadings were entered. Both briefs formed the basis of the argument to the arbitrator on the reserved issues.

- c. The arbitrator had the authority to correct a previous ruling.

The parties agreed in the CR2A that three CDs would be awarded to Ms. Block totaling \$3,188. CP 207. Subsequent to the CR2A, Mr. Block cashed out the CDs, paid Ms. Block a portion of them, and paid the property taxes with the balance (though not authorized to do so). CP 208. Subsequently, the arbitrator (and later the court) found that Mr. Block had converted the CDs for his own use and ordered a judgment in her favor. CP 8-9.

Although the arbitrator ruled in January 2009 that the value of the CDs owing to Ms. Block was \$1,510.10, he *corrected* that ruling to \$1,686.90 in the August 21, 2009, opinion. CP 138. He is authorized to correct his ruling under RCW 7.04A.200.

- d. The arbitrator had the authority to grant attorney fees and prejudgment interest to Ms. Block, whether or not he gave reasons therefore.

The arbitrator was authorized by statute and the court's order to award attorney fees and prejudgment interest to Ms. Block<sup>8</sup>.

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<sup>8</sup> In fact, arbitrators may exceed their authority by failing to award attorney fees to prevailing party under an arbitration agreement. Phillips Bldg. Co., Inc. v. An, 81 Wash.App. 696, 915 P.2d 1146 (1996).

RCW 7.04A.210 explicitly permits an arbitrator to award punitive damages or other exemplary relief, attorney fees or other reasonable expenses of arbitration, or other remedies he or she deems “just and appropriate” under the circumstances of the arbitration proceeding. Furthermore, “the fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under RCW 7.04A.220 or for vacating an award under RCW 7.04A.230.” RCW 7.04A.210(3).

Mr. Block’s argument that the arbitrator must give rationale for his decision must fail. A statement explaining arbitrator's reasons for award is not part of award, for purposes of court review. Hanson v. Shim, 87 Wash.App. 538, 943 P.2d 322, review denied 134 Wash.2d 1017, 958 P.2d 313 (1997). Furthermore, unless an award is made under RCW 7.04A.210(1) (punitive or exemplary damages)<sup>9</sup>, no explanation is necessary.

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<sup>9</sup> RCW 7.04A.210(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.” There is no similar provision for awards made under §§ (2) or (3).

**D. Ms. Block Should Be Awarded Her Attorney Fees.**

Ms. Block should be awarded her fees and costs for having to defend this action, in an amount to be provided consistent with RAP 18. First, she is wholly dependent on Mr. Block for her financial security, having negotiated a property settlement agreement with him, *none of which has been paid despite the fact that it has been nearly two years.* Accordingly, she is without funds to pay for this appeal or the first appeal in this case (Linked Case 63244-2-I). Given the factual and legal questions involved, the unremitting litigation imposed on her by Mr. Block's actions (or failure to act: a third party has had to be appointed in the dissolution action to step in in the same role as the parties to get the house sold because Mr. Block refused to cooperate in any part of the court-ordered sale), the substantial amount of time necessary to prepare briefs and motions, and the fact that the largest assets in this case (the house and the equalizing payment to be made to her when the house sells) are being held hostage by Mr. Block, Ms. Block first requests relief under RCW 26.09.140, need versus ability to pay.

Ms. Block's second prayer for relief regarding attorney fees is brought under RCW 4.84.185 because Mr. Block has deliberately

prosecuted this case for no reason other than harassment, delay, nuisance or spite. Skimming v. Boxer, 119 Wn.App. 748, 756, 82 P.3d 707 (2004). He argues that he did not have a chance to bring a “proper” motion to vacate or correct, but the record clearly shows that he assented to characterization of his “objection” as a “proper” motion under RCW 7.04A. He states that he did not consent to reserving issues and having them decided by the arbitrator, but again, the record reflects an entirely different story. Mr. Block argues again and again that the remaining issues of dispute at the time of the presentation of final documents (which were eventually sent to arbitration) were first presented to him *at the hearing*, when in fact **he** raised them in his “objection” and it was *Ms. Block* who first knew of them when she received his “objection.” His prosecution of this appeal should be soundly sanctioned.

Ms. Block finally asks the court to grant her attorney fees for this appeal because of Mr. Block’s continued intransigence in refusing to negotiate or agree to any issue in the case. In re Marriage of Wallace, 111 Wn. App. 697, 708, 45 P.3d 1131 (2002), *rev. denied*, 148 Wn.2d 1011 (2003). *See also* argument above regarding behavior constituting harassment, nuisance and spite.

### III. CONCLUSION

The relief requested by Mr. Block, that this court remand this case to amend the final pleadings, is without merit and should be denied. Commissioner Bedle acted well within his authority to enter final pleadings and reserve for arbitration three narrow issues, especially when the issues and method of dispute resolution were agreed to by the parties. The arbitrator acted within his authority – as delegated by the court commissioner and pursuant to statute – when he considered the reserved issues and rendered his opinion on them. He was not required to make findings or conclusions regarding his decision on those issues. Mr. Block’s argument that he did not have an opportunity to bring a “proper” motion to vacate is brought in bad faith since he agreed, through counsel, that his 135 page “objection” was, in fact, a motion to vacate and/or correct the award.

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

Respectfully submitted this 8<sup>th</sup> day of July, 2010.

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