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Court of Appeals No. 64834-9-1  
Snohomish County Superior Court 03-3-02479-3

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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In re the Marriage of:  
CHRISTINE L. BROWN (KNA McCAULEY),  
RESPONDENT,  
v.  
FRED F. BROWN,  
APPELLANT.

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REPLY BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES. . . . .	.ii
ISSUE . . . . .	1
ARGUMENT . . . . .	1
CONCLUSION.. . . . .	5
APPENDIX.. . . . .	A-1

**TABLE OF AUTHORITIES**

**Page**

**Table of Cases**

**Washington Courts**

Council House, Inc. v. Hawk 136 Wn. App. 153, P.3d 1305 (Dec. 2006). . . . . 2

Duke v. Boyd, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). . . . . 2

Elford v. City of Battle Ground, 87 Wn. App. 229, 941 P.2d 678 (1997). . . . . 3

In re Marriage of Leslie v. Verhey, 90 Wn. App. 796, 954 P.2d 330 (1998).. . . . 1, 3-4

King County v. City of Seattle, 70 Wn.2d 988, 425 P.2d 887 (1967). . . . . 2

McGinnis v. State, 152 Wn.2d 639, 99 P.3d 1240 (2004).. . . . 3

State v. J.P., 149 Wn.2d 444, 69 P.3d 318 (2003).. . . . 3

**Statutes**

RCW 7.06.020. . . . .4, A-1

RCW 7.06.060. . . . .1-5, A-1

RCW 7.06.080. . . . .2, 3, 5, A-1

RCW 26.09.140.. . . . 2, 3, A-2

**Court Rules**

MAR 7.3.. . . .2, A-2

SCLMAR 1.1. . . . . 5, A-2

## I. Issue

It is agreed by all parties that McCauley is "a party who appeals the [mandatory arbitration] award and fails to improve his or her position on the trial de novo." RCW 7.06.060(1) (CP 16; *Brief of Respondent*, p. 1)

The question here is whether McCauley's requested trial de novo escapes the consequences the legislature demands of such a party, namely: "The superior court shall assess costs and reasonable attorneys' fees against"? RCW 7.06.060(1)

## II. Argument

McCauley references In re Marriage of Leslie v. Verhey, 90 Wn. App.796, 954 P.2d 330 (1998) as a basis to deny Brown a mandatory award of trial de novo attorney fees and costs. (*Brief of Respondent*, p. 3) But, the In re Marriage of Leslie decision was not based on current

Washington State laws and therefore is not relevant to this case.

McCauley (*Brief of Respondent*, p. 2, 4) reiterates the trial court's declared need to use statutory construction methods to decipher whether MAR 7.3 and RCW 7.06.060 are in effect in this case. (CP 16-17) But, the post-2002 language of both RCW 7.06.060 and 7.06.080 is extremely clear and unambiguous—using such words as “shall” and “all”—and therefore should be taken at face value, not manipulated by statutory construction argument.<sup>1</sup>

Even if statutory construction interpretation were to be used regarding the statutes in question, RCW 7.06.060 and 7.06.080 would prevail over RCW 26.09.140 in this case.

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<sup>1</sup> In Council House, Inc. v. Hawk 136 Wn. App. 153, at 157 (Dec. 2006), the Division I Appellate Court pronounced: “We will examine sources beyond the statute and apply the rules of statutory construction only if the statute is ambiguous.” Where a statute is plain, unambiguous, and clear on its face, there is no room for construction. King County v. City of Seattle, 70 Wn.2d 988, 991, 425 P.2d 887(1967). When statutory language is clear and unequivocal, we must assume that “the Legislature meant exactly what it said and apply the statute as written.” Duke v. Boyd, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).

The cited RCW 7.06 statutes are relatively young<sup>2</sup>, specific<sup>3</sup>, and fulfill legislative intent<sup>4</sup>.

McCauley (*Brief of Respondent*, p.3-4) and the trial judge (CP 18) point to public policy as their culminating argument denying the relevance of RCW 7.06.060 in appeals of mandatory arbitrations in family law cases. The trial judge quotes a footnote from In re Marriage of Leslie:

"Support for this approach is found in the footnote at page 806, in In re: Marriage of Leslie, (90 Wn. App. 796, 954 P.2d 330 (1998), where the court said, in deciding whether to give effect to RCW 26.09.140 over a conflicting MAR: 'Our decision is also furthered by public policy. Mandating costs and attorney fees for all cases where a parent is unable to secure a better result upon a de novo review has the potential to work an economic hardship on a custodial parent. This supports granting the court wide latitude in determining the

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<sup>2</sup> "the more recently enacted provision should prevail unless the language of the earlier provision is more clear and explicit." Elford v. City of Battle Ground, 87 Wn. App. 229, 941 P.2d 678 (1997) (See also CP 17, *Memorandum Opinion Denying Motion for Reconsideration*)

<sup>3</sup> for further discussion see *Brief of Appellant* p. 11

<sup>4</sup> When interpreting a statute, the Court must discern and implement the legislature's intent, State v. J.P., 149 Wn.2d 444,450, 69 P.3d 318 (2003), and give effect to a statute's plain meaning. McGinnis v. State, 152 Wn.2d 639, 645, 99 P.3d 1240 (2004). For further discussion see *Brief of Appellant* p. 10

appropriateness of such awards after considering both parties financial resources and balancing the requesting parent's need against the other's ability to pay." (CP 18)

If in fact there was such a public policy in 2002 when the legislature revisited the mandatory arbitration statutes pertaining to the award of attorney fees in cases sent to mandatory arbitration by RCW 7.06.020 including "all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments" in counties where "approved by majority vote of the superior court judges of a county which has authorized arbitration," then the legislature chose to subjugate that public policy to other public objectives.

This is made clear by the absence of the legislature excluding family law from the revised RCW 7.06.060 and by its creation

of RCW 7.06.080 specifying "all requests for a trial de novo filed pursuant to and in appeal of an arbitrator's decision and filed on or after June 13, 2002" [underling added] as being subject to RCW 7.06.060.

### **III. Conclusion**

McCauley requested a meritless appeal of the parties' April 1997 mandatory arbitration. As evidenced by the 3 year gap between that date and today's date, in so doing she robbed Brown of "a simplified and economical procedure for obtaining prompt and equitable resolution" (SCLMAR 1.1 (a)) to the parties' dispute, and frivolously added to court congestion. The trial de novo mandatory attorney fee and costs award statute, RCW 7.06.060, is meant for precisely these circumstances.

The trial court's rulings that denied Brown an award of his reasonable attorney fees and costs incurred in the trial de novo should be reversed and vacated. And the Court should award

Brown attorney fees and costs for this appeal which was made necessary by the same meritless tactics McCauley has utilized during the entire protracted 7-year period of the parties' divorce proceedings.

DATED this day of 17<sup>th</sup> May, 2010.

Respectfully submitted,



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**APPENDIX**

**STATUTES AND RULES**

**A. STATUTES**

**RCW 7.06.020 (2):** “If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved.”

**RCW 7.06.060:** “(1) The superior court shall assess costs and reasonable attorneys' fees against a party who appeals the award and fails to improve his or her position on the trial de novo. The court may assess costs and reasonable attorneys' fees against a party who voluntarily withdraws a request for a trial de novo if the withdrawal is not requested in conjunction with the acceptance of an offer of compromise.

(2) For the purposes of this section, "costs and reasonable attorneys' fees" means those provided for by statute or court rule, or both, as well as all expenses related to expert witness testimony, that the court finds were reasonably necessary after the request for trial de novo has been filed.

(3) If the prevailing party in the arbitration also prevails at the trial de novo, even though at the trial de novo the appealing party may have improved his or her position from the arbitration, this section does not preclude the prevailing party from recovering those costs and disbursements otherwise allowed under chapter 4.84 RCW, for both actions.”

**RCW 7.06.080:** “RCW 7.06.050 and 7.06.060 apply to all requests for a trial de novo filed pursuant to and in appeal of an arbitrator's decision and filed on or after June 13, 2002.”

**RCW 26.09.140:** “The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his name.”

#### **B. COURT RULES**

**MAR 7.3:** “The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess costs and reasonable attorney fees against a party who voluntarily withdraws a request for a trial de novo. "Costs" means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.”

**SCLMAR 1.1:** “(a) **Purpose.** The purpose of mandatory arbitration of civil actions under RCW 7.06, as implemented by the Mandatory Arbitration Rules (MAR), is to provide a simplified and economical procedure for obtaining the prompt and equitable resolution of disputes involving claims of fifty thousand dollars (\$50,000) or less, exclusive of attorney fees, interest and costs, and claims in which the sole relief sought is the establishment, modification, or termination of maintenance or child support payments regardless of the number or amount of such payments. . . .”

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DIVISION I

In re the Marriage of:

CHRISTINE L. BROWN (KNA  
MCCAULEY),

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and

FRED F. BROWN,

Appellant

**NO. 64834 9-I** [Court of Appeals]  
**NO. 03-3-02479-3** (Snohomish County)

CERTIFICATE OF SERVICE

I hereby certify on this \_\_\_ day of May, 2010, I caused true and correct copies of the *REPLY BRIEF OF APPELLANT*, and this *Certificate of Service*, to be served on the following in the manner indicated:

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I certify under penalty to perjury under the laws of the State of Washington that  
the foregoing is true and correct:

5/17/2010



Date

Signature, Fred Brown, Pro Se