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## **I. ANSWER to CLAIMED ERRORS**

Appellant Ronald Karlsten makes two essentially inconsistent arguments–

(1) The trial court erred by not enforcing the Property Status Agreement as written, but rather *changed* the Agreement by entry of the decree of dissolution, which added terms and provisions to *a subject that was already dealt with in the Agreement* (claimed Error No. 1), specifically, the trial court (a) converted the payments from tax-deductible payments into property settlement payments; and (b) extended the length of the appellant Ronald’s obligation to make payments ; and

(2) Because the length of time Ronald is required to make his payments to Nansi is purportedly missing and *not dealt with* in the Agreement, the trial court erred by ignoring parol evidence and the factual context and circumstances when *interpreting the objective manifestations of the parties’ intentions* regarding (a) the length of time payments are to be made to Nansi under the Agreement (claimed Error No. 2); and (b) whether Ronald’s obligation to pay Nansi survives his death (claimed Error No. 3).

Respondent Nansi Karlsten answers that the trial court committed no errors–

(1) The trial court did not change the fundamental nature of the payments between Ronald and Nansi, but merely affirmed that the promises and payments by Ronald to Nansi were given in exchange for relinquishment of all her interest in the community business, and thus were payments for property;

(2) The Property Status Agreement addressed both the (a) length of time payments were to be made to respondent Nansi Karlsten and (b) whether the obligation to pay survived appellant Ronald Karlsten's death. Moreover, the decree of dissolution did not change these terms, but merely affirmed them.

(3) Even if the Agreement was silent as to either the length of obligation and survivability of the obligation (which respondent does not concede), the trial court considered the factual context and circumstances (i.e., extrinsic parol evidence) when determining the intentions of the parties and interpreting the Agreement. There is sufficient evidence to support the trial court's findings, and its conclusions of law are supported by those findings.

The judgment and decree of the trial court should be affirmed.

## **II. STATEMENT of the CASE**

### **A. General Background**

Ronald Karlsten was born in 1944, and was 65 years old at time of trial. (RP 17, l. 3).<sup>1</sup>

Nansi Karlsten was born in 1945, and was 65 years of age at time of trial. (RP 133, l. 3-6).<sup>2</sup>

The parties were married on July 23, 1965, in Seattle. (RP 16, l. 17). The parties separated on June 15, 1985, after almost 20 years of marriage. (RP 16, l. 19). Ronald Karlsten filed this dissolution action on December 17, 2008, more than

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Ronald did not graduate from high school, but was in the Army and did obtain a GED in 1964. (RP 16, l. 24, to RP 17, l. 2). For the next ten years he worked at Boeing, Todd Shipyard and a metal plating business "honing his trade" of polishing, anodizing, finishing and plating metals. (RP 19, l. 3-12). He suffers from high blood pressure and is prescribed anti-depressants, blood thinners and blood pressure medicine. (RP 17, l. 10).

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Nansi has two years of college. (RP 160, l. 11). Between 1983 and 2009, Nansi was continuously employed, changing employers only once. (RP 133, l. 9; RP 151, l. 15). She was laid off in early 2009 due to lack of work. (RP 133, l. 9-18). At time of trial she was receiving unemployment benefits and, although able to apply for Social Security, she had not yet done so. (RP 151, l. 5-11). She suffers from Type Diabetes, has a uterine condition that is being closely watched for pre-cancer, and has fibromyalgia. (RP 159, l. 6).

23 years after separation. (CP 108-112).

In 1974, approximately nine years into his marriage, Ron started a metal finishing business called "Production Plating," a small corporation of which he was president. The business was Ronald's creation, "baby" and project. (RP 21, l. 21; RP 137, l. 19). Nansi helped out in the business by answering the telephone, doing the payroll and doing the billing. (RP 24, l. 11-25; RP 25, l. 25). Nansi was no longer employed at Production by the time the parties separated in 1985. (RP 31, l. 21).

At trial, Ronald acknowledged that he has always been "the businessman," while Nansi has not. Nansi wasn't a risk-taker like him. She liked security and did not like risk. Although it bothered him, Ronald embraced risk. (RP 108, l. 6-25).

The parties separated in 1985, and Nansi remained in the family's Edmonds house. Ronald never lived in that house again. (RP 63, l. 21, to RP 64, l. 2).

In 1985, Ronald started paying Nansi monthly payments of \$1,728. Ronald has continuously made similar monthly payments ever since. (RP 133, l. 19; RP 133, l. 20; RP 148, l. 16). Nansi testified she had nothing to do with the amount of

the payment- Ronald came up with the figure himself and just started paying it.

The amount has never gone up over the years, and in over 25 years he has never missed a payment. (RP 134, l. 1-8). The payments started out at \$864 every two weeks, but then Ronald started paying \$1,728 every four weeks. (RP 152, l. 12; RP 161, l. 19).

In 1989, four years after separation, the Edmonds house was put solely into Nansi's name to compensate her for funds spent by Ronald on a woman with whom he was having an affair. (Testimony of Ronald, RP 73, l. 12, to RP 74, l. 10). The 1989 deed (Exhibit No. 4) recited it was given "for and in consideration of property settlement regardless of any Court action," which Nansi testified was "due to Ron's transgressions spending community money." (RP 138 l. 9-19). (Exhibit 4).

### **B. The Relationship Between The Separated Parties**

During the 45 years Nansi had been married to, and separated from Ronald, Nansi recalled "there had been quite a few" times when he presented legal documents to her to sign. (RP 137, l. 12-15).

Ronald testified that during the 25 years the parties have

been separated, perhaps as many as 30 documents have been signed between himself and Nansi. (RP 106, l. 22, to RP 107, l.

6). Ronald testified at trial (at RP 107, l. 12-16) that –

A. Every time she signed a document, it was for the benefit of Production Plating. Otherwise, it would have gone out of business.

Q. So that's the business that you own?

A. Yes.

Additionally, during the course of their marriage, and even after separation, the parties filed joint income tax returns. (RP 39, l. 13).<sup>3</sup> The joint returns would be prepared by Ronald's accountant. (RP 48, l. 2-14). There was no deduction for, nor claim of alimony in the returns. (RP 39, l. 16).<sup>4</sup> Nansi

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For example, 2005 was a joint return (RP 44, l. 8-13), 2006 was a joint return (RP 45, l. 2), and 2007 was a joint return (RP 45, l. 14). After this dissolution action was filed by Ronald on December 17, 2008 (CP 108-112), Nansi filed her own tax return for 2008 through her own accountant. (RP 48, l. 2).

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Nansi Karlsten's 2009 separate income return is not in evidence. She testified that her own CPA may have called the payments alimony, "which it isn't," and she didn't know whether or not her CPA listed Ronald Karlsten's social security number on her return as alimony received. She "would have to see the document." (RP 154, l. 20, to RP 155, l. 21).

would give her information to Ronald, and he would give it to his accountant. (RP 121, l. 9-23). At trial, Ronald testified (beginning at RP 121, l., through RP 122, l. 11)

Q. At your deposition, you said that the monthly payments you were paying to Nansi were income to her, do you remember that?

A. Yes.

Q. That you did that so the business could deduct her salary—

A. No.

Q. — as a business expense. Do you remember saying that?

A. No.

Q. Why would you call her money that you paid to her a salary to her?

A. It wasn't a salary. It was a payment towards Production Plating. You can call it what you want.

### **C. Production Plating**

At the point of the 1985 separation of Ronald and Nansi, Production Plating was owned 50% by a Mr. Keating, while Ronald and Nansi owned the other 50%. (RP 30, l. 10, to RP 32, l. 25; RP 37, l. 5-6).

Ronald was employed by Production Plating the majority of his life (RP 19, l. 13-22), until it was sold in 2006 (RP 33, l. 9).<sup>5</sup>

In 2006, Ronald agreed to sell for \$1,325,000 all "his" shares of Production Plating, i.e., all the shares owned by him and Nansi, (RP 36, l. 12 - 24). Nansi had no part in the negotiation of the sale price. (RP 42, l. 12). Ronald testified that had Nansi not signed the Property Status Agreement dated December 18, 2006, (Exhibit No. 1), Production Plating "would not have sold and it would have folded." (RP 41, l.

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After separation, with his then son-in-law, Ronald formed two more small corporations engaged in the same industry. He is vice-president of "Metron Metal Finishing" of Mukilteo, Washington, started in the 1990s (RP 51, l. 13-19), and he is president of "Metron Powdercoating" of Moses Lake, Washington, started in 2006 (RP 52, l. 4). (RP 20, l. 13-23). Nansi has no interest in either of those businesses. (RP 51, l. 16, to RP 52, l. 3). At the time of trial, Ronald was earning approximately \$500 per month as an employee of those two businesses (RP 117, l. 1-13). He also has a truck and gasoline provided to him. (RP 114, l. 13-24).

15).

After she signed the Property Status Agreement dated December 18, 2006 (Exhibit 1), Ronald received \$500,000 down and also agreed to receive the balance of \$825,000 over the next ten years. (Exhibit 21, Redemption Note dated January 11, 2007). He receives \$9,000 per month under the terms of that note. (RP 117, l. 20-22).

He did not sell his interest in the commercial building which housed the plating shop and powder plant business, which is an asset separate from the business interest he sold (RP 42, l. 25, to RP 43, l. 2). Ronald Karlsten is still an equal partner with Keating in their commercial building, which is now leased to the new owners of Production Plating. (RP 54, l. 19). For his share of the rents, Ronald receives \$4,000 per month, recently reduced to \$3,000 per month due to the poor real estate market. (RP 115, l. 17). Nansi has no interest in that partnership property or income. (RP 55, l. 20).

In sum, at time of trial in 2010, Ronald Karlsten had monthly income of approximately \$14,400, being \$500 as an employee of Metron, \$1,900 Social Security, \$9,000 from the sale of Production Plating, and \$3,000 from rental of the commercial building. (RP 117, l. 11, to RP 118, l. 5).

**D. Property Status Agreement (Exhibit No. 1)**

On December 18, 2006, the parties executed a "Property Status Agreement" (Exhibit No. 1), citing **RCW 26.16.120**, the relevant terms of which are as follows –

**PROPERTY STATUS AGREEMENT**

\* \* \*

In consideration of the mutual benefits to be derived by the parties hereto, the parties hereby agree:

**1. Prior Agreements.** To the extent this Agreement is inconsistent with any previously made agreement of the parties with respect to the status of their community and/or separate property, said previously made agreement is hereby mutually rescinded.

**2. Designated Separate Property.** Ronald and Nansi hereby agree that all of . . . Production Plating, Inc. . . is and shall remain, for all purposes, the separate property of Ronald, free and clear of any claims of Nansi. Nansi specifically waives, relinquishes, renounces and gives up any claim that she might otherwise have . . . Ronald may hold, sell, convey, gift, lease, encumber and dispose of such Designated Separate Property as if her were not married.

\* \* \*

**4. Monthly Support Payments.** Ronald and Nansi agree that, until such time as the parties otherwise mutually agree in writing, Ronald shall continue to make

support payments to Nansi in the amount of \$864 every two weeks (26 time per year).<sup>6</sup>

**5. Termination of Agreement.** This Agreement may be amended or terminated only upon the mutual agreement of the parties in writing.

**6. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, personal representatives, successors and assigns. Further, this Agreement shall survive and be binding upon the parties without regard to the fact that their marriage may be terminated, annulled or found to be invalid for any reason.

\* \* \*

**9. Voluntary Execution.** Each of the parties acknowledges that he or she has voluntarily executed this Agreement, with full knowledge and information, and that no coercion or undue influence has been used by or against either party in making this Agreement. Each party acknowledges that he or she fully understands the Agreement and its legal effect. Neither party has any reason to believe that the other did not fully understand the terms and effects of this Agreement, and that he or she did not freely and voluntarily execute this Agreement.

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The payments did not start on December 18, 2006, but had been going on for more than 20 years. (RP 135, l. 13-17).

Over the last 25 years, the parties have finally divided their assets and liabilities, (RP 140, l. 23), resolving the issues between them excepting the issues arising from the Property Status Agreement (Exhibit No. 1), which is the subject of this appeal.<sup>7</sup>

### **E. Execution of the Agreement**

The Agreement was drafted by Ronald's attorney. (RP 41, l. 22; RP 109, l. 18). Ronald knew how to read and write when he asked his lawyer to prepare the Agreement (RP 110, l. 13-17). Ronald knew how to read and write when he signed it (RP 110, l. 13-17). He read the agreement when he signed it. (RP 128, l. 8).

Ronald presented the Agreement to Nansi at her workplace, where she told him she would not sign until she reviewed it. (RP 134, l. 25). Nansi faxed the Agreement to an

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As noted, Ron finally quit-claimed his interest in the Edmonds house to Nansi in 2003 (Exhibit No. 6), and in 2007 he quit-claimed any interest he might claim in her Mukilteo house (Exhibit No. 7; Exhibit No. 9; RP 141, l. 4). Similarly, she disavowed any interest she might claim in his condominium at Crescent Bar (RP 58, l. 12), and in 1999 quit-claimed any interest in his Mukilteo condo (Exhibit No. 8; RP 141, l. 22). These are examples of she and Ronald going their separate ways by dividing property (RP 141, l. 10-12).

attorney for review before she signed it. (RP 154, l. 1-13).

There was no negotiation between Ronald and Nansi regarding the terms of the Agreement. (RP 41, l. 6). She did not ask for any changes to be made to the Agreement, and she did not ask Ronald to make any changes. (RP 154, l. 9-13).

It was Nansi's understanding that Paragraph 6 provided that she would get \$1,728 a month until she died. (RP 154, l. 14; RP 155, l. 25 to RP 156, l. 2). She "actually felt that the payments were going to continue even to his estate upon his death because of how it was laid out. . ." (RP 136, l. 8-11). The payments did not start on December 18, 2006, but had been going on for more than 20 years. (RP 135, l. 13-17).

Ronald testified that when the parties signed the Property Status Agreement on December 18, 2006, he wasn't trying to trick Nansi, nor defraud her or misrepresent anything to her; that there was no fraud going on against her; and that the Agreement was fair when it was signed. (RP 111, l. 1-25; RP 157, l. 9).

Similarly, Nansi was not trying to get tricky or hide assets or resort to any kind of fraud. (RP 136, l. 12; RP 157, l. 3). She believed that the Agreement was fair at the time it was signed "because I had been going along with that for some

time, and it seemed fair to me." (RP 136, l. 22). The Agreement was fair to her "as long as he had been continuing to pay the payments, which he had." (RP 157, l. 1).

Additionally, Ronald testified that there was no third party keeping him from paying under the Agreement; he was not maintaining that paying Nansi was a crime or against public policy; and he was not maintaining that some "act of God" was prohibiting him from making the payments; nor that payment was impossible. (RP 127, l. 13, through RP 128, l. 14).

#### **F. Ronald's Payments**

Nansi had first started receiving payments of \$1,728 per month from Ronald in 1985, after separation and after approximately 20 years of marriage. (RP 133, l. 19; RP 133, l. 20; RP 148, l. 16). Nansi testified she had nothing to do with the amount of the payment— Ronald came up with the figure himself and just started paying it. The amount never went up over the years. In over 25 years he has never missed a payment. (RP 134, l. 1-8).

Ronald testified that the payment amount of \$864 every two weeks, as set forth in paragraph 4 of the Property Status Agreement (CP 103), was originally negotiated between

Nansi's attorney and his attorney, when a dissolution of marriage had been filed in 1989. He had already been paying that same amount since separation in 1985 (RP 39, l. 4, to RP 40, l. 11).

He has been regularly making the payments to Nansi since 1985, regardless of the source of the money. (RP 105, l. 5-10). Ronald is able to pay Nansi every month "out of [his] income." (RP 43, l. 14-17).<sup>8</sup>

At trial in 2010, Ronald testified he *now understands* and contends that the written language of Paragraph 4 of The Property Status Agreement limits and conditions the duration of his payments to Nansi to the same duration of the 10-year contract for the sale of the business. "Nansi would receive \$1,728 or something per month until the end of the contract, until I was paid off." (RP 38, l. 19-25).<sup>9</sup>

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Ronald Karlsten has *monthly* income of approximately \$14,400, being \$500 as an employee of Metron, \$1,900 Social Security, \$9,000 from the sale of Production Plating, and \$3,000 from rental of the commercial building. (RP 117, l. 11, to RP 118, l. 5).

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It is interesting to note that while Ronald is now asserting that the monthly payments to Nansi are limited to the same duration as payments received by him for the sale of the business (disregarding the amount actually paid or still owed to her), he is conveniently silent about what happened to the \$500,000 cash down payment he received and whether or

Paragraph 4 of the Agreement (Exhibit 1<sup>10</sup>; CP 103) expressly provides as follows –

**4. Monthly Support Payments.** Ronald and Nansi hereby agree that, until such time as the parties otherwise agree in writing, Ronald shall continue to make support payments to Nansi in the amount of \$864 every two weeks (26 times per year).

Ronald also testified that he *now wants* to terminate the payments completely because Nansi had instructed him to file

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not Nansi should have been paid something from that.

He received sufficient money at the close of the sale of business to have paid her off completely, or, perhaps, he has saved or invested his money to cover the payments. The down payment alone could have covered all future payments for about \$300,000, leaving the balance of \$1,025,000 for himself:

Exhibit No. 3 is the report of economist Robert Moss, who computed the present value of the future monthly payments at time of trial to be approximately \$286,250, using the shorter life expectancy of the two parties as the earliest possible termination date of the \$864 every-two-week payments. (RP 87 through RP 101).

Rather, after obtaining Nansi's signature on another of his documents– declaring that it's necessary for her to sign so he can unload a failing business about to "fold"– Ronald argues he should pay Nansi nothing more after he has received his full \$1,325,000.

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Exhibit No. 20 is the same as Exhibit No. 1 and Exhibit No. 2, which are the same as CP 103-105. See Index of Exhibits Filed, CP 99-102.

for "divorce," although he would have continued to make the payments had Nansi not told him to go file for "divorce." (RP 85, l. 1-3; RP 105, l. 11, to RP 106, l. 14).

Ronald also testified that there was a *verbal agreement* with Nansi that her monthly payments would terminate when she sold the Edmonds house. (RP 84, l. 12-21; RP 85, l. 9, to RP 86, l. 2).

According to Nansi, there were no discussions that the payments would end in ten years. (RP 136, l. 1). Nansi also testified that there was no agreement that the payments would end when the Edmonds house was sold. In fact, she didn't even discuss it with him. (RP 135, l. 18-25).

Ron concedes there is nothing in the Agreement about the payments ending in ten years, or when the Edmonds house sold. (RP 110, l. 13-25).

### **G. Edmonds House**

When the Edmonds house was put in Nansi's name, it was already mortgaged. Ronald never made any mortgage payments, nor did he pay any taxes or insurance. Nansi paid off the mortgage, (RP 119, l. 16, to RP 120, l. 8), which had ten or more years to go. (RP 139, l. 1).

The Edmonds house was used "multiple times" for collateral or financing for Production Plating during the marriage and separation. For example, in 1985, it was used as collateral to borrow money to keep Production Plating running. (RP 67, l. 7-25). As another example, in 1998, thirteen years after the parties separated, according to Ronald, the Edmonds house was used as security for a loan by Production Plating because the business was in debt. (RP 70, l. 14-25).<sup>11</sup>

Ronald testified that the various deeds of trust against the Edmonds house, were ". . .all related to Production Plating for money." (RP 70, l. 1-3). Nansi also testified that "usually any of these quit-claims were to benefit Ron and his business so that he could continue to use it as collateral in a lot of cases." (RP 150, l. 13).

The Edmonds house has a continuous flooding problem. (RP 81, l. 21, to RP 82, l. 11). Nansi testified that there was a claim for damages pending against the City of Edmonds, and

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Nansi recalls that she deeded the property back to herself and Ronald (Exhibit No. 5) so that they "could get a loan for our son to buy a house, and we needed to have this for collateral . . ." (RP139, l. 22), which is also confirmed by Ronald's testimony. (RP 65, l. 13-17; RP 66, l. 8). After their son moved out of his house in 2003, the Edmonds house was deeded back to Nansi as her separate property (Exhibit No. 6), and the realty has remained in her name since. (RP 140, l. 9-22).

that a lawsuit was the next step. (RP 145, l. 18, to RP 146, l. 10). Ronald has never paid any litigation fees regarding the claim for flooding. (RP 120, l. 10). It's not a house he would buy because of the flooding. (RP 120, l. 25).

### **H. Court's Findings and Conclusions**

Following the presentation of evidence and testimony of witnesses, the trial court rendered its oral decision (RP 162 through RP 168) and later entered its written Finding of Fact 2.8 (CP 27-36), which provides –

#### **2.8 Community Property**

Given that the parties separated 25 years prior to the commencement of this trial, there are limited issues relating to community property.

The parties own real property located at 20719 86<sup>th</sup> Place W, Edmonds, Washington, and resided in the home as the family residence. Under the terms of a series of Quit Claim Deeds, the Petitioner's interest in that property was transferred to the Respondent. The Court finds that those Deeds were executed for the purpose of either awarding the property to the Wife as her separate property or the purpose of securing a loan for the parties' son. The Court further finds that at no time was there an intention by the Wife to transfer back to the marital community an interest in the above-described real property.

In addition, the parties executed a Property Status Agreement dated December 18, 2006. The subject of the Property Status Agreement related to the dividing of the community's interest in the corporation, Production Plating, Inc., which was about to be sold.

The Petitioner by the terms of that Agreement was given the marital community's interest in the corporation as his separate property.

In accordance with the Property Status Agreement the Wife was to receive the sum of \$864 every two weeks.

The Court finds that an essential term of the Property Status Agreement relating to the time at which the monthly support payments should end was not specified in paragraph 5 or elsewhere in the contract. The Court finds that paragraph 5 of the agreement states that the Agreement may be amended or terminated only upon the mutual agreement of the parties in writing, but that such language does not provide the Court with a termination date of the payments to be made by Husband to Wife.

The Court finds that it is appropriate to consider parole evidence and extrinsic evidence relating to the Property Status Agreement in determining what the missing essential terms of this Agreement should be in dividing the property interest of the Wife as set forth in the Property Status Agreement.

The Court finds that the language in paragraph 6 of the Property Status Agreement means that the contract payments shall continue for the life of the Wife and shall survive the death of the Petitioner and shall be a lien against his estate until the death of the Respondent.

The Court finds the Property Status Agreement was tied to the sale of the business, Production Plating, Inc., and the payments to be made to the Wife pursuant to paragraph 4 of the Property Status Agreement were not intended as a maintenance payment.

Upon the foregoing Finding of Fact 2.8, and trial court entered the following Conclusion of Law (CP 27-36) 3.8 –

### **3.8 Other**

The Court finds that the parole evidence and extrinsic evidence submitted at the time of the trial in conjunction with the reading of paragraph 6 of the Property Status Agreement allows the Court to conclude as follows:

The Property Status Agreement dated December 18, 2006, is an enforceable agreement between the parties. Husband shall receive the designated separate property provided for him therein. Wife shall receive the monthly payments provided therein until her death. The obligation to pay the monthly payments provided therein shall survive the Husband's death and constitute a lien against his estate if Wife survives Husband.

In it's oral decision (RP 162-167), the trial court stated that Ronald was asserting that the parties intended to have the monthly payments to Nansi expire when Ronald no longer received payment for the sale of the business (RP 162, l. 4-8), and that an oral agreement purportedly modified the written Agreement to stop his payments when the Edmonds house sold (RP 162, l. 9-13). The trial court concluded, in part, that Ronald's testimony would be in contravention of the specific terms of the written Agreement, which provides "This agreement may be amended or terminated only upon the mutual agreement of the parties in writing." (RP 164, l. 19, to RP 165, l. 6). The trial court also concluded that the parties intended for the Agreement to survive the death of Ronald and must

have contemplated that the Agreement could still be enforced if the estate still had assets, as the Agreement also provides that "This agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, personal representatives, successors, and assigns." (RP 165 l. 7-17).

### **III. ARGUMENT**

#### **A. Property Status Agreement**

The written language of the Property Status Agreement is clearly worded:

**4. Monthly Support Payments.** Ronald and Nansi agree that, until such time as the parties otherwise mutually agree in writing, Ronald shall continue to make support payments to Nansi in the amount of \$864 every two weeks (26 time per year).

**5. Termination of Agreement.** This Agreement may be amended or terminated only upon the mutual agreement of the parties in writing.

**6. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, personal representatives, successors and assigns. Further, this Agreement shall survive and be binding upon the parties without regard to the fact that their marriage may be terminated, annulled or found to be invalid for any reason.

The clear language of the Agreement states that Ronald shall *continue* to make the \$864 payment every two weeks. These are payments that *he* guaranteed to continue to make in exchange for Nansi relinquishing any interest in Production Plating, in an amount chosen by *him*, which amount *he* had been able to continuously pay since 1985 out of *his* income from whatever source (i.e., even long before *he* agreed to sell the parties' interests in Production Plating). The Agreement did not change the fundamental nature of the payments. Nor does the decree of dissolution (CP 19-26) change the fundamental nature of the payments, but merely affirms what the Agreement provides and what the parties had been doing for decades (and what Ronald agreed to continue to do as a risk-taking millionaire).

It is clear that the parties expressly and specifically agreed that the payments would survive the termination of their marriage and death, and that the Agreement may only be changed or terminated by a mutual agreement in writing. The decree (CP 19-26) does not change these provisions of the Agreement, but necessarily affirms the terms, because at trial Ronald was trying to put them at issue by unilaterally arguing there were other, verbal agreements which relieved him of this

duties under the written Agreement.

At trial, Ronald argued that the written Agreement (Exhibit No. 1) was to be modified, altered, re-written or ignored so to relieve him of his written obligations.

He advanced three alternative and conflicting theories – (1) he was only required to pay Nansi until his own contract was paid off (PR 38, l. 19-25); (2) he was entirely relieved of his duty to pay once Nansi sold the Edmonds house (RP 84, l. 12-21; RP 85, l. 9 to RP 86, l. 2); and also argued, *albeit* inconsistently, that he nevertheless would have continued to make the payments had Nansi *not* told him to go file for "divorce." (RP 85, l. 1-3; RP 105, l. 11, to RP 106, l. 14).

By advancing these three theories, appellant was necessarily asking the trial court to consider parol evidence and to weigh the credibility of witnesses, which it did as stated in the finding of fact No. 2.8, quoted above in this brief. In its oral decision (RP 165, l. 4), the trial court referred to *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990)(extrinsic evidence may be admitted solely for the purpose of aiding in the interpretation of what is already contained in the agreement).

## **B. Credibility of Witnesses**

As indicated above, appellant Ronald Karlsten testified and presented his three theories of how verbal, extrinsic evidence (if believed) purportedly terminated his written covenants under the written Agreement. However, recall that Ronald conceded there is nothing in the Agreement about the payments ending in ten years, or when the Edmonds house sold, (RP 110, l. 13-25).

Also, recall that Ronald was advancing the incredible argument that he necessarily obtained Nansi's signature on the Agreement so he could unload a failing business about to "fold," and that Nansi was agreeing that he should pay her nothing more after he has received his full \$1,325,000 for the sale of that community property. The sale turned him into a "millionaire," at least.

By comparison, Nansi testified there were no discussions that the payments would end in ten years. (RP 136, l. 1). She also testified that there was no agreement that the payments would end when the Edmonds house was sold. In fact, she didn't even discuss it with Ronald. (RP 135, l. 18-25). It was her understanding that she would get \$1,728 a month until she died. (RP 154, l. 14; RP 155, l. 25 to RP 156, l. 2). She

"actually felt that the payments were going to continue even to his estate upon his death because of how it was laid out. . ."  
(RP 136, l. 8-11). The Agreement was fair to her "as long as he had been continuing to pay the payments, which he had." (RP 157, l. 1).

The trial court weighed the credibility of witnesses. In its oral decision, the trial court stated "[t]he evidence in this case, is, for the most part, undisputed with the exception of two assertions by Mr. Karlsten." (RP 162, l. 2-3). The trial court rejected appellant's contentions after trial.

The credibility of witnesses cannot be reviewed on appeal. Credibility determinations are solely for the trier of fact. *Morse v. Antonellis*, 149 Wn.2d 572, 70 P.3d 125 (2003); *State v. Johnson*, 2 Wn.App. 743, 472 P.2d 411 (1970) (credibility and weight to be attached to testimony of witnesses are for the trial of fact and not for the appellate court).

### **C. The Court's Findings are Verities**

Appellant Ronald Karlsten did not propose any alternative findings or conclusions supporting his assertions about loss of tax deductibility, nor has he referenced his assertions about the same to any specific place in the record on

appeal.

He has similarly made unsupported factual assertions about a connection between Ronald's sale of business contract and his Agreement with Nansi. In his appellate brief (at page 12), referring to Ronald Karlstens's separate \$1,325,000 contract of sale with Production Plating Inc., (evidenced only in part by Exhibit No. 21, the \$825,000 redemption note dated January 11, 2007) and the Property Status Agreement between himself and Nansi Karlsten (evidenced by Exhibit No. 1, dated December 18, 2006), appellant states that –

The Trial Court found that they were in fact related transactions and, therefore, it should be construed together as one contract.

This statement is not supported by the record. Nansi was not a party to, not a signatory to, nor a payee under the terms of the sale of Production Plating.

Rather, the trial court found that the Property Status Agreement (Exhibit No. 1), to which Nansi was a party, was a signatory, and is a payee, is simply tied to the sale of all her interest in Production Plating to Ronald, which is a contract between Ronald and Nansi for the sale of property and payments for property. (Finding of Fact No. 2.8, CP 27-36).

Where such factual assertions are made without support in the record on appeal, the trial court's findings of fact are treated as verities on appeal. "As a general rule, unchallenged findings of the trial court will be treated by this court as verities on appeal, and review will be limited to determining whether the findings support the conclusions of law." *Fuller v. Employment Sec. Dept. of State of Wash.*, 52 Wn.App. 603, 762 P.2d 376 (1988).

Thus, the remaining question on the issue is only whether the court's conclusions of law follow from those facts found. *Fenton v. Contemporary Development Co. Inc.*, 12 Wn.App. 345, 529 P.2d 883 (1974) (where reviewing court was required to accept as verities the controlling facts as set forth in findings, the question becomes whether conclusions of law follow from facts found).

Here, the trial stated, at Finding of Fact No. 2.88:

The Court finds the Property Status Agreement was tied to the sale of the business, Production Plating, Inc., and the payments to be made to the Wife pursuant to paragraph 4 of the Property Status Agreement were not intended as a maintenance payment. (CP 27-36).

Conclusion of Law No. 3.8, (CP 27-36) is supported by the facts found. Therein, the trial court concludes that the property

status agreement, which transfers a community asset (Production Plating) to the husband separately, in exchange for monthly payments to the wife, is a an enforceable agreement for such an exchange of property.

#### **D. Appellant's Two Assertions**

In his brief (at page 7), appellant Ronald Karlsten argues that the "[t]he Court ordered Mr. Karlsten to make property settlement payments and (*sic*) that were no longer tax deductible to Mr. Karlsten. The Court extended the length of time for Mr. Karlsten to make payments to Mrs. Karlsten. By doing so, the Trial Court made a new contract for the parties."

##### **(a) Nature of Payments Not Changed by Decree**

The trial court has not changed the nature and deductibility of the payments. In all the decades that his accountant prepared the joint returns for the parties, never was there a deduction for, nor claim of alimony in the returns. (RP 39, l. 16). In fact, during his testimony Ronald denied deducting the payments against income as a business expense and that stated "[i]t wasn't a salary. It was a payment towards Production Plating. You can call it what you want." (RP 121,

l., through RP 122, l. 11).

Ronald's testimony was somewhat confusing and contradictory on this issue – while he testified the payments were not salary, by the time of trial, he may have started to deduct the payments from his personal income tax (RP 125, l. 1); he also testified on re-direct that he didn't know how he treated the payment on his income tax return, whether alimony or business expense, because "I don't know; it's confusing," but that it was "maintenance" (RP 129, l. 7-25); he believed it was possible that Nansi might have taken the contract payments and used them "to support herself" (RP 130, 1-8); while in his petition for dissolution, at paragraph 1.10, he prayed that Nansi be awarded "maintenance," (CP 111), at trial he argued against any award of maintenance for Nansi, which position the trial court adopted (Finding of Fact No. 2.12, "Maintenance should not be ordered because each party has sufficient income and resources to support themselves without contribution from the other spouse; Decree paragraph 3.7 Maintenance "Does not apply." CP 27-36).

Similarly, Nansi testified that for the first time in decades she filed her own separate income tax return in 2009, after always filing joint returns with Ronald. While her own CPA

may have called the payments alimony in 2009, "which it isn't," she didn't know whether or not her CPA listed Ronald's social security number on her return as paying alimony. She "would have to see the document." (RP 154, l. 20, to RP 155, l. 21). Nansi's 2009 return was not admitted into evidence and is not in the record.

There is insufficient evidence in the record or testimony to support the contention that the trial court has changed the deductibility of the payments made by Ronald. Rather, the evidence supports finding of fact No. 2.8, which provides in relevant part that—

\* \* \*

In addition, the parties executed a Property Status Agreement dated December 18, 2006. The subject of the Property Status Agreement related to the dividing of the community's interest in the corporation, Production Plating, which was about to be sold. The Petitioner by the terms of that Agreement was given the marital community's interest in the corporation as his separate property.

In accordance with the Property Status Agreement the Wife was to receive the sum of \$864 every two weeks.

\* \* \*

The Court finds the Property Status Agreement was tied to the sale of the business, Production Plating, Inc., and the payments to be made to the Wife pursuant to paragraph 4 of the Property Status Agreement were not intended as a maintenance payment.

**(b) Length of Payments Not Changed by Decree**

The *Property* Status Agreement (Exhibit No. 1) refers to **RCW 26.16.120**, which generally provides that the spouses may enter into *any* agreement concerning the status or disposition of community *property*. (*Emphasis added*). **RCW 26.16.120** provides in relevant part that –

Nothing contained in any of the provisions of this chapter or in any law of this state, shall prevent both spouses . . . from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, *then owned by them or afterwards to be acquired, to take effect upon the death of either. . . .* (*Emphasis added*).

Both paragraph 6 of the Property Settlement Agreement (Exhibit No. 1), and the statute recited therein, specifically discuss that such agreements between spouses may be made binding following death. Incredibly, appellant Ronald Karlsten disavows such an understanding of the document he signed –

even though he has his GED, (RP 16, l. 24, to RP 17, l. 2); he is the president of several small corporations, (RP 51, l. 13-19; RP 52, l. 4); he knew how to read and write when he signed it, (RP 110, l. 13-17); in fact, he read the agreement when he signed it, (RP 128, l. 8); and he regularly consults with attorneys, (RP 110, l. 13-17), and accountants (RP 121, l. 9-23) in the course of his business.

The trial court weighed the credibility of the parties, both of whom testified, and rejected Ronald's assertion that the Property Status Agreement had been superceded by some verbal agreement. Referring to paragraph 6 of Exhibit No. 1, stating in its oral decision (RP 165, l. 7-15) –

This also provides that: "This agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, personal representatives, successors, and assigns." It would certainly give the Court reason to believe that the parties intended that this would survive the death of Mr. Karlsten as proposed by Ms. Karlsten.

Binding on the heirs, certainly the parties must have contemplated that if Mr. Karlsten died at some point, this could still be enforced if the estate still had assets available to enforce this agreement.

... This agreement was intended by the plain language of the document to extend beyond the life of

Mr. Karlsten and up and to the time of the death of Ms. Karlsten.

**E. RCW 26.09.070**

Appellant relies upon **26.09.070**, which provides in relevant part:

**26.09.070 Separation contracts.** (1) The parties to a marriage... in order to promote the amicable settlement of disputes attendant upon their separation or upon the filing of a petition for dissolution of their marriage... may enter into a written separation contract providing for the maintenance of either of them, the disposition of any property owned by both or either of them...

\* \* \*

(3) If either or both of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage... the contract. . . shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties . . . that the separation contract was unfair at the time of its execution....

Both parties testified that the Agreement was fair to both parties at the time of its execution. Ronald stated it was fair. (RP 111, l. 1-25; RP 157, l. 9). Nansi stated it was fair. (RP 136, l. 22; RP 157, l. 1).

Appellant Ronald Karlsten mistakenly argues (in his brief at page 6) that the trial court, *sua sponte*, ignored the

Agreement and made a "just and equitable" division of the property of the parties under **RCW 26.09.070**. Again, this assertion is not supported by any reference to the record. In fact, the trial court rejected *appellant Ronald Karlsten's* invitation to ignore the terms of the Agreement and grant him the relief he sought – addition, modification and re-characterization of the contract terms. .

In it's oral decision (RP 165, l., through RP 166, l. 17):

So the Court is finding that this is a binding agreement between the parties. It provides for specific performance of that agreement. This agreement was intended by the plain language of the document to extend beyond the life of Mr. Karlsten and up and to the time of the death of Ms. Karlsten. Mr. Karlsten is not entitled to any relief from the obligations under which he entered at the time of this contract based upon business conditions or for any other reason provided to the Court in this proceedings (*sic*), and that these payments constitute a Property Settlement Agreement tied to the sale of the business, Production Plating, Incorporated, and they were not intended as maintenance, nor does the Court characterize them as such. ... They have entered into a contract....this is a contract case.

Interestingly, at page 6 of his brief, appellant argues that because the trial court did not find the Agreement unfair at the

time of execution as required by **RCW 26.09.070**, "...the parties should have been held to have waived their right to have the court determine a 'just and equitable' division of the property which was the subject matter of the agreement."

Then, appellant disingenuously argues (at page 11) that –

In the alternative, the Trial Court, having found that an essential element of the Property Status Agreement was missing (the time for termination of the support payments) could have exercised its discretion under the law to determine when the "support" payments should have terminated under the laws pertaining to spousal support. RCW 26.09.090

#### **F. Parol Evidence**

Appellant Ronald Karlsten argues that the trial court should have considered extrinsic parole evidence, which it did (RP 165, I. 3; Conclusions of Law No. 3.8, CP 27-36), but to have reached a different conclusion.

If there is disputed evidence concerning the parties' intent, then the *rules of interpretation* apply, and the fact-finder determines the meaning of the contract, often based upon extrinsic evidence. Intent is a question of fact, determined by examining the objective manifestations of the parties' intent. By comparison, *construcion* of a contract raises a question of

law. Yet, *rules of construction* may also be aids to interpretation. **DeWolf, Allen and Caruso, *Contract Law and Practice***, Vol. 25, Washington Practice Series, sec. 5.2, "Interpretation and construction distinctions," (2d Ed., 2007).

***Berg v. Hudesman***, 115 Wn.2d 657, 801 P.2d 222 (1990) sets forth the "context rule" for interpreting written contract language which involves determining the intent of the contracting parties by viewing the contract as a whole, including (1) subject matter and objective of the contract, (2) all circumstances surrounding the formation, (3) the subsequent acts and conduct of the parties, (4) reasonableness of the respective interpretations advocated by the parties, (5) statements made by the parties in preliminary negotiations, and (6) usage of trade and course of dealings. Washington Civil Patter Instruction **WPI 301.05**, "Contract Interpretation."

**WPI 301.06**, "Parol Evidence," the Civil Washington Pattern Instruction on parol evidence, sets forth the rule when there is a written contract and a factual issue exists as to whether the contract is integrated, or merged into the final document. In general, admissible extrinsic evidence does *not* include (a) evidence of a party's unilateral or subjective intent as to the meaning of a contract word or term, (b) evidence that

would show an intention independent of the instrument, or (c) evidence that would vary, contradict or modify the written word.

A contract is generally construed against the drafter. The party who drafts the contract or who hires an attorney to draft it has the benefit of experience or expertise. The drafter is also in a better position to prevent mistakes or ambiguities. ***Huber v. Coast Inv. Co., Inc.***, 30 Wn.App. 804, 638 P.2d 609 (1981). The contract is to be construed against Ronald, as his attorney drafted the Agreement at his direction. (RP 41, l. 22; RP 109, l. 18).

The trial court admitted parol and extrinsic evidence and applied the several rules of interpretation and construction. (Conclusion of Law No. 3.8, "The Court finds that the parole evidence and extrinsic evidence submitted at the time of trial in conjunction with the reading of paragraph 6 of the Property Status Agreement allows the Court to conclude . . . ;" CP 27-36). The facts found support the conclusions and decision made in this case.

For example, Ronald's subjective *understanding* is not controlling. (He alone *understood* his payments would be terminated after he finally received all of his \$1,325,000. RP

38, l. 19-25). *City of Everett v. Sumstad's Estate*, 95 Wn.2d 853, 631 P.2d 366 (1981).

Ronald's testimony that there was a *verbal agreement* with Nansi that her monthly payments would terminate when she sold the Edmonds house was not admissible parol evidence, even when considered under the "context" rule. (RP 164, l. 19, to 175, l. 6). (Ronald said there was a verbal agreement. RP 84, l. 12-21; RP 85, l. 9, to RP 86, l. 2). Similarly, his testimony that his obligation to pay was terminated when he received the last of his \$1,325,000 was not admissible under the parol evidence rule to contradict the written Agreement. (Nansi would receive her payments "until I was paid off." RP 38, l. 19-25). **WPI 301.06.**

The Agreement (Exhibit No. 1) expressly provides under paragraph 4 that Ronald shall continue to make payments "until such time as the parties otherwise mutually agree in writing. Paragraph 5 provides that the Agreement "may be amended or terminated only upon the mutual agreement of the parties in writing." Ronald's extrinsic evidence contradicted Exhibit No. 1 and could not be considered. **WPI 301.06.**

Evidence considered under the "context rule" of *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990), support the

trial court's determination and findings of the parties' consent:

(1) the subject matter and objective of the contract was Production Plating, Ronald's creation, "baby" and project, which he solely wanted to own, (RP 21, l. 21; RP 137, l. 19);

(2) all the circumstances surrounding the formation of the Agreement showed that Ronald set the terms and timing, he presented the Agreement to Nansi to sign with an expression of urgency and desperation that if she didn't sign the Agreement the business would "fold," (RP 41, l. 15);

(3) after the Agreement was signed, Ronald has continuously made the payments to Nansi and has never missed a payment, (RP 134, l. 1-8);

(4) interpretations advocated by the Ronald are unreasonableness, that is, that Nansi would agree to forego all her interest in the community business while Ronald would receive \$1,325,000, (RP 38, l. 19-25);

(5) during preliminary negotiations, Ronald agreed to continue making payments he was already making, regardless of the source of his income, (RP 39, l. 4, to RP 40, l. 11); and

(6) how that Agreement was presented and executed, the payments under it are consistent with the course of dealings between the parties over the years, as the documents usually were to benefit Ronald and his business, (RP 70, l. 1-3; RP 150, l. 13).

The designation of payments in a property settlement agreement as either alimony or as a property settlement is not conclusive; instead, the intent of the parties and the nature of the payments is determinative. *Carstens v. Carstens*, 10 Wn.App. 964, 521 P.2d 241 (1974) (in part of agreement separate and distinct from property settlement, parties used the specific word "alimony" and had payments terminate upon either death or remarriage of recipient, indicating alimony).

Whether future payments provided for by a written agreement and adopted by the decree of a divorce court are alimony and support money or a property settlement depends on the circumstances and intent of the parties; and where one construction would make a contract unreasonable, and another would make it reasonable, the interpretation which makes it a rational and probable agreement must be adopted.

*Messersmith v. Messersmith*, 68 Wn.2d 735, 415 P.2d 82 (1966).

### **G. Final Argument**

Appellant Ronald Karlsten argues (at page 12) that "[n]o reasonable interpretation of [the Agreement] can be found which would impose a permanent obligation of making

property settlement payments to Mrs. Karlsten for her lifetime."

Yet, that is exactly what an annuity purchased from a life insurance company would have done, and such companies routinely undertake such obligations. Instead of undertaking the life-time obligation himself, perhaps appellant should have considered purchasing an annuity for respondent, which would ended his obligation to her. Respondent's economist testified at trial that the present value of the payments Ronald was going to make for the rest of his life was approximately \$286,000. (Exhibit No. 3). He could have paid for that out of the \$500,000 down payment he received in January of 2006.

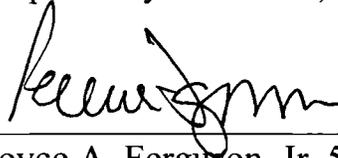
It is not unreasonable to find and conclude that appellant Ronald Karlsten agreed to undertake the obligation of paying Nansi Karlsten \$864 every two weeks for the rest of her life. More than 25 years earlier, he had agreed to pay a like amount, which has never raised. Even if half of the \$1,325,000 was claimed by Nansi , the Property Status Agreement (negotiated and drafted by him) enabled him to buy her one-half at a substantial discount and with no interest.

**IV. CONCLUSION**

The trial court should be affirmed.

April 26, 2011.

Respectfully submitted,



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