

66927-3

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NO. 66927-3

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of:

SUDESH S. KOTHARI

Appellant/Cross-Respondent,

and

KUNJALATA S. KOTHARI

Respondent/Cross-Appellant.

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAR 22 PM 4:19

REPLY IN SUPPORT OF CROSS-APPEAL OF

KUNJALATA KOTHARI

In his response to Kunjalata Kothari's cross-appeal, Sudesh Kothari, submitted a largely unintelligible rant against Ms. Kothari, Judge Fox, and Ms. Kothari's attorney. He makes no citations to the record which dispute the specific financial facts alleged by Ms. Kothari, who provided proper cites to the record in her cross-appeal.

A. PROPERTY DIVISION

Ms. Kothari asks that the Court find that the trial court's division of her 401k account was an abuse of discretion. Washington law does not support an award of 80% of the community property to Sudesh Kothari, the non-custodial parent who provides no support for the minor children, while Ms. Kothari, who was awarded only 20%, was also awarded an "underwater" family home with a sizeable mortgage obligation. While Washington law does not require a 50/50 division of community property, the 80/20 division to Dr. Kothari in this case was an abuse of discretion by the trial court. By way of example, in *Marriage of Crosetto*, 82 Wn. App. 545 (1996), the wife received 60% of the assets following a 21 year marriage during which she had inferior earning capacity to the husband.

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The Kotharis were married 17 years (separating after 16) and Dr. Kothari holds a Ph.D.

Ms. Kothari's separate property award also did not support an award to her of only 20% of the net community estate. She received modest separate property accounts in the U.K. which she owned prior to marriage. The value of those accounts relative to the net value of the community estate did not support reducing her share of the net community estate to only 20%. At the time of trial, Ms. Kothari's UK accounts had a U.S. dollar value of \$45,000. Kunjalata Kothari, 12/20/10 RP 1033.

Finally, the trial judge's comments at the March 4, 2011 presentation hearing illustrate that the court did not actually know how disparate the property division awarded might be to the husband. The trial court's failure to determine the percentage property division being ordered was an abuse of discretion. RP 11-12, 3/4/11 (presentation hearing.)

Further, it was abuse of discretion for the trial judge to base the division of property at time of trial on an expectation that the home awarded to Ms. Kothari would "hopefully . . . become an above-water situation after several years." RP 5, 3/4/11 (presentation hearing.)

Certainly, the assets awarded to both parties may increase in value "after

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several years.” Ms. Kothari was entitled to a fair and equitable property division based on the value of the property at time of trial.

The trial judge may have intended to appease Dr. Kothari by awarding him 80% of the net community estate, although that is not a valid basis for a disproportionate property division. Dr. Kothari was not dissuaded from filing an appeal, causing wife to incur more attorney’s fees that she cannot pay, continuing to make the same unfounded and unsubstantiated claims that he made at trial and, in fact, as his response to wife’s cross-appeal demonstrates, escalating his complaints against wife, Judge Fox and wife’s attorney.

B. SPOUSAL MAINTENANCE

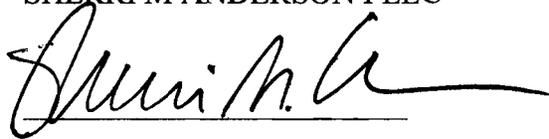
In the trial court’s ruling, maintenance was awarded for 12 months, despite mother’s inability to pay and father’s Ph.D. degree and his refusal to find work in accordance with the temporary orders. The trial court intended the maintenance award to allow the father to maintain a home and act as a father to his children. Memorandum Opinion, CP 265 at p.8. In his response, Dr. Kothari does not dispute that he has been incarcerated since July 2011 and, thus, not maintaining a home for his children.

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DATED this 22nd day of March 2012.

LAW OFFICES OF
SHERRI M ANDERSON PLLC

A handwritten signature in black ink, appearing to read "Sherri M. Anderson", written over a horizontal line.

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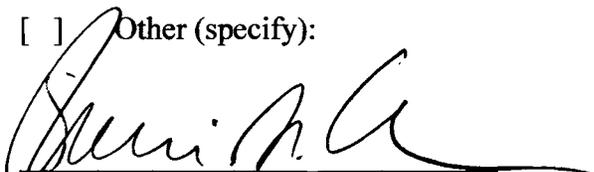
CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March 2012 I served the attached reply brief on the following person, at the noted address, by the indicated method:

Sudeshkumar S. Kothari BA #211021921
King County Correctional Facility
500 Fifth Avenue
Seattle, WA 98104

By:

- U.S. Postal Service, ordinary first class mail
- U.S. Postal Service, certified or registered mail
- Return Receipt Requested
- Hand Deliver
- Facsimile
- Electronic Service through the Court system
- Other (specify):


Sherri M. Anderson, WSBA#20881

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