

64499-8

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No. 64499-8-1  
STATE OF WASHINGTON COURT OF APPEALS  
DIVISION I

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PAUL HENRI MONGAUZY,  
  
Appellant,  
  
and  
  
KATHLEEN DIANE MONGAUZY,  
  
Respondent.

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COURT OF APPEALS  
STATE OF WASHINGTON

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On Appeal from King County Superior Court  
Honorable Meg Sassaman

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Appellant's Reply Brief

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## **A. Introduction**

Do not believe everything you read — verify. Appellant is not suggesting he is without fault for what happened between the parties since Former Wife dissolved her marriage with Appellant. Any transgressions, however, are largely irrelevant to the financial issues presented by this appeal because they took place after the parties listed their home for sale, after they rejected three post-inspection counteroffers, and after Appellant refinanced the home into his own name and paid off all the community debt the parties were to share equally pursuant to the Dissolution Decree. Former Wife's attempts to portray Appellant's conduct as pervading the entire marriage are not supported by accurate cites to the record, were not found by the trial court, and are refuted by her own Findings of Fact, Dissolution Decree, and Parenting Plan she drafted. These court orders preclude her from re-litigating marital domestic violence claims in these proceedings.

Former Wife has also not contested Appellant's central arguments. She has not contested that the facts found by the trial court regarding the former marital home's value were without sufficient evidentiary support. She has not contested that the trial court improperly modified the property distribution provisions in the

Dissolution Decree. She has not contested that the trial court was prohibited from imposing an obligation that was not set forth in the Dissolution Decree. She has not contested that the quit claim deed in this case that Former Wife drafted, signed, had notarized, and delivered to Appellant after the Dissolution Decree was entered transferred her interest in the former marital home to Appellant. Last, she has not contested that there needs to be an offset for the debts she was obligated to pay pursuant to the Dissolution Decree. These uncontested arguments alone require reversal and remand.

## **B. Argument**

### **1. Former Wife's Case Statement Should Not Be Considered Because It Violates Numerous Rules.**

Unfortunately, Appellant must begin this Reply Brief by pointing to Former Wife's egregious rule violations in her Response Brief. Former Wife's case statement is argument, and for the most part it is not supported by any cites to the record. Moreover, Former Wife's precious few cites to the record do not support the asserted facts. These violations are so pervasive that this Court should ignore Former Wife's case statement.<sup>1</sup> It is important in this case because Former Wife demonizes Appellant without record support in order to garner sympathy to legitimize patent error.

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<sup>1</sup> *Perry v. Rado*, 155 Wn. App. 626, 637 n.1, 230 P.3d 203 (2010).

**a. Former Wife Does not Cite the Record or the Cites do not Support her Propositions.**

RAP 10.3(a)(5) requires record cites for each factual statement in the case statement. Here, Former Wife makes more than three dozen factual assertions without cite to the record and improperly cites the record for another dozen assertions:

- Br. of Resp't 1, First ¶. No cites.
- Br. of Resp't 1, Second ¶. No cite for assertion

“respondent was without funds with which to pay an attorney at the time of the divorce...”; CP 24 does not support her assertion that she had no access to funds to hire an attorney “for the divorce”; CP 1 does not support her assertion that she was totally dependent on Appellant for her support.

- Br. of Resp't 2, First ¶. There is no record cite for Former Wife's assertion that Appellant perpetrated abuse upon Former Wife; CP 92 does not support Former Wife's assertion that Appellant tried to have the former marital residence titled in his name during the marriage; CP 79 does not support her assertion that Appellant told her that the home was not her home.

- Br. of Resp't 2, Second ¶. There are no record cites in that paragraph or footnote 1.

- Br. of Resp't 2, Third ¶ – 3, First ¶. There are no record cites in that paragraph, and CP 135 in footnote 2 does not support her assertion as to why she signed the quit claim deed.
- Br. of Resp't 3, First Full ¶ – 4, First ¶. There are no record cites.
- Br. of Resp't 4, First Full ¶. There are no record cites.
- Br. of Resp't 4, Second Full ¶ – 5, First ¶. There are only three record cites and those cites do not support the respective facts asserted. CP 127 and 22 do not show why Former Wife signed the quit claim deed or what Appellant allegedly said to induce Former Wife to sign the quit claim deed.
- Br. of Resp't 5, First Full ¶. There are only two cites. CP 27 does not support the assertion as to why Appellant rejected offers on the home; CP 87 is not an e-mail message. Appellant believes the correct reference to be the February 13, 2007 e-mail exchange at CP 100. It does show that in February 2007 Former Wife wanted to sell the home and split the proceeds, but not until all the debts and bills were paid. Not only was this cite misleading, but it was also not an agreement, and it was more than two months

prior to Former Wife drafting, signing and delivering the quit claim deed to Appellant.<sup>2</sup>

- Br. of Resp't 6, First Full ¶. There is only one cite and it does not support the preceding factual assertion. CP 93 does not show Former Wife's resources.

- Br. of Resp't 7, First Full ¶. There are no record cites.

- Br. of Resp't 8, Second Full ¶ – 9, First ¶. There are no cites even for the long quoted material. There are vague references to corroborating attachments to Former Wife's declaration without cite to the record. In the record there are *three* declarations from Former Wife, each having multiple attachments.

- Br. of Resp't 8, First Full ¶. All the statements in this paragraph are incidents that allegedly occurred after the house was listed and the counteroffers rejected and after Former Wife drafted, signed, and delivered the quit claim deed to Appellant. There is record support that Appellant might have appeared unannounced at his former father-in-law's residence and tried to force his way into the home to talk to Former Wife and then violated a Temporary Order of Protection. Beyond that, Former Wife's assertions are

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<sup>2</sup> CP 350-51, ¶ 14; CP 368-69. Note the similarity in handwriting between the quit claim deed (CP 368-69) and the Dissolution Decree Former Wife obtained by default (CP 1-8).

embellishments. There is no support that Appellant “assaulted” Former Wife when he had contact with her after the Order of Protection was entered.

- Br. of Resp’t 9 , First Full ¶. There is no record support that Appellant tried to have the Order for Protection modified.

- Br. of Resp’t 9, Second Full ¶ – 10, First ¶. There are no record cites.

**b. Former Wife’s Case Statement is Argument.**

RAP 10.3(a)(5) also prohibits argument in the case statement. Here, Former Wife’s case statement is replete with argument not supported by facts and these arguments should be disregarded.

**2. Former Wife is Precluded From Re-litigating Claims Appellant was Domestically Violent During the Marriage.**

Not only are Former Wife’s marital domestic violence claims exaggerated, not supported by the evidence, and not found to be true by the trial court, but claim preclusion prohibits Former Wife from re-litigating alleged domestic violence during the marriage. Claim preclusion prohibits a party from re-litigating not only claims that were actually litigated, but also those claims that could have

been litigated in a former action.<sup>3</sup> It applies with equal force to decrees entered by default.<sup>4</sup> Here, Former Wife admits she dissolved the marriage by default on May 27, 2007.<sup>5</sup> In the final papers she prepared, she stated that a continuing restraining order did not apply<sup>6</sup> and that there were no RCW 26.09.191 restrictions, including a domestic violence history or abusive use of conflict.<sup>7</sup> Respondent has not appealed or sought to vacate or modify these final orders. They are, therefore, conclusive on these issues and cannot be re-litigated in these proceedings.

**3. Former Wife's Coercion Allegations Were not Found by the Trial Court and are, Therefore, Deemed to Have Been Found Against her.**

If no finding is entered as to a material issue, it is deemed to have been found against the party having the burden of proof.<sup>8</sup> Here, Former Wife had the burden to prove Former Husband did not comply with the Dissolution Decree. She also admitted she signed the quit claim deed and post-inspection counteroffer

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<sup>3</sup> *Sayward v. Thayer*, 9 Wash. 22, 24, 36 P.2d 66 (1894), and *In re Bays*, 413 B.R. 866, 877 (Bankr. E.D. Wash., 2009).

<sup>4</sup> *Maxwell v. Provident Mut. Life Ins. Co.*, 180 Wash. 560, 572, 41 P.2d 147 (1935); *Baskin v. Livers*, 181 Wash. 370, 374 43 P.2d 42 (1935); and *In re Bays*, 413 B.R. at 877.

<sup>5</sup> Br. of Resp't 1, CP 1-8.

<sup>6</sup> CP 5 and 12.

<sup>7</sup> CP 313, ¶¶ 2.1 and 2.2.

<sup>8</sup> *Pacesetter Real Estate v. Fasules, Inc.*, 53 Wn. App. 463, 475, 767 P.2d 961 (1989).

rejections.<sup>9</sup> It was, therefore, also her burden to prove the quit claim deed and post-inspection counteroffer rejections were improperly procured.<sup>10</sup>

Former Wife did not raise any argument in the argument section of her Response Brief regarding her signing the quit claim deed or the post-inspection counteroffer rejections, but in her case statement she argued that she did not freely sign the quit claim deed.<sup>11</sup> In her brief, Former Wife never asserted she did not freely sign the various post-inspection counteroffer rejections. Her argument that she did not freely and voluntarily sign the quit claim deed is without cite to the record or legal authority and, therefore, violates RAP 10.3(a)(5) and (6).<sup>12</sup>

Former Wife's contention that she signed the quit claim deed because she thought it was necessary for Appellant to refinance the property is highly unbelievable.<sup>13</sup> On April 10, 2008 Former Wife executed a Deed of Trust for the property to accomplish the refinancing.<sup>14</sup> This occurred 11 days prior to Former Wife drafting and signing the quit claim deed, having it notarized, and delivering

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<sup>9</sup> CP 89, In 17-20; and CP 93, In 45-47.

<sup>10</sup> *McCoy v. Lowrie*, 44 Wn.2d 483, 488, 268 P.2d 1003 (1954).

<sup>11</sup> Br. of Resp't 4.

<sup>12</sup> *Perry v. Rado*, 155 Wn. App. 626, 637 n.1, 230 P.3d 203 (2010).

<sup>13</sup> Br. of Resp't 5.

<sup>14</sup> CP 350, ¶13; and CP 366.

it to Appellant.<sup>15</sup>

Moreover, the trial court made no finding that the quit claim deed or the post-inspection counteroffer rejections were not signed volitionally or that they were procured through fraud, coercion, duress, intimidation, threats or control that overcame Former Wife's free will. The trial court's not making a finding on these issues is tantamount to the trial court finding that they did not occur.

In either case, the findings, or lack thereof, do not support the legal conclusions and order, especially conclusion of law 15(d) that Former Wife's "signing of a quit claim deed does not extinguish her interest in the property."<sup>16</sup>

**4. Former Wife Does not Contest the Trial Court Erred in Concluding the Quit Claim Deed did not Extinguish Former Wife's Interest in the Former Marital Home.**

As argued in Appellant's Opening Brief, the law is completely contrary to the trial court's conclusion 15(d).<sup>17</sup> In her Response Brief, Former Wife does not challenge the law or disagree with Appellant's argument; rather, she only argues in her case statement, without citation to the record or authority, that she signed the quit claim deed against her will. Because the trial court

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<sup>15</sup> CP 368-69.

<sup>16</sup> CP 274.

<sup>17</sup> *McCoy*, 44 Wn.2d at 488.

made no findings to overcome the presumption and because Former Wife does not argue to the contrary, reversal is required because the quit claim deed that Former Wife drafted, signed, had notarized, and delivered to Appellant did transfer her interest in the property.

**5. Former Wife Does not Contest the Trial Court Erred When it Modified the Property Distribution Provisions in the Dissolution Decree.**

Former Wife did not argue or otherwise contest Appellant's argument that the trial court improperly modified the property distribution provision in the Dissolution Decree. RCW 26.09.170(1) explicitly provides, "[t]he provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state." It is undisputed Former Wife has never filed a motion to vacate the Dissolution Decree and the trial court made no findings there were any grounds to justify reopening the Decree.

Former Wife also did not argue or explain how her motion and the ensuing Order simply enforced provisions existing in the Decree. The Dissolution Decree that Former Wife drafted and submitted to the trial court ordered the property to be listed for sale immediately and awarded each party "50% of final equity/profit from

sale.”<sup>18</sup> This was confirmed by the trial court when it entered the Judgment underlying this appeal.<sup>19</sup> The property was community property in existence when the Dissolution Decree was entered and was, therefore, distributed to the parties as tenants in common.<sup>20</sup> The Decree’s net effect was to distribute the property to the parties equally as tenants in common with a provision the property be listed and when sold the net proceeds equally distributed to the parties. This gave the Former Wife the benefit to share in the property’s post-Decree appreciation, but also allocated to her some risk the property might decline in value. The Decree was entered May 22, 2007 when the residential housing market was at or near an all-time high and nobody could foresee the upcoming recession. This provision, therefore, appears to have benefited Former Wife at the time she drafted and submitted the Decree.

The overheated housing market also explains the parties’ behavior in rejecting post-inspection counteroffers. When the Eustaces reduced their full price offer after they performed inspections by \$10,000 and also required the Mongauzys credit them \$3,000 for closing costs, the Mongauzys, on July 31, 2007,

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<sup>18</sup> CP 2 and 3.

<sup>19</sup> CP 273, ¶ 3.

<sup>20</sup> *Yeats v. Estate of Yeats*, 90 Wn.2d 201, 203, 580 P.2d 617 (1978); and *Pittman v. Pittman*, 64 Wn.2d 735, 737, 393 P.2d 957 (1964).

agreed only to reduce the purchase price by \$10,000 or credit the Eustaces with \$10,000 toward their closing costs.<sup>21</sup> This makes sense because when the Eustaces did not accept the Mongauzys' offer and the deal fell through, the Mongauzys immediately signed a contract with back-up buyers, the Slichtas, the next day for only a \$10,000 reduction in purchase price (\$719,900).<sup>22</sup> In other words, the Mongauzys were only willing to reduce the purchase price by \$10,000 to \$719,900 because they had a back-up buyer who was willing to offer \$719,900 for the property. Unfortunately, that deal was also subject to inspection and fell through because the buyers discovered defects during inspection and wanted substantial credits for repairs that the Mongauzys rejected.<sup>23</sup> Believing property values would only increase, the Mongauzys mutually took the property off the market.<sup>24</sup>

Unquestionably, the trial court modified the property distribution provision in the Decree. First, it totally re-allocated the risk that property values might drop in the future from both the parties, as stated in the Decree, to Appellant solely. With hindsight and after

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<sup>21</sup> CP 362.

<sup>22</sup> See CP 364 showing a purchase and sale agreement date of August 1, 2007; and CP 198.

<sup>23</sup> CP 364.

<sup>24</sup> CP 187.

the housing market crashed and property values dropped, Former Wife brought a motion that requested the trial court modify the property distribution provisions in the Decree by awarding her half the equity in the former marital home that existed when the Decree was entered and before the market values dropped. Specifically, she stated, “I request that the court order him [Appellant] to pay me my share of the net proceeds had the home sold in June 2007.”<sup>25</sup>

This is exactly what the trial court did. The trial court’s basis for the monetary judgment it entered against Appellant was Appellant “has failed to pay [Former Wife] her share of the net equity that existed at the time the Decree of Dissolution was entered.”<sup>26</sup>

This modified the Decree. The Decree did not award Former Wife one-half the net equity in the former marital home when the Decree was entered; rather, it awarded her one-half the net proceeds if, as, and when the property sold. Despite this, the trial court improperly modified the property distribution provisions and risk allocation in the Decree when it purportedly enforced an obligation that did not exist, entered a monetary judgment against Appellant, and placed a lien on the residence for the monetary judgment amount.

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<sup>25</sup> CP 22, ln 10-12.

<sup>26</sup> CP 274, ¶10.

It is beyond dispute that the trial court's converting the tenant in common distribution in the original Dissolution Decree into a judgment for half the equity in Former Wife's favor with a lien on the property modified the property distribution provisions in the Decree. In *Byrne v. Ackerlund*,<sup>27</sup> the Washington Supreme Court held that there was a substantive difference between owning property as tenants in common and awarding the property to one spouse and giving the other spouse a lien on the property for one-half the equity at the time a dissolution decree is entered. Specifically, the *Byrne* court compared the facts in *Shaffer*<sup>28</sup> wherein the trial court distributed property to the parties as tenants in common to the facts in *Byrne* where the trial court distributed the property to one spouse and gave the other spouse a judgment for one-half the equity in the property when the dissolution decree was entered. The *Byrne* court specifically held, "the lien/title arrangement incorporated into the dissolution decree is different from the tenancy in common disposition found in *Shaffer*."<sup>29</sup>

**6. Former Wife's Arguments That the Local Family Law Rules Allow an Expedited Procedure to Enforce Dissolution Decrees Is Misplaced.**

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<sup>27</sup> 108 Wn.2d 445, 739 P.2d 1138 (1987).

<sup>28</sup> *Shaffer v. Shaffer*, 43 Wn.2d 629, 262 P.2d 763 (1953).

<sup>29</sup> *Byrne*, 108 Wn.2d at 449.

Former Wife devotes almost her entire argument in her Response Brief to explaining and defending the King County Local Family Law Rule's procedure for enforcing Dissolution Decrees, but her argument is misplaced because she asked the trial court to do more, and the trial court did more, than simply enforce the Decree. Had Former Wife wanted to simply enforce the Decree or had the trial court simply enforced the Decree, then there could have been an order that enforced the provision requiring the property be listed and ordered the property to be listed. Similarly, the trial court could have enforced the provision that the parties receive one-half the net proceeds by ordering the proceeds be distributed in accordance with the Decree. That would be enforcing the Decree. Converting the Decree from a tenant in common distribution, as Former Wife requested in her default Dissolution Decree, into a judgment and lien situation, especially with the benefit of hindsight after the housing market crashed, did much more and was prohibited by RCW 26.09.170(1).

**7. *Mickens* Dictates the Proper Procedure to be Followed in This Case and *Langham* Does not Alter this Result.**

*Mickens*<sup>30</sup> is the proper process to be followed in this case. In *Mickens*, the former wife sought a monetary judgment against the former husband for his frustrating the provisions in the Dissolution Decree. The former wife and former husband agreed the former husband would pay the former wife a sum certain when the property would be sold and agreed the property would be listed for sale immediately and former husband would pay the land contract (mortgage).<sup>31</sup> After listing the property for sale and not being able to sell it, former husband stopped paying the land contract payments and the property was forfeited to the original seller.<sup>32</sup> Once this happened, the dissolution court could no longer enforce the decree because the parties no longer owned the property that was required to be listed and sold. The former wife filed a petition ancillary to the original dissolution action and the trial court entered a monetary judgment against the former husband.<sup>33</sup> The former husband appealed and the state Supreme Court held, “the judgment could not properly be entered upon a petition and order to show cause as an incident to the divorce decree.” The court there

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<sup>30</sup> *Mickens v. Mickens*, 62 Wn.2d 876, 385 P.2d 14 (1963).

<sup>31</sup> *Id.* at 15.

<sup>32</sup> *Id.* at 15-16.

<sup>33</sup> *Id.*

specifically held this was an issue regarding process, not jurisdiction.<sup>34</sup>

The situation in this case is the same. Once the Former Wife crossed the line from enforcing the Decree and wanted to get a monetary judgment against Appellant for his allegedly frustrating the Decree's provisions, *Mickens* controlled and she needed to file an independent proceeding with a complaint and summons. This would have been the proper process. This would have also afforded Appellant the discovery he requested in his response to Former Wife's motion.<sup>35</sup>

Former Wife relies on *Langham* as impliedly overruling *Mickens*, but the two can be read consistently. Impliedly overruling a prior decision is disfavored and should not be done if the two cases can be read consistently.<sup>36</sup> Moreover, *stare decisis* still applies even if a prior decision is implicitly overruled, unless the prior rule is clearly shown to be harmful.<sup>37</sup> While the former husband in *Langham* was more concerned about the process used to enter a judgment

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<sup>34</sup> *Id.* at 17.

<sup>35</sup> CP 192.

<sup>36</sup> *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009).

<sup>37</sup> *Id.* at 280.

against him, he did not cite any support for his process argument.<sup>38</sup> Specifically, he did not cite *Mickens* and the Supreme Court did not mention *Mickens* in its decision. The Supreme Court then decided the dissolution court, being a superior court, had jurisdiction to consider the conversion matter.<sup>39</sup> This is consistent with *Mickens*, wherein the Supreme Court also held the superior court had jurisdiction to consider the matter.<sup>40</sup> Because *Langham* dealt with jurisdiction and *Mickens* was consistent, but dealt with process, *Langham* did not abandon or overrule the process required by *Mickens*.

*Langham* is also distinguishable because an abbreviated process was sufficient in that case because the former husband admitted all facts constituting conversion. When two cases are distinguishable, then the subsequent case does not impliedly overrule the prior case.<sup>41</sup> Here, there is a huge distinguishing factor. In *Langham*, the former husband admitted he sold the stock options and, thus, admitted he committed conversion.<sup>42</sup> The

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<sup>38</sup> *In re Marriage of Langham and Kolde*, 153 Wn.2d 553, 559, 106 P.3d 212 (2005).

<sup>39</sup> *Id.* at 559-60.

<sup>40</sup> *Mickens*, 62 Wn.2d at 17.

<sup>41</sup> *Weismann v. Safeco Ins. Co. of Ill.*, \_\_\_ Wn. App. \_\_\_, 236 P.3d 240, 244-45 (2010).

<sup>42</sup> 153 Wn.2d at 560.

Supreme Court in *Langham* was careful to say the trial court was justified in employing the motion process in that particular case to enter a judgment against the former husband once “he admitted the facts relevant to the tort of conversion.”<sup>43</sup>

This distinguishing fact aligns *Langham* with Appellant’s procedural due process argument. A litigant is only entitled to procedural due process required “under all the circumstances.”<sup>44</sup> Because the former husband in *Langham* admitted to all the facts necessary to support a judgment for conversion, “[a]dditional safeguards would have done him little good.”<sup>45</sup> Under the unique circumstances in *Langham* there was no procedural due process violation.

Unlike the former husband in *Langham*, the Appellant did not admit the facts relevant to any tort or grounds for a monetary judgment against him and even demanded discovery in order to properly defend himself. Under *Mickens*, the trial court, although having jurisdiction, should have required the Former Wife to utilize the process dictated in *Mickens* and file an independent proceeding for a monetary judgment.

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<sup>43</sup> *Id.*

<sup>44</sup> *Rosander v. Nightrunners Transport, Ltd.*, 147 Wn. App. 392, 401, 196 P.3d 711 (2008).

<sup>45</sup> *Id.*

**8. Former Wife's Argument That Appellant did not Avail Himself of the Procedure for Oral Testimony Should not bar Appellant's Request to Conduct Discovery.**

Former Wife improperly argues Appellant waived his right to discovery because he failed to follow the procedure for oral testimony.<sup>46</sup> Appellant's response to Former Wife's motion requested discovery, not oral testimony.<sup>47</sup> There is no specified procedure in the LFLR for a party to request discovery prior to a contested hearing. In Family Law Motion hearings, the only opportunity to respond to a motion is in a response filed four calendar days prior to the hearing.<sup>48</sup> As such, there was nothing improper in Appellant requesting the opportunity for discovery in his response.

**9. *James* is Distinguishable and Does not Obviate the Need to Make Findings to Justify a Judgment.**

Former Wife cites *In re Marriage of James*<sup>49</sup> for the proposition that oral testimony was not required in this case, but *James* is distinguishable.<sup>50</sup> Admittedly, *James* seems to allow trial courts to adjudicate contempt based on disputed declarations. Former Wife, however, did not bring a motion for contempt and she has not cited

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<sup>46</sup> Br. of Resp't 13.

<sup>47</sup> CP 192.

<sup>48</sup> LFLR 6(b)(2).

<sup>49</sup> *In re Marriage of James*, 79 Wn. App. 436, 903 P.2d 470 (1985).

<sup>50</sup> Br. of Resp't 17-18.

any authority that directed or authorized the trial court to conduct the necessary trial in this case to resolve the factual disputes based on declarations alone.

Not only is *James* distinguishable, but it also underscores the necessity that the trial court make appropriate findings to justify the relief it orders, even if the trial is by declaration. In fact, *James* holds that the trial court must make necessary findings to justify the relief that it orders.<sup>51</sup> Here, the findings do not support the relief the trial court ordered. Specifically, the trial court correctly found the Dissolution Decree ordered the parties to split the home sales proceeds equally if, as and when the home sold.<sup>52</sup> Based on that finding, the trial court then incorrectly concluded Appellant failed to pay Former Wife half the net equity when the Dissolution Decree was entered.<sup>53</sup> The finding does not support this conclusion and the conclusion is inconsistent with the Decree's clear, unambiguous, and express terms that Former Wife drafted.<sup>54</sup>

**10. *Maddix* is Still Good Law and the Commissioner Abused her Discretion by not Ordering an Evidentiary Hearing in this Particular Case.**

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<sup>51</sup> 79 Wn. App. at 441.

<sup>52</sup> CP 276, ¶ 3.

<sup>53</sup> CP 277, ¶ 10.

<sup>54</sup> CP 2 and 3.

*James* also does not conflict with *Maddix*.<sup>55</sup> *Maddix* stands for the proposition that in that case, when there were disputed facts regarding fraud and other improper conduct and insufficient findings to support the relief, that the trial court erred in not conducting an evidentiary hearing.<sup>56</sup> There is nothing in the LFLR that prohibit an evidentiary hearing. Trial courts, therefore, have the authority to conduct evidentiary hearings. Here, Appellant argued that the trial court abused its discretion in not ordering an evidentiary hearing in this case before entering \$238,000 in judgments against Appellant and placing a lien on the former marital residence on the convoluted, disputed facts involving coercion, intimidation and manipulation allegations.

The situation in this case is more similar to *Maddix* than *James*, despite *Maddix* seeking to vacate a judgment. Former Wife is seeking to vacate a quit claim deed she drafted, executed, had notarized and delivered to Appellant. She is also seeking to vacate the property distribution provisions in the Dissolution Decree and that requires the same justification as reopening a judgment.<sup>57</sup>

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<sup>55</sup> *In re Marriage of Maddix*, 41 Wn. App. 248, 703 P.2d 1062 (1985).

<sup>56</sup> 41 Wn. App. at 252.

<sup>57</sup> RCW 26.09.170(1).

**11. Former Wife Admits There Should be an Offset for the Community Debts she was to Equally Pay.**

Former Wife presents no argument or even addresses Appellant's argument that any ultimate judgment that might be rendered should account for the amounts Appellant had to pay to discharge the community debts listed in the Decree that Former Wife was to equally share. The Decree provides that Former Wife would pay one-half the home mortgages and home equity loans, the American Express credit card, the Bank of America credit card, and the Home Depot credit card.<sup>58</sup> In her Response Brief, Former Wife admits that "none of the debts in the Decree of Dissolution had been paid."<sup>59</sup> Because Former Wife was obligated to pay one-half these debts, any judgment that may ultimately be rendered in this case must credit Appellant for the amounts he paid toward Former Wife's obligations to pay these debts.

**12. Former Wife Admits the Trial Court's Finding as to Value was not Supported by the Evidence.**

Former Wife concedes, as she must, that the trial court's finding the property's value was \$729,900 was not supported by substantial evidence. First, Former Wife offered no argument and pointed to no evidence to support the trial court's finding.

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<sup>58</sup> CP 4.

<sup>59</sup> Br. of Resp't 6.

Moreover, she admits in her Response Brief that “[w]e had counteroffers on our home after our inspections because of improvements that needed to be made.”<sup>60</sup> This admission clearly renders the trial court’s valuation erroneous because there were needed repairs and Former Wife admits the buyers would not pay the full listing price for the property; rather, the buyers made counteroffers.

**13. Former Wife has not Fully Complied With RAP 18.1 and is, Therefore, not Entitled to Attorney Fees.**

RAP 10.3(b) and 10.3(a)(6) require Former Wife to cite to legal authority. The only authority Former Wife cites as authority for attorney fees is RAP 18.1, which says in pertinent part that “If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review... the party must request the fees or expenses as provided in this rule.”<sup>61</sup>

While Former Wife did request attorney fees in her Response Brief as required by RAP 18.1(b), she has not cited any underlying legal authority or “applicable law grant[ing her] the right to recover reasonable attorney fees or expenses.” Because Respondent has not cited this legal authority as part of her argument as required by

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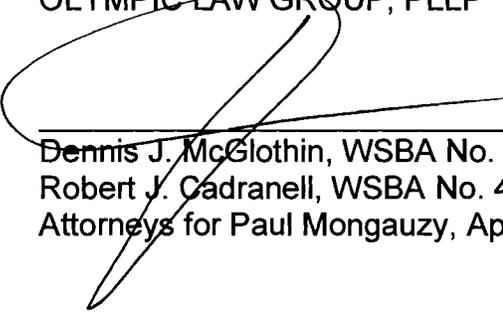
<sup>60</sup> *Id.* at 7.

<sup>61</sup> RAP 18.1(a).

RAP 10.3(b) and 10.3(a)(6), this Court should not consider her request for fees.<sup>62</sup> However, despite this deficiency, and without waiving any objection related to this deficiency, the Appellant will, in an abundance of caution, submit his financial declaration showing that he does not have the ability to pay Former Wife's attorney fees given his child support transfer payment and other expenses.

Respectfully submitted this 16<sup>th</sup> day of September, 2010.

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<sup>62</sup> See *Perry*, 155 Wn. App. at 637 n.1.

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IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON, DIVISION I

PAUL HENRI MONGAUZY,

Appellant,

and

KATHLEEN DIANE MONGAUZY,

Respondent.

No. 64499-8-1

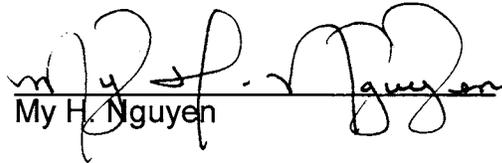
Lower Court Case  
No. 07-3-01206-4 SEA

DECLARATION OF SERVICE

I, My H. Nguyen, declare under penalty of perjury under the laws of the State of Washington that, on September 16, 2010, I caused a copy of the APPELLANT'S REPLY BRIEF and this DECLARATION OF SERVICE via Regular Mail on the following:

Robert C. Kaufman  
2100 116<sup>th</sup> Ave. NE  
Bellevue, WA 98004  
Attorney for Respondent

SIGNED this 16th day of September, 2010, at Seattle, Washington

  
My H. Nguyen