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CASE # 67225-8-I

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COURT OF APPEALS FOR THE STATE OF WASHINGTON,  
DIVISION I

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In re:

ROSA SARAUSAD, Appellant,

v.

ROMULO SARAUSAD, Respondent.

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BRIEF OF RESPONDENT

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A. STATEMENT OF THE CASE

Mr. Romulo Sarausad and Ms. Rosa Sarausad were married in Cebu City, Philippines on March 18, 1969 and held a religious ceremony in Seattle, Washington some time in August 1969.<sup>1</sup> (CP 180).

On September 14, 1995, Romulo and Rosa filed for divorce in Snohomish County Superior Court. (CP 259). Rosa signed the joinder provision of the Petition for Dissolution of Marriage, which provides that “[b]y joining in the petition, the respondent [Rosa] agrees to the entry of a decree in accordance with the petition, without further notice.” (CP 264).

1. The Parties were divorced pursuant to a Decree of Dissolution entered on September 25, 1996 in Snohomish County Superior Court.

Each party signed the decree, and Rosa’s signature waived notice of its presentation. (CP 178). The court entered the agreed Decree of Dissolution on September 25, 1996. (*Id.*)

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<sup>1</sup> For the sake of clarity, hereinafter Mr. Romulo Sarausad will be referred to as Romulo, and Ms. Rosa Sarausad will be referred to as Rosa.

2. Ms. Sarausad declared her status of 'divorced' in litigation to which she was a party and for the purposes of advancing her interests therein as early as October 10, 1996.

Within one month of the entry of the Decree of Dissolution, Rosa presented herself as a divorced mother of four for the purposes of advancing her interests in other litigation in which she was involved. Rosa indicated that she was divorced in no fewer than three discrete communiqués: (1) in a letter dated October 10, 1996 to Judge Kathryn Guykema of the Board of Industrial Insurance Appeals (CP 330); (2) in a letter dated August 11, 1999 to the then-Director of the Department of Labor and Industries, Mr. Gary Moore (CP 333); and (3) in her answers to a questionnaire received by her from the Department of Labor and Industries (CP 335).

In a signed pleading filed with King County Superior Court in support of her Petition for Dissolution filed therein on May 19, 2010, Rosa admits to her use of her status as a divorced woman to obtain public assistance. Specifically, Rosa admits that she “told the Department of Health and Social Services that my husband divorced me and that there is a file number in Snohomish Court and also used this information about being divorced in my pleading papers filed during the legal processing of my own legal cases.” (CP 100-1; 317-8).

3. Ms. Sarausad filed a petition for dissolution of marriage in King County on May 19, 2010, which was dismissed with prejudice on February 23, 2011.

Rosa filed a petition for dissolution of marriage with King County Superior Court on May 19, 2010. (King County Superior Court, Cause No. 10-3-03656-7, Sub 1). After being advised by Romulo's counsel that a proceeding already existed in Snohomish County for these parties, Rosa's then-attorney voluntarily dismissed the action and withdrew as her counsel effective immediately. (King County Superior Court, Cause No. 10-3-03656-7, Sub 17 and 18). Rosa, then proceeding *pro se*, moved to strike the voluntary dismissal of the dissolution action. (King County Superior Court, Cause No. 10-3-03656-7, Sub 20). Rosa's motion to strike the voluntary dismissal was granted on January 5, 2011. (King County Superior Court, Cause No. 10-3-03656-7, Sub 26).

Romulo filed a motion to dismiss the King County dissolution action with prejudice, which was granted on February 23, 2011. (King County Superior Court, Cause No. 10-3-03656-7, Sub 36). Rosa filed no response to Romulo's motion to dismiss, but rather filed a motion to vacate Decree of Dissolution in Snohomish County Superior Court.

4. Order of March 21, 2011 denying motion to vacate Decree of Dissolution from which Ms. Sarausad appeals

On February 16, 2011, Rosa noted a motion for an order to show cause as to why her motion to vacate the Decree of Dissolution entered with Snohomish County Superior Court should not be granted. (CP 114). In her affidavit in support of her motion, Rosa alleged that she only learned that she was divorced from Romulo sometime after August 20, 2009, once she asked her then-attorney to investigate whether Romulo had married another woman, Ms. Lourdes Limbo. (CP 99). In that same affidavit, Rosa admits “[to] be frank, *for many years* I was not exactly sure of our legal status and I didn’t wish to engage an attorney to help me get the facts straight for fear of provoking another scandal with my husband and because I was just too distressed and tired to investigate.” (Emphasis supplied) (CP 52).

Rosa and her then-attorney and Romulo’s attorney appeared before Family Law Commissioner Lester Stewart on March 4, 2011. Rosa’s motion was denied, as Rosa had neither obtained, nor personally served Romulo, an order to show cause. (CP 119-20). Romulo was awarded \$300 for attorneys fees for the burden and expense of appearing for Rosa’s motion which was not properly before the court. (*Id.*).

Rosa renoted her motion to vacate, which, after a further continuance, was heard on March 21, 2011. (Sub 30). For that hearing, the court reviewed both parties' declarations and the attorneys' legal memoranda. Commissioner Stewart denied Rosa's motion to vacate the decree of dissolution and, finding Rosa brought her motion to vacate in bad faith, awarded attorneys fees in the amount of \$1,200.00 to Romulo for the burden of defending against Rosa's frivolous motion. (CP 112-3).

Rosa filed a Motion For Revision of the Order on March 31, 2011. (CP 26). Rosa failed to confirm the hearing for the original date for which she noted it, the hearing was stricken, and her motion was not heard. (CP 32). Rosa renoted the motion for revision for May 3, 2011. (Sub 37). Rosa's motion for revision was denied on that same date. (CP 20). Rosa filed a Notice of Appeal to this Court on June 1, 2011. (CP 1).

#### B. SUMMARY OF ARGUMENT

Rosa argues no findings in her brief, and thus, all findings of the trial court are verities on appeal.

This Court should affirm the trial court's denial of Rosa's motion for revision, thereby upholding the court commissioner's May 21, 2011 Order in its entirety, including the assessment against Rosa for \$1,200 in

legal fees, because her motion to vacate was frivolous and filed in bad faith, and because Romulo was the prevailing party.

The court commissioner correctly determined that Rosa had actual knowledge no later than October 10, 1996 that she and Romulo were divorced, and, consequently, that Rosa's motion to vacate was not brought within a reasonable time, as required by CR 60(b). In its ruling, the court commissioner emphasized that timeliness was paramount with respect to motions to vacate brought pursuant to CR 60(b).

Because Rosa had actual knowledge that she was divorced no later than October 10, 1996, and Rosa did not file her motion to vacate the Decree of Dissolution within a reasonable time, Commissioner Stewart acted correctly when denying Rosa's motion to vacate the fourteen year old decree of dissolution, and this Court should affirm Commissioner Stewart's decision.

This Court should affirm the court commissioner's award of attorney fees to Romulo, because he was the prevailing party, and because Rosa's motion was brought in bad faith.

This Court also should award to Romulo the costs and attorney fees which he incurred in defending this appeal, because this appeal is frivolous and brought in bad faith.

C. ARGUMENT

1. THE FINDINGS ON WHICH THE TRIAL COURT MADE ITS RULING ARE VERITIES ON APPEAL.

Rosa does not argue the findings of fact that the court commissioner made in ruling that she did not act timely in bringing her motion to vacate, given that she knew of her status as divorced no later than October 10, 1996.

If the appellant assigns no error to the finding, then that finding of fact is a verity on appeal. *In re Marriage of Glass*, 67 Wn. App. 378, 381 n.1, 835 P.2d 1054 (1992). The court in *Glass* held that “[a] party abandons assignments of error to findings of fact if he or she fails to argue them in his or her brief.” 67 Wn. App. at 381 n.1. On appeal, this Court will not consider error assigned to findings without supporting argument, since failing to expressly argue a specific finding “prevents any meaningful review.” (*Id.* at 381. n.1).

Rosa argues no findings in her brief, and thus, all of Commissioner Stewart’s findings are verities on appeal.

2. THE COURT DID NOT ABUSE ITS DISCRETION WHEN DENYING MS. SARAUSAD'S MOTION TO VACATE THE DECREE OF DISSOLUTION

The standard of review of a trial court's decision on a motion to vacate is the "abuse of discretion" standard. *In re Marriage of Tang*, 57 Wn. App. 648, 653, 789 P.2d 118 (1990). An abuse of discretion occurs if the decision is based on untenable grounds or untenable reasons. *Id.*

Here, the basis for the trial court's ruling was Rosa's lack of timeliness in bringing her motion to vacate the decree of dissolution. Because Rosa knew she was divorced no later than October 10, 1996, she failed to bring her motion to vacate "within a reasonable time" as required by CR 60(b).

(a) The trial court correctly determined that Ms. Sarausad had actual knowledge no later than October 10, 1996 that she and Mr. Sarausad were divorced as of that date.

Commissioner Lester Stewart correctly held that, because Rosa had actual knowledge that she was divorced no later than October 10, 1996, she did not bring her motion to vacate decree of dissolution in a timely manner as required by CR 60(b). He reached this conclusion by examining the signed communiqués in which Rosa declared her status as a divorced mother, the earliest of which was a letter dated October 10, 1996

to Judge Kathryn Guykema of the Board of Industrial Insurance Appeals. Romulo presented additional evidence to the court including a signed pleading filed with King County Superior Court in support of Rosa's Petition for Dissolution filed therein on May 19, 2010 stating that she "told the Department of Health and Social Services that my husband [Romulo] divorced me and that there is a file number in Snohomish Court and also used this information about being divorced in my pleading papers filed during the legal processing of my own legal cases." (CP 100-1; 317-8). As set forth above, Rosa does not contest the finding that Rosa's communicated evidence her actual knowledge of her divorce, and it is a verity on appeal.

3. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEY FEES AND COSTS TO MR. SARAUSAD PURSUANT TO RCW 4.84.185, BECAUSE HE WAS THE PREVAILING PARTY, AND MS. SARAUSAD'S ACTION WAS FRIVOLOUS AND BROUGHT IN BAD FAITH.

Romulo was entitled to an award of attorney fees in the trial court, because he was the prevailing party, and the court commissioner held that Rosa brought her motion to vacate in bad faith. "The decision to award attorney's fees is left to the trial court's discretion and will not be disturbed

in the absence of a clear showing of abuse.” *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82, *review denied*, 113 Wn.2d 1001, 777 P.2d 1050 (1989).

Bad faith specifically includes frivolousness. *In re Impoundment of Chevrolet Truck, WA License No. A00125A ex rel. Registered/Legal Owner*, 148 Wn.2d 145, 160 n.13, 60 P.2d 53 (2002). RCW 4.84.185 addresses frivolousness and provides the basis for the trial court’s award of attorneys fees:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense... The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause.

An action is frivolous within the meaning of RCW 4.84.185 if it “cannot be supported by any rational argument on the law or facts.” *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125 at 132. Intransigence, among its various iterations, also specifically includes frivolous actions. *In re Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997). “If intransigence is established, the financial resources of the spouse seeking

the award are irrelevant.” *In re Marriage of Crosetto*, 82 Wn. App. 545, 564, 918 P.2d 954 (1996).

The court commissioner specifically found that Rosa’s motion was brought in bad faith. Bad faith specifically includes frivolousness. Rosa’s motion to vacate was frivolous as defined by *Clarke*: it was, under any imaginable theory, not made within a reasonable amount of time – which precludes any viable legal argument toward that end – and the evidence shows that Respondent had actual knowledge that the parties were divorced as early as October 10, 1996 – which precludes any legitimate factual basis for a motion to vacate a fourteen year old decree. *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125 at 132. Accordingly, there is ample grounds to support the court commissioner's finding of bad faith.

Romulo clearly was the prevailing party. The trial court denied Rosa’s motion to vacate the decree of dissolution, and held that Rosa brought her motion to vacate in bad faith. (CP 129-130). The trial court’s award of attorneys fees was not an abuse of discretion, and it should be affirmed.

Although it was not necessary to sustain an award for fees, Romulo’s attorney submitted to the trial court a detailed listing of the time which he spent in defending against Rosa’s motion. (CP 336).

4. MR. SARAUSAD SHOULD BE AWARDED ATTORNEY FEES INCURRED IN THIS COURT PURSUANT TO RCW 4.84.185 AND RAP 18.9(a) AS MS. SARAUSAD'S APPEAL IS FRIVOLOUS AND BROUGHT IN BAD FAITH.

RCW 4.84.185 provides that the court may award attorneys fees to the prevailing party who successfully defends against a frivolous action advanced without reasonable cause. RAP 18.9(a) permits an appellate court to order attorney fees on appeal when said appeal is frivolous. An appeal is frivolous if this Court is persuaded that the appeal offers no debatable issues upon which reasonable minds could differ and is "so lacking in merit that there is no possibility of reversal." *Mahoney v. Shinpoch*, 107 Wash.2d 679, 691, 732 P.2d 510 (1987).

Rosa's appeal is frivolous in that it fails to address the basis of the trial court's ruling. Rosa's opening brief is written largely as an affidavit. Significantly, Rosa fails to challenge the trial court's finding that she had actual knowledge of her divorce no later than October 10, 1996. Since Rosa has not challenged the court's finding that she had actual knowledge of her divorce no later than October 10, 1996, and said finding is a verity on appeal, Rosa fails to provide any basis to challenge the trial court's legal conclusion that she failed to bring her motion to vacate within a reasonable time, as required by CR 60(b). Accordingly, Rosa's appeal is

frivolous, and Romulo should be awarded his costs and attorney fees, if he is the prevailing party.

D. CONCLUSION

This Court should affirm the trial court's judgment in its entirety. Specifically, the trial court's denial of Rosa's motion for revision should be affirmed, thereby upholding the court commissioner's denial of Rosa's Motion to Vacate the Decree of Dissolution. This Court also should affirm the court commissioner's award to Romulo of \$1,200 for and as attorney fees and costs, incurred in responding to the motion to vacate because Rosa's motion was frivolous and brought in bad faith, and Romulo was the prevailing party. Finally, Romulo requests an award of attorney fees and costs in this appeal as it is frivolous and brought in bad faith.

10/26/2011  
[Date]

Respectfully submitted,



JOSHUA C. WHEELER  
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Law Offices of Roberta E. Doyle  
Attorney for Romulo Sarausad

DECLARATION OF SERVICE

JENNIFER LACOSTE certifies as follows:

I am the legal assistant for the Law Offices of Roberta E. Doyle. I am over the age of eighteen (18) years of age and make this declaration based on personal knowledge.

On October 26, 2011, I mailed the foregoing Brief of Respondent and Appendix to Ms. Rosa Sarausad at 4606-230<sup>th</sup> Terrace SE, Sammamish, WA 98075.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on October 26 2011.

  
\_\_\_\_\_  
Jennifer LaCoste  
Legal Assistant

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