

No. 69566-5-I

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WASHINGTON STATE COURT OF APPEALS, DIVISION I

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KAREN V. AGARS,

Appellant,

v.

ROLLAND M. WATERS,

Respondent,

And

CRAY, INC.,

Garnishee Defendant.

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JULIA S. GRIFFIN

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**RESPONDENT'S BRIEF**

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ORIGINAL

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## I. INTRODUCTION

At its core, this case is a continuation of years of post-marital proceedings between Appellant Karen V. Agars and Respondent Rolland M. Waters. The parties were divorced after six years of marriage on March 9, 2007. The marriage included the birth of a son, Rolland “Gus” Waters. In the years following the marriage, the parties have found themselves in several post-decree court proceedings and before the Washington Department of Social and Health Services. Unfortunately, many of these proceedings were initiated by Ms. Agars for financial gain to which she was not entitled, commonly at the expense of Mr. Waters.

On June 7, 2012, Ms. Agars wrongfully filed a Writ of Garnishment for wages against Mr. Waters, thereby initiating the most recent in a string of actions for pecuniary gain to which she was not entitled. Ms. Agars contends that the garnishment was for an outstanding judgment entered within a broadly drafted Temporary Order in the midst of the parties’ divorce over six years ago. However, the judgment did not survive the divorce, instead terminating when the parties executed a comprehensive, all inclusive property settlement agreement (“CR2A Agreement”) which sought to conclusively determine the final resolution of all issues between the parties. The CR2A Agreement was subsequently incorporated into the parties’ Decree of Dissolution.

Upon receipt of Ms. Agars Writ of Garnishment, Mr. Waters duly filed a Motion to Quash the Garnishment, setting off a new series of post-decree court filings leading to the appeal at bar. The trial court ultimately quashed Ms. Agars' Writ, holding *inter alia* 1) that the post-decree actions of the parties evidenced their intent that the earlier judgment was to be incorporated into their CR2A Agreement, thereby terminating said judgment, and 2) that the Writ of Garnishment was knowingly obtained without a legal basis, thus invoking sanctions pursuant to CR 11. CP 175. Mr. Waters was awarded attorney's fees and costs for successfully controverting the Writ with trial court incorporating CR 11 sanctions against Ms. Agars into said costs. CP 395.

On appeal, Ms. Agars contends that the trial court improperly quashed the Writ. Fundamentally, Ms. Agars attacks the trial court's order as resting on inadmissible factual evidence and for failing to recognize that the judgment had survived the divorce. In particular, Ms. Agars vehemently objects to the introduction of evidence by Mr. Waters of prior, post-decree court and administrative agency filings undertaken by Ms. Agars which evidence a pattern of improper efforts to obtain pecuniary gains to which she was not entitled, commonly at Mr. Waters' expense.

Mr. Waters respectfully requests that this court affirm the trial court's Order Quashing Garnishment and corresponding Order and

Judgment. Mr. Waters further requests attorney's fees and imposition of sanctions on appeal.

## **II. ASSIGNMENTS OF ERROR**

Mr. Waters assigns no error to the trial court proceedings.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Mr. Waters disagrees with Ms. Agars' statement of the issues on appeal, which are more properly stated as follows:

1. Whether the trial court properly granted Mr. Waters Motion to Quash Ms. Agars' Writ of Garnishment when it found that the judgment upon which it was founded had been incorporated into the parties Decree of Dissolution.
2. Whether the trial court properly awarded Mr. Waters reasonable attorney's fees and costs for successfully controverting Ms. Agars' Writ of Garnishment.
3. Whether the trial court properly incorporated CR 11 sanctions into Mr. Waters' attorney's fees and costs for Ms. Agars knowingly filing a groundless Writ of Garnishment.
4. Whether the trial court properly admitted into evidence Ms. Agars documented history of court and administrative agency proceedings for pecuniary gains and/or benefits to which she was not entitled.

5. Whether Mr. Waters is entitled to reimbursement of his attorney's fees and costs on appeal.
6. Whether Mr. Waters is entitled to sanctions on appeal.

#### **IV. RESTATEMENT OF THE CASE**

##### **A. Factual Background.**

Appellant Karen V. Agars (hereinafter "Ms. Agars") and Respondent M. Rolland Waters (hereinafter "Mr. Waters") were married on March 3, 1999. CP 11. On December 17, 2000, Ms. Agars gave birth to their son, Rolland "Gus" Waters. CP 69. Subsequently, on December 15, 2005, Ms. Agars filed a Petition for Dissolution in King County Superior Court. CP 51. Both parties were represented by counsel during the pendency of the dissolution; throughout the entirety of the dissolution, Ms. Agars was represented by her counsel in the case at bar, Mr. Matthew Cooper. CP 97.

During the course of the proceedings Ms. Agars filed a Motion for Temporary Orders and, on June 7, 2006, the trial court entered a Temporary Order setting forth temporary relief, including but not limited to temporary maintenance, a Temporary Parenting Plan and a Temporary Order of Child Support. CP 1. Within the Temporary Order, Ms. Agars was awarded a judgment for attorney's fees in the amount of \$5,000.00, to which she was identified as the judgment creditor. CP 2.

Subsequently, on January 29, 2007, the parties executed a Separation Contract and CR2A Agreement (“CR2A Agreement”) which was duly executed by both parties and their respective counsel. CP 403, 414. The CR2A Agreement sought to comprehensively and conclusively determine the final resolution of all issues between the parties, including the distribution of all property and liabilities, spousal maintenance, and the residential provisions and support of their son. CP 403.

The preamble to the CR2A Agreement declares in relevant part: “In consideration of the mutual promises and agreements and other good and valuable consideration herein expressed, the parties hereby stipulate and agree to make a *complete and final settlement* of all their marital property rights and obligations . . .” Id. On March 9, 2007, the dissolution was finalized with entry of a Decree of Dissolution expressly incorporating the CR2A Agreement. CP 8.<sup>1</sup>

At the time of entry of the Decree, the judgment for attorney’s fees within the earlier June 7, 2006, Temporary Order had not been paid. However, neither the CR2A Agreement nor the Decree of Dissolution contain any provision carrying forward or reserving said judgment. The only reference to attorney’s fees in either document are waivers to said

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<sup>1</sup> Within the Final Parenting Plan, Ms. Agars was designated the custodial parent of Gus Waters.

fees. Paragraph 12 of the CR2A Agreement provides: “Attorney Fees Waived. Neither party shall pay any attorney fees or costs to or for the benefit of the other party.” CP 407. Paragraph 3.13 of the Decree provides: “Attorney Fees, Other Professional Fees and Costs Does not apply.”<sup>2</sup> CP 9.

Subsequent to entry of the Decree, the parties found themselves locked in a continuing series of court filings, petitions and motions for post-decree relief, ultimately leading to the dispute in the case at bar.

- 1. After the Decree of Dissolution, both parties separately relocate to Idaho. Mr. Waters was subsequently granted custody of his son.**

After entry of the King County Decree, the parties separately relocated to Bonner County, Idaho. CP 54. On April 18, 2008, Mr. Waters filed a Petition to Modify Child Custody in Bonner County District Court seeking primary custody of his son, alleging in part that Ms. Agars had been diagnosed with bi-polar disorder but was refusing to comply with, or receive, medical treatment. *Id.* On August 29, 2008, the Bonner

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<sup>2</sup> The CR2A Agreement also contains a mandatory arbitration provision: “Each party agrees and stipulates that all disputes in reducing this agreement to documents and orders, *including resolution of any issues inadvertently omitted from the agreement* but necessary to final disposition of this matter, shall be subject to binding arbitration.” CP 414 (emphasis added).

County District Court granted Mr. Water's Petition, entering an Order to Modify Custody. CP 69.<sup>3</sup>

On April 21, 2009, Mr. Waters filed a subsequent Petition to Modify in Regard to Child Custody and Child Support when his employment in Idaho ended and Ms. Agars objected to their son's relocation back to Seattle. CP 54. Although Ms. Agars herself moved back to Washington State in August, 2009, she continued to object to Mr. Waters' relocation, forcing the matter to full trial. CP 55 (fn.2) 75. On September 16, 2009, the Idaho District Court entered a second Order to Modify Custody allowing Mr. Waters to return to Seattle with his son. CP 75. The Idaho trial court also ordered Ms. Agars to pay Mr. Waters child support. CP 77.

Within the Modification Order, the Idaho District Court implicitly recognized the potential for continuing litigation between the parties and the reality of both parents returning to Washington but to separate communities: "[t]he Court hereby submits that this [Order] should be *a long term solution for custody. And the Court would have established the same custody arrangement if the parties were in the same community.*" CP 79 (emphasis added).

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<sup>3</sup> The Bonner County District Court temporarily reserved the issue of child support because Ms. Agars was unemployed at the time of entry of the order. CP 73.

**2. Ms. Agars brings forth several claims for monetary relief in Washington State while Idaho continued to retain jurisdiction over the parties and their son.**

Despite the Idaho District Court Orders pertaining to custody and child support, on or about August 1, 2010, Ms. Agars inexplicably filed for Child Support with the Washington Department of Social and Health Services (“DSHS”). CP 353. In her application for support, Ms. Agars’ falsely represented to DSHS that she was the designated custodial parent. Id.

On August 31, 2010, DSHS closed Ms. Agar’s file after determining that Mr. Waters was, in fact, the custodial parent and that no monies were due to Ms. Agars because the Idaho District Court had returned her son to the care of Mr. Waters. CP 83-84.

Upon receiving notice from DSHS that Ms. Agars had filed her application for support, on August 9, 2010, Mr. Waters obtained an Order to Show Cause for Contempt in the Idaho District Court alleging that Ms. Agars had falsely represented to DSHS that she was the designated custodial parent and was asking for child support. CP 82.

Shortly thereafter, on November 2, 2010, Mr. Waters filed a second Motion for an Order to Show Cause in the Idaho District Court because Ms. Agars was continuing to ignore her obligation to pay child support. CP 88.

On October 14, 2010, Ms. Agars opened a new case before the King County Superior Court, suddenly filing a Petition for Modification of Parenting Plan and Child Support. CP 89. On January 28, 2011, the King County trial court denied all of Ms. Agars' requests for relief, finding no adequate cause for custody modification or a substantial change of circumstances for support modification. CP 92-93. In denying Ms. Agars' Petition for Adequate Cause, arguably to deter future frivolous filings, the King County Superior Court held:

Attorney fees are reserved. If the mother brings a similar motion for modification of child support or adequate cause re: visitation schedule that the court concludes is improper, the father shall be entitled to attorney fees for said motions *as well as these current motions heard on this day.*

CP 92 (emphasis added).

## **B. Procedural Background.**

- 1. After being notified by Mr. Waters that the earlier 2006 judgment within the Temporary Order remained on record, Ms. Agars responded by filing a Writ of Garnishment seeking payment of the judgment.**

On March 9, 2012, Mr. Waters was in the midst of purchasing a home when he discovered through Chicago Title that the judgment from the June 7, 2006, Temporary Order remained on record. CP 344. He immediately brought the judgment to the attention of his former attorney, David Owens, in order to remove the judgment from remaining on record.

CP 97, 569. Mr. Waters further, and directly, contacted Ms. Agars' prior divorce attorney, Mr. Matthew Cooper for the same purpose. CP 569. Mr. Cooper responded that he had no knowledge of the judgment and that, if one remained, a Satisfaction of Judgment should be entered. CP 101, 103. Mr. Owens immediately sent Mr. Cooper a Satisfaction of Judgment for signature. CP 97, 102.<sup>4</sup> As Mr. Waters' divorce attorney has affirmed, "I am of the opinion that the judgment was incorporated into the parties' CR2A Agreement and should not remain on record." CP 98.

Suddenly, on June 7, 2012, Ms. Agars, through Mr. Cooper's office, filed an Affidavit of Garnishment for Wages against Mr. Waters before the King County Superior Court on the judgment for attorney's fees within the Temporary Order. CP 15. At no time prior to the filing of the underlying Writ of Garnishment did Ms. Agars -- or her counsel -- ever communicate to Mr. Waters, directly or indirectly, that the judgment within the June 7, 2006, Temporary Order remained outstanding or that they considered it valid. CP 57.

## **2. Mr. Waters' Motion to Quash the Writ of Garnishment.**

On August 16, 2012, Mr. Waters filed a Motion to Quash Ms. Agars' Writ of Garnishment. CP 26. Within Mr. Waters' Motion to

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<sup>4</sup> Mr. Waters regrettably admits that "[l]ooking back, the only error [we] made in finalizing the divorce was not following up and filing a Satisfaction of Judgment on or after our Decree was entered." CP 53.

Quash, he alleged *inter alia* that the judgment had been incorporated into, and terminated, by the all-inclusive intent of the parties' CR2A Agreement and Decree of Dissolution.<sup>5</sup> CP 38. Mr. Waters further alleged that Ms. Agars and her counsel knew that the judgment had terminated and, therefore, the Writ of Garnishment was frivolous; "the CR2A Agreement [was intended to] resolve all issues, and correspondingly satisfy the earlier judgment for attorney's fees." CP 51-52 (emphasis in original).

Mr. Waters further alleged that the Writ of Garnishment was part of a pattern of frivolous actions by Ms. Agars, several of which were undertaken with the intent of obtaining financial gains and benefits to which she was not entitled, often at the expense of Mr. Waters. CP 53. In support of his allegation that Ms. Agars was engaged in a pattern of improper actions and proceedings for pecuniary gain to which she was not entitled, Mr. Waters brought to the trial court's attention several prior actions evidencing said pattern. *Id.* In particular, Mr. Waters brought the following actions to the trial court's attention:

1. Ms. Agars filed for child support before the Washington Department of Social and Health Services, falsely representing that she was the custodial parent. CP 54, 353.

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<sup>5</sup> Due to the a scheduling error discussed below, two separate Motions to Quash were filed, further resulting in two separate response briefs and two separate reply briefs being on file with the court. CP 27, 34. However, only the second set of pleadings was before the trial court on hearing and, therefore, only the second set of pleadings will be cited to herein.

2. After entry of the Idaho District Court order granting Mr. Waters child support, Ms. Agars continued to receive child support from Mr. Waters to which she was not entitled, resulting in an overpayment in the approximate amount \$8,000, and to which she had not paid back.<sup>6</sup> CP 54, 426-427.
3. Since entry of the September 16, 2009, Idaho District Court order to pay Mr. Waters child support, Ms. Agars had failed to pay *any* support, thereby being in arrears in the approximate amount of \$13,197.45.<sup>7</sup> CP 55. See also CP 77.
4. Ms. Agars filed Motions for Adequate Cause and Temporary Orders for Modification of a Parenting Plan and Child Support before King County Superior Court while the Idaho District Court case was still active. CP 55. Despite being the child support obligor, within her Petition for Modification of Parenting Plan and Child Support, Ms. Agars strangely alleged that child support modification was necessary because the Idaho District Court order granting Mr. Waters child support was too low for *her* needs; Ms. Agars alleged that the Idaho support order was “set too low and creates a disproportionate discrepancy which creates severe economic hardship for the child while he resides with the Mother. The current order does not provide for health/medical related long distance transportation costs, special educational expenses or . . . summer child care expenses.” CP 91. This statement was made although Mr. Waters is the custodial parent and despite the fact that Ms. Agars continues to refuse to paid her court ordered child support.
5. On June 15, 2011, Ms. Agars filed for Chapter 7 before the United States Bankruptcy Court for the Eastern District of

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<sup>6</sup> The overpayments were due to an error by the bank where Mr. Waters previously maintained an account for the purpose of paying Ms. Agars child support via automatic, electronic transfer. CP 54, 426-427.

<sup>7</sup> As recently as the hearing on the Writ of Garnishment, Ms. Agars was still refusing to pay Mr. Water her court ordered child support. CP 55.

Washington. CP 418. Ms. Agars falsely affirmed to the Bankruptcy Court that she held a \$19,406.40 asset consisting of “Estimated Child Support Owed to Debtor.” CP 421. In her listing of Current Expenditures, Ms. Agars further and falsely affirmed that she was paying Mr. Waters \$377.00 in “[a]limony, maintenance, and support.” CP 422.

Within his Motion to Quash, Mr. Waters pled for attorney’s fees pursuant to RCW 6.27.230. CP 47. Finally, following his allegation that the Writ was frivolous and in furtherance of a pattern of financial harassment by Ms. Agars, Mr. Waters requested sanctions pursuant to CR 11.<sup>8</sup> CP 49.

In her Response to the Motion to Quash, Ms. Agars argued that the judgment within the Temporary Order survived the CR2A Agreement and Decree of Dissolution because it was not marital property or a marital obligation. CP 121. Conversely, she argued the CR2A Agreement served to preserve the judgment. *Id.* Ms. Agars further argued that Mr. Waters’ introduction of her earlier actions and proceedings before courts and administrative agencies was improper and should be sanctioned pursuant to CR 11. CP 126.

Ms. Agars did not file an affidavit countering Mr. Waters’ factual contentions, instead choosing to rely upon her attorney’s “First Revised

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<sup>8</sup> Mr. Waters further argued that if the judgment actually survived the divorce, the arbitration provision within the CR2A Agreement required Ms. Agars to submit the matter to arbitration before resorting to garnishment. CP 46-47.

Responsive Certification.” CP 119. Her Response is somewhat difficult to classify; in substantial part Ms. Agars’ Response seeks to counter Mr. Waters’ allegations by the first person accounting of Mr. Cooper, yet it is not signed under the penalty of perjury, nor otherwise conforms with RCW 9A.72.085. Id. See also CP 127. More glaringly, Ms. Agars’ Response did not challenge a single assertion of fact by Mr. Waters.

In his Reply, Mr. Waters argued that not only was the CR2A Agreement intended to incorporate the Temporary Orders judgment, but that Ms. Agars’ credibility and motives were properly before the trial court for consideration. CP 159-161.

The Motion to Quash was originally scheduled on the August 24, 2012, King County Superior Court Ex Parte Calendar but was continued to September 5, 2012. Both counsel for Ms. Agars and Mr. Waters appeared at said hearing but were told by the Commissioner that the matter was improperly noted and that it should have been noted on the Chief Civil Calendar. CP 39 (fn.1). To accommodate scheduling conflicts of counsel, the Motion to Quash was re-noted for October 17, 2012, in front of the presiding Chief Civil Judge for King County Superior Court, the Honorable Laura Inveen.<sup>9</sup>

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<sup>9</sup> As noted above, only the second set of pleadings were before Judge Inveen on October 17, 2012, when the matter came on for oral argument.

### **3. Ms. Agars' Cross Motion for CR 11 Sanctions.**

Prior to the hearing on Mr. Waters' re-noted Motion, on October 17, 2012, Ms. Agars filed a Cross Motion for CR 11 Sanctions to be heard contemporaneously with the Motion to Quash. CP 107. Within her Cross Motion, Ms. Agars argues that the Motion to Quash is improper in part because Mr. Waters purported "to have CR 11 sanctions entered regarding pleadings filed months or years ago in other courts regarding other matters, none of which are relevant here." CP 109. In short, Ms. Agars argued that Mr. Waters should be sanctioned for seeking to introduce evidence of her aforementioned actions and court proceedings. However, at no time did Ms. Agars file a Motion to Strike said evidence within her Response to the Motion to Quash or within her Cross Motion for Sanctions.

In Response to the Cross Motion, Mr. Waters argued that his Motion to Quash was both legally and factually sound and, more fundamentally, that Ms. Agars was not properly invoking CR 11 for the purposes for which it is designed. CP 110. Ms. Agars did not file a Reply.

### **4. Hearing on Motion to Quash.**

On October 17, 2012, the Chief Civil Judge for King County Superior Court, the Honorable Laura Inveen, heard oral argument on Mr.

Waters' Motion to Quash and Ms. Agars' Cross Motion for Sanctions. It is clear from the record on hearing for oral argument that the trial court's order included, in part, consideration of Ms. Agars' aforementioned, prior actions. See Verbatim Report of Proceedings ("VRP"), 21-23. In issuing the court's ruling, Judge Inveen found as follows:

I find that clearly the CR 2A agreement in -- was an attempt and in fact did incorporate all of the claims between the parties, including the \$5,000 what we call judgment. . . . [I]t is absolutely clear from reading the -- the clear four corners of the written agreements that everything was taken care of.

[I]f one needed to go out of the four corners of the document, if it was in fact ambiguous, the actions of all of the parties are consistent with it being a final resolution and that there not be a judgment out there.

. . . .

The only time that this [judgment] came to light was when Mr. Waters was trying to get a loan, 2012, what, five or so years later. He's the one that brought it to the folks' attention. It's pretty darn clear Ms. Agars never thought she was owed any money, because over the course of the litigation that's shown in the record, she's been ordered to pay money to Mr. Waters. She hasn't paid. And you'd certainly think that if she thought he owed her money, she would have said hey, let's offset. She didn't do that. She didn't -- she didn't put in her bankruptcy petition that she had a judgment in her favor.

So for a variety of reasons, I just think that the evidence is unrebutted that that judgment was satisfied when the CR 2A agreement was entered and the final dissolution documents were entered.

And I have to find that for a variety of legal reasons, Mr. Waters is entitled to his attorney's fees for purposes of having to quash this garnishment. I -- I find that it was made in bad faith. Ms. Agars knew that she wasn't entitled to this money. It is very, very clear from her behavior over the course of the proceedings she knew that she wasn't -- not entitled to this money for the reasons that I've just stated. I -- so I find that it was in violation of CR 11. And the CR 2A agreement also references the costs of attorney's fees for purposes of having to interpret that. And then of course there's the statutory provision in RCW 6.27, which authorizes the prevailing party to have attorney's fees.

. . . I am finding was that the judgment was satisfied back when the final documentation was entered. . . . [W]ith regards to the amount of attorney's fees, I would suggest that that should be determined by way of a motion without oral argument.

Id.<sup>10</sup>

Judge Inveen duly issued an Order Quashing Garnishment, holding in relevant part that “the CR2A Agreement incorporated all of the claims of the parties, including the judgment” and that Ms. Agars’ Writ of Garnishment was “without legal basis.” CP 176. Attorney’s fees were reserved with Judge Inveen instructing Mr. Waters to submit a motion for attorney’s fees without oral argument. VRP 23-24. Finally, Judge Inveen imposed CR 11 sanctions, which were to consist of Mr. Waters’ award of attorney’s fees. Id., 24.

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<sup>10</sup> Judge Inveen noted for the record that Ms. Agars’ objections to Mr. Waters’ introduction of her earlier proceedings were on record and noted. VRP 11. Mr. Waters countered that the probative value of said proceedings outweighed any prejudice alleged by Ms. Agars. VRP 11-12.

#### **5. Motion to Approve Attorney's Fees and Costs.**

Per Judge Inveen's instructions, on October 29, 2012, Mr. Waters submitted a Motion to Approve Attorney's Fees and Costs. CP 178. Mr. Waters requested reasonable attorneys' fees and costs in the amount of \$7,127.05, "plus any amounts incurred [] in reviewing [Ms.] Agars' objections to [the] Motion, [and] for drafting a Reply to said objection, if necessary." CP 181.

On November 2, 2012, Ms. Agars filed a Response to Mr. Waters' Motion for Attorney's Fees. CP 328. However, instead of limiting her argument to the reasonableness of the attorney's fees, Ms. Agars argued that Judge Inveen's underlying order that the Writ was without legal basis and based upon inadmissible evidence. See generally id., CP 208-212.

Ms. Agars filed a supporting affidavit in Response, within which for the first time she attacked the underlying facts alleged in Mr. Waters' Motion to Quash. CP 208. The affidavit discusses in detail her version of the factual history presented by Mr. Waters. CP 208-212. Attached to her affidavit in support were numerous exhibits in support of her contention that Mr. Waters version of the facts was incorrect and that the trial court

had not properly considered the evidence in granting his Motion to Quash.<sup>11</sup> CP 208-212.

In Reply, Mr. Waters argued for additional sanctions against both Ms. Agars and her counsel, jointly and severally, for her attempt to reopen the Motion to Quash and improperly introduce new evidence into the record. CP 338, 343. Mr. Waters further sought additional attorney's fees for having to respond to Ms. Agars' "needless increase in the cost of litigation." See generally id.

Ultimately, on November 7, 2012, Judge Inveen entered an award of attorney's fee and costs in the amount originally requested within Mr. Waters initial Motion for Fees: \$7,127.05. CP 396. However, Judge Inveen reserved the option of additional sanctions. Within the Order and Judgment, Judge Inveen crossed out the following sentence: "If willful disregard and noncompliance of the Court's orders persist, the Court will award additional sanctions." CP 397. Immediately following the deletion is a notation by Judge Inveen that said provision is reserved. CP 397.

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<sup>11</sup> Ms. Agars' Response affidavit appears to have been advanced as a Motion for Reconsideration, although no such motion was ever formally submitted by her.

## V. ARGUMENT

### A. **The Standard of Review on the Order Quashing Garnishment is the Substantial Evidence Standard or, in the Alternative, an Abuse of Discretion.**

At its essence, the underlying dispute involves the question as to whether the parties to a divorce intended that a judgment entered within a Temporary Order, but never paid, survives their Decree of Dissolution. Despite best efforts by Ms. Agars to argue that the case at bar is a simple matter of contract and thus the standard of review is *de novo*, it is not so summarily confined. In the context of domestic relations, appellate courts are reluctant to make determinations of credibility or motive. As our Supreme Court has noted,

The general rule relating to *de novo* review applies only when the trial court has not *seen* or heard testimony requiring it to assess the credibility of the witnesses. Here, where the proceeding at the trial court turned on credibility determinations and a factual finding of bad faith, it seems entirely appropriate for a reviewing court to apply a substantial evidence standard of review.

In re Marriage of Rideout, 150 Wn.2d 337, 352, 77 P.3d 1174 (2003)(internal citation omitted)(emphasis in original).

In Rideout, *supra*, the Supreme Court was faced with a similar question of the appropriate standard of review in the context of domestic relations. At issue was a finding of contempt based on affidavits alone.

The Rideout court upheld the trial court's finding of contempt, holding the appropriate standard of review is the substantial evidence standard.

The application of the substantial evidence standard in cases such as this is a narrow exception to the general rule that where a trial court considers only documents, such as parties' declarations, in reaching its decision, the appellate court may review such cases de novo because that court is in the same position as trial courts to review written submissions.

Although an argument can and indeed has been advanced that the appellate court is in as good a position to judge credibility of witnesses when the record is entirely documentary, we reject that argument. As we noted in Jannot, [] trial judges and court commissioners routinely hear family law matters. In our view, they are better equipped to make credibility determinations.

Id., at 351 (internally citing In re Parentage of Jannot, 149 Wn.2d 123, 65 P.3d 664 (2003)).

At issue in Jannot, supra, was a denial of adequate cause to modify custody based on affidavits alone. The Jannot court noted "we recognize that a trial judge generally evaluates fact based domestic relations issues more frequently than an appellate judge and a trial judge's day-to-day experience warrants deference upon review." Jannot, 149 Wn.2d, at 126. The Jannot court ultimately employed an abuse of discretion standard.

[A] trial judge does stand in a better position than an appellate judge to decide whether submitted affidavits establish adequate cause for a full hearing on a petition to modify a parenting plan. We . . . hold that an appellate court may overturn a trial court's . . . adequate cause

determination only if the trial court has abused its discretion.

Id., at 128.<sup>12</sup>

The present dispute arises out of a post-marital decree action between two parties who have a well-documented history of court and administrative filings over their respective rights arising from their underlying Decree of Dissolution. This case presents as an example of precisely the type of continuing post-decree domestic relations disputes that the appellate courts abhor. "[I]n the area of domestic relations, the appellate courts have granted deference to the trial court because '[t]he emotional and financial interests affected by such decisions are best served by finality,' and de novo review may encourage appeals." Jannot, 149 Wn.2d at 127 (quoting In re Marriage of Landry, 103 Wn.2d 807, 809, 699 P.2d 214 (1985)). A better description of the personal dynamics presented within case at bar is hard to imagine.

Ms. Agars makes reference to the provision within the CR2A Agreement that the Agreement is intended to "retain its status independently as a contract," yet she cannot escape the ultimate

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<sup>12</sup> The decision of a trial court whether to vacate a domestic relations order under CR 60 is also reviewed under an abuse of discretion standard. In re Marriage of Moody, 137 Wn.2d 979, 986, 976 P.2d 1240 (1999). "The granting of a motion to vacate a judgment is directed to the discretion of the trial court, and will not be reversed in the absence of a manifest abuse of that discretion." Gustafson v. Gustafson, 54 Wn. App. 66, 70, 772 P.2d 1031 (1989).

conclusion that the Agreement expressly *preserves* the right of the parties to enforce it pursuant to principles of domestic relations, “*specifically including the use of the contempt power of the court*, in the event a decree of dissolution or legal separation is granted.” CP 412-413 (emphasis added).<sup>13</sup>

The cases cited by Ms. Agars to support de novo review are either inapplicable or inapposite; the underlying trial court decisions in the cases cited by Ms. Agars did not involve determinations of the credibility or motive. See also Rideout, at 150 (discussing the inapplicability to domestic relations of the very cases cited in support of de novo review by Ms. Agars, including Progressive Animal Welfare Soc’y v. Univ. of Wash., 125 Wash.2d 243, 252, 884 P.2d 592 (1994), and Smith v. Skagit County, 75 Wash.2d 715, 718, 453 P.2d 832 (1969)).<sup>14</sup>

Regardless, as explained below, even assuming that the standard of review on the Order Quashing Garnishment is de novo, the evidence

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<sup>13</sup> With respect to enforcement of property settlement agreements our Supreme Court has made clear that “contempt proceedings are a proper remedy to enforce the court’s order with respect to property settlements — whether or not the settlement was previously agreed to by the parties, so long as it is embodied or incorporated by reference in the divorce decree.” Decker v. Decker, 52 Wash.2d 456, 465, 326 P.2d 332 (1958).

<sup>14</sup> Ms. Agars further cites to 224 Westlake, LLC v. Engstrom Properties, LLC, 169 Wn. App. 700, 281 P.3d 693 (2012). However, at issue 224 Westlake was interpretation of a real estate contract in the context of a summary judgment proceeding, a decision unquestionably requiring de novo review. “The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court.” Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

before the trial court conclusively establishes that the judgment within the Temporary Order did not survive the divorce.

**B. A Trial Court's Rulings under CR 11 is Reviewed Under an Abuse of Discretion Standard.**

Deference to the trial court is particularly appropriate when it imposes CR 11 sanctions. Washington State Physicians Ins. Exch. & Assoc., v. Fisons Corp., 122 Wn.2d 299, 338, 858 P.2d 1054 (1993)(“Decisions granting sanctions are reviewed for abuse of discretion.”). “The abuse of discretion standard again recognizes that deference is owed to the judicial actor who is ‘better positioned than another to decide the issue in question.’” Id., at 339, citing Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 403, 110 S.Ct. 2447 (1990), quoting Miller v. Fenton, 474 U.S. 104, 114, 106 S.Ct. 445 (1985).

**C. The Judgment within the Temporary Order was Incorporated into the Parties’ Decree of Dissolution. The Judgment did not Survive the Divorce.**

Once a property settlement agreement merges into a Decree of Dissolution, a party may only bring suit upon the Decree. “Where a property settlement agreement is approved by a divorce decree, the rights of the parties rest upon the decree rather than the property settlement.” Mickens v. Mickens, 62 Wn.2d 876, 881-82, 385 P.2d 14 (1963), citing

United Benefit Life Ins. Co. v. Price, 46 Wn. (2d) 587, 283 P. (2d) 119 (1955).

Even under the heightened de novo standard of review, the judgment was unambiguously incorporated into the CR2A Agreement and failed to survive the parties' divorce. Monies other than child support which are owed under a Temporary Order but not paid at the time of entry of the Decree terminate upon its entry. "A temporary order, temporary restraining order, or preliminary injunction: [t]erminates when the final decree is entered . . ." RCW 26.09.060(10)(c).

In the context of the termination of spousal support provided for within a Temporary Order but not carried forward into a Decree of Dissolution, Division I has noted that "the presumption is that *all the rights of the parties* were determined in the divorce decree and it is further presumed [temporary support] was taken into consideration by the court in the distribution of the property." Wagner v. Wagner, 1 Wn. App. 328, 332, 461 P.2d 577 (1969). See also Furgason v. Furgason, 1 Wn. App. 859, 860, 465 P.2d 187 (1970)("[a] decree of divorce is the final adjudication of the rights and obligations of the parties, one to the other. It determines all rights and obligation concerning matters in existence during coverture. A temporary order for support is an incidental order, intended to facilitate the conduct of the suit.").

The Furgason court quoted with approval a New Jersey decision holding that a Temporary Order will not survive a Decree of Dissolution without express reference to it within the Decree: “Every preceding order in the suit is terminated upon entry of the final decree unless there be an express reservation. It must be assumed that the decree settles and disposes of the whole controversy between the parties *and of everything incidental or ancillary thereto.*” Id., quoting with approval Lief v. Lief, 14 N.J. Misc. 27, 29, 178 A. 762 (1935)(emphasis added).

**D. The CR2A Agreement Unambiguously Disposes of all Rights Between the Parties and Terminates the Judgment within the Temporary Order.**

“When a property settlement is approved by a divorce decree, the rights of the parties rest upon the decree.” Aetna Life Ins. Co. v. Wadsworth, 36 Wn. App. 365, 675 P.2d 604, rev'd on other grounds, 102 Wn.2d 652, 689 P.2d 46 (1984), citing United Benefit, 46 Wn.2d at 588.

Construction of [a] decree and any contract incorporated therein is a question of law. Interpretation by the reviewing court must be based upon the intent of the parties as reflected in the language of the agreement. The court may not add to the terms of the agreement or impose obligations that did not previously exist[.]. Nor can a court make a contract for the parties based upon general considerations of abstract justice.

Byrne v. Ackerlund, 108 Wn.2d 445, 455, 739 P.2d 1138 (1987). In the case at bar, there is no ambiguity. The plain language of the CR2A

Agreement clearly declares that it was intended to be the final disposition of all issues between the parties. Indeed, the Agreement references its intent of finality in several provisions, including but not limited to satisfying the Temporary Order judgment for attorney's fees.

The plain language of the CR2A Agreement is unambiguous in its intent to be all-inclusive and "make a *complete and final settlement of all [of the parties'] marital property rights and obligations . . .*" CP 403 (emphasis added).

The all-inclusive intent of the CR2A Agreement is further memorialized in Paragraph 32 of the Agreement:

*Entire Contract. This contract embodies all of the agreements of the parties concerning the disposition of property and property rights and all other issues between them. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied upon by either party with respect to the subject matter of this contract. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby. This contract by its terms, nature and purpose, contemplates and intends that each and all of its parts are interdependent and common to one another and to the consideration and the contract is therefore "entire," rather than "severable."*

CP 413 (emphasis added). A more comprehensive declaration of the intent of the parties to construct the CR2A Agreement as all-inclusive is hard to imagine.

Paragraph 6 of the CR2A Agreement further provides “[e]xcept as otherwise specifically provided herein, the table of assets and liabilities attached hereto is approved and agreed to by the parties as the *final distribution* of assets and liabilities listed therein.” CP 405 (emphasis added). The table of assets and liabilities attached to the CR2A Agreement is all-inclusive as to any and all obligations arising out of the dissolution proceedings. CP 416. At the bottom of the table of assets and liabilities ledger, the parties purposefully left blank the line item for “[r]eimbursements owed outside the division of community property” (i.e., the “Husband owes wife” zero). Id.

Paragraph 18 waives “any and all [other] claims by the other party for injuries or losses, *known or unknown, foreseen and unforeseen, which have accrued up to the date of execution of this agreement*, arising out of the marriage or any other relationship. CP 408 (emphasis added).

Nowhere within the CR2A Agreement or Decree of Dissolution is there any provision contemplating that the June 7, 2006 judgment for attorney’s fees was intended to remain standing. Indeed, Paragraph 12 of the CR2A Agreement expressly provides that such fees are waived: “Attorney Fees Waived. Neither party shall pay *any* attorney fees or costs to or for the benefit of the other party.” CP 407. See also CP 9.

**1. The judgment is deemed satisfied by the consideration given by the parties in entering the CR2A Agreement.**

The contention that the CR2A Agreement did not operate to terminate the judgment is not well taken. Contrary to Ms. Agars' contention that only formal payment will operate to effectuate satisfaction of the judgment, a judgment may be deemed satisfied provided sufficient consideration is provided by the parties to a settlement contract. Rogich v. Dressel, 45 Wn.2d 829, 843, 278 P.2d 367 (1954)(stating that in a settlement, consideration takes the form of payment and release of claims, acting as an accord and satisfaction). There is no dispute between the parties that the CR2A comports with the necessary contractual element of consideration. Such consideration in the case at bar is evident in the parties agreeing to "final resolution of *all issues* between the parties." CP 403 (emphasis added).

**E. Ms. Agars Actions are Inconsistent with her Current Position that the Judgment Survived the Divorce.**

Ms. Agars would have the court conclude that the parties did not intend to incorporate the judgment within the Temporary Order into the CR2A Agreement and, through said incorporation, terminate the judgment. However, given her actions subsequent to entry of the Decree -- specifically her inaction on the disputed judgment until *Mr. Waters* brought it to her attention -- it defies imagination that Ms. Agars

considered the judgment to have survived. Since entry of the Decree, Ms. Agars has taken numerous actions for financial gain, several of them arguably fraudulent. By ignoring the judgment, her actions are not those of an individual who believes that they are entitled to said judgment.

When the parties to a separation agreement dispute its meaning, the court must ascertain and effectuate their intent at the time they formed the agreement. Generally, this is true even when the separation agreement has been incorporated in a dissolution decree, because the parties' intent will be the court's intent. *The intent of the parties is determined by examining their objective manifestations, including both the written agreement and the context within which it was executed.* If the agreement has only one reasonable meaning when viewed in context, that meaning necessarily reflects the parties' intent.

Boisen v. Burgess, 87 Wn. App. 912, 920, 943 P.2d 682 (1997), review denied, 134 Wn.2d 1014 (1998)(emphasis added)(footnotes omitted).<sup>15</sup>

**1. The CR2A Agreement requires binding arbitration to resolve any dispute arising Post-Decree to the Decree of Dissolution.**

Assuming for the sake of argument that the judgment survived the Decree of Dissolution, the CR2A Agreement mandates that any dispute arising Post-Decree that relates, directly or indirectly, to the dissolution shall be submitted to binding arbitration. “Each party agrees and

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<sup>15</sup> The Declaratory Judgment Act (RCW 7.24 et seq.) affords no relief to Ms. Agars. As discussed in In re Marriage of Mudgett, 41 Wn. App. 337, 341-42, 704 P.2d 169 (1985), where there is no ambiguity in a property settlement agreement, a declaratory judgment action is inappropriate. See also Byrne, 108 Wn.2d, at 453 (“A declaratory judgment action is not proper where there is no ambiguity in the decree or where a party seeks relief based upon unilateral mistake, unconscionability or public policy.”).

stipulates that all disputes in reducing this agreement to documents and orders, including resolution of *any issues inadvertently omitted from the agreement but necessary to final disposition of this matter*, shall be subject to binding arbitration.” CP 414 (emphasis added).

At no time until the filing of the her Writ of Garnishment did Ms. Agars ever make any demands upon Mr. Waters for a claim for payment of the judgment to which she is now claiming. The Writ should never have been filed; Ms. Agars was bound by the CR2A Agreement to bring her claim for the alleged attorney’s fees before arbitration for resolution. The Writ could have been quashed on that basis alone.

**F. Ms. Agars’ Evidentiary Objections are not Well Founded.  
Ms. Agars Credibility and Motive is in Issue.**

Where a party contends a garnishment is wrongful, the trial court may conduct several inquiries, including but not limited to conducting a trial on the disputed issues. “This is the process the garnishment statute, and specifically the controversion procedure, accommodates.” Bartel v. Zuckriegel, 112 Wn. App. 55, 65-66, 47 P.3d 581 (2002), citing E.B. Millar & Co. v. Plass, 11 Wash. 237, 238, 39 P. 956 (1895).

The decision as to whether to hold trial on controversion ordinarily lies within the sound discretion of the trial court. The garnishment statute allows, but does not require, an evidentiary hearing

and the trial court may decide a controverion of garnishment on affidavits alone.

Upon the expiration of the time for garnishee's response, the matter may be noted by any party for hearing before a commissioner or presiding judge for a determination whether an issue is presented that requires a trial. If a trial is required, it shall be noted as in other cases, but no pleadings shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the reply of the plaintiff or defendant controverting such answer, unless otherwise ordered by the court.

RCW 6.27.220. See also Bassett v. McCarty, 3 Wn.2d 488, 499-500, 101 P.2d 575 (1940)(affirming order quashing a writ of garnishment without trial where a verdict that was the object of garnishment was not a debt subject to garnishment and the controverting affidavit presented no issue requiring resolution).

Ms. Agars asserts that her credibility is not at issue in the case at bar. Mr. Waters counters that on the question of credibility, her motive and her behaviors subsequent to the Decree is crucial. The “context rule” as adopted in Berg v. Hudesman, 115 Wash.2d 657, 801 P.2d 222 (1990) is illuminating. “In discerning the parties' intent, subsequent conduct of the contracting parties may be of aid, and the reasonableness of the parties' respective interpretations may also be a factor in interpreting a written contract.” Id., at 668. “*It is well established that subsequent acts and*

*conduct of the parties to the contract are admissible to assist in ascertaining their intent.” Id., at 677-678 (emphasis added).*

The court may consider (1) the subject matter and objective of the contract, (2) the circumstances surrounding the making of the contract, (3) *the subsequent conduct of the parties to the contract*, (4) *the reasonableness of the parties' respective interpretations*, (5) *statements made by the parties in preliminary negotiations*, (6) usages of trade, and (7) *the course of dealing between the parties*. Such evidence is admissible regardless of whether the contract language is deemed ambiguous.

Spectrum Glass Co. v. PUD of Snohomish County, 129 Wn. App. 303, 311, 119 P.3d 854 (2005).<sup>16</sup>

Ms. Agars' contention is further contrary to the settled law and the Rules of Evidence, particularly in the context of domestic relations. Her briefing on the merits consist of conclusory assertions regarding the interpretation of the CR2A Agreement without any discussion of the actual facts giving rise to said Agreement or to a discussion of its intent. Even her counsel was admittedly unaware that the judgment remained on record, a judgment he himself helped draft. CP 97-98.

Pursuant to Blair v. GIM Corp., 88 Wn. App. 475, 945 P.2d 1149 (1997), a Motion to Quash has the same statutory effect as the procedures

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<sup>16</sup> The enthusiasm of some courts to liberally construe the Berg decision was later tempered in Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005)(“We take this opportunity to acknowledge that Washington continues to follow the objective manifestation theory of contracts. . . the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used.”).

to controvert set forth in the garnishment statute. The statute “does not exclude the use of a more involved procedure in the form of a motion to quash a garnishment, *attacking the validity of an underlying judgment or the ability to collect it.*” Id., at 475 (emphasis added).

In her briefing before the trial court, Ms. Agars could not point to any authority that the court should not consider the credibility of the judgment creditor upon a Motion to Quash Garnishment wherein the debtor alleges the garnishment to be wrongful. The prior actions of Ms. Agars to which Mr. Waters points consist virtually entirely of representations made under oath to judicial and administrative tribunals – all for undue financial gain. The misrepresentations were not only relevant but material. “Where a case stands or falls on the [ ] belief or disbelief of essentially one witness, that witness' *credibility or motive must be subject to close scrutiny.*” State v. Roberts, 25 Wn. App. 830, 834, 611 P.2d 1297 (1980)(emphasis added)(citations omitted).

In this case, given Ms. Agars' documented pattern court and administrative filings for improper pecuniary gains and benefits, the probative of said actions outweigh any prejudice. Evidence is relevant if it has any tendency to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without it. ER 401. Evidence that is not relevant is not admissible. ER

402. ER 607 provides that any party can attack a witness's credibility. ER 608 provides that reputation evidence may be presented if it involves character for truthfulness or untruthfulness or as response if the other party has already attacked the witness by reputation evidence.

In the case at bar, Ms. Agars misrepresentations pointed to by Mr. Waters, all of which were under oath, and the majority of which were for financial gain to the detriment of Mr. Waters, were highly probative as to whether she had a good faith belief that the judgment was actually intended to survive the Decree of Dissolution. Her complete silence by not filing any responsive affidavits as to her misrepresentations before the state courts, the federal bankruptcy court and the Washington Department of Social and Health Services is glaring.

**G. The Award of Attorney' Fees was Appropriate and, in this Case, were Mandatory.**

The garnishment statute expressly provides for a mandatory award of attorney's fees. "RCW 6.27.230 provides for *mandatory* assessment of attorney's fees to a party who successfully opposes a writ of garnishment." Lindgren v. Lindgren, 58, Wash.App. 588, 598 (1990), review denied, 116 Wash.2d 1009 (1991)(emphasis added), citing Hinote's Home Furnishings, Inc. v. Olney & Pederson, Inc., 40 Wn. App. 879, 886 (1985).

The bad and/or good faith of a Ms. Agars' filing of her Writ is irrelevant on the issue of attorney's fees. "A prevailing party [under the garnishment statute] is entitled to attorney's fees *regardless* of whether the opposing party has presented frivolous arguments. The statute requires imposition of attorney's fees and gives the trial court *no discretion* to deny such fees in this circumstance." *Id.* (emphasis added).

The CR2A Agreement also provides for attorney's fees in the event either party is required to successfully prosecute or defend a claim under the Agreement. CP 409.<sup>17</sup>

- 1. The record is conspicuously absent of any affidavits in support of the Writ. Only after the trial court quashed her Writ did Ms. Agars submit an affidavit, and only then in response to the court-requested Motion for Attorney's Fees. Her affidavit inappropriately and belatedly attacks the evidence introduced by Mr. Waters and further improperly attacks the decision of the trial court.**

Before the trial court, Ms. Agars' Writ of Garnishment was prosecuted vigorously by her counsel. Perhaps this is not surprising given that the judgment within the Temporary Order was for attorneys' fees. Regardless, Ms. Agars did not submit any affidavit in support of the Writ.

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<sup>17</sup> The Agreement also contains a hold harmless provision referencing attorney's fees. CP 408.

The only affidavits in support of the Writ were filed by her counsel.<sup>18</sup> CP 15.

More likely, counsel for Ms. Agars may have intended to strategically skew the trial court record by refusing to file an affidavit on behalf of his client. If so, such a strategy is undermined by the submission of Ms. Agars' affidavit in Response to Mr. Waters' Motion to Approve Attorney's Fees and Costs. Ms. Agars should not now be rewarded with a remand in this case for failing to make timely, factual objections to Mr. Waters' factual presentation.

Within Ms. Agars' affidavit in opposition to said fees she seeks to relitigate her lost opportunity. See CP 208. Ms. Agars' affidavit is breathtaking in its scope and tenor. Unfortunately, Ms. Agars' counsel was complicit in her attempts to relitigate the case in such a haphazard and inappropriate method. CP 328.

**2. Counsel for Ms. Agars improperly continues to argue the merits of the Writ in his Response to Mr. Waters Motion to Approve Attorney's Fees and Costs.**

In his Response to Mr. Waters' Motion to Approve Attorney's Fees and Costs, counsel for Ms. Agars did not limit his discussion to the sole issue of the reasonableness of attorney's fees but instead continued to vehemently object to Mr. Waters' evidence. Moreover, not satisfied to

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<sup>18</sup> Arguably, this tactic has created the very situation contemplated by the hold harmless provision within both the CR2A Agreement and Decree of Dissolution.

even limit his objections to the evidence, counsel further argues -- in response to a motion for fees -- that the trial court's order was entered on "baseless" pleadings and inadmissible evidence; "[My] fees would have been significantly reduced if I was not required to review and respond to the respondent's *baseless motions*." CP 331(emphasis added). See also CP 330 ("My client also incurred fees for my having to review the *irrelevant material* contained in the respondent's motion documents *and for having to respond to his baseless motions*." )(emphasis added).

In his Response, counsel makes no distinction between the evidence presented and the wrongfulness of the Writ. Instead, counsel attempts to relitigate the case by arguing directly that the Motion to Quash was baseless.

Although it is unclear what motivated Ms. Agars' counsel to submit such pleadings after the fact -- except perhaps to skew the trial court record -- Ms. Agars' post-hearing submission, and that of her counsel, were more appropriately filed as a Motion for Reconsideration.<sup>19</sup> However, Ms. Agars failed to file a Motion for Reconsideration; her submissions -- to the extent that they seek to improperly introduce new

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<sup>19</sup> Although even a Motion for Reconsideration does not allow introduction of new evidence that was known to the parties. Pursuant to CR 59, newly discovered evidence must be that which the moving party "could not with reasonable diligence have discovered and produced at the trial." CR 59(a).

evidence – should be stricken from the appellate court’s consideration as to the merits of her Writ.

**H. The Trial Court’s Imposition of CR 11 Sanctions was not only Warranted, but Implemented Reasonably.**

A CR 11 inquiry may necessarily delve into motive and knowledge in examining the reasonableness of a party’s actions; in considering CR 11 sanctions, the court should inquire into "what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted" to determine if the attorney engaged in an appropriate level of pre-filing investigation. Bryant v. Joseph Tree Inc., 119 Wash.2d 210, 220, 829 P.2d 1099 (1992).

A lawsuit is legally frivolous under CR 11 when it is not based on a plausible view of the law. Id. See also Doe v. Spokane and Inland Empire Blood Bank, 55 Wn. App. 106, 780 P.2d 853 (1989); Miller v. Badgley, 51 Wn. App. 285, 753 P.2d 530 (1988).

The reasonableness of an attorney's inquiry is evaluated by an objective standard. CR 11 imposes a standard of ‘reasonableness under the circumstances’. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted.

Bryant, at 220 (citations omitted), quoting Miller, 51 Wn. App. At 299 (internal citations omitted).

Counsel for Ms. Agars 1) represented her in the dissolution under which the Temporary Order judgment arose, 2) was a party to the drafting and execution of the CR2A Agreement and Decree of Dissolution, and 3) despite representing Ms. Agars in the divorce, claimed no knowledge that the temporary judgment remained on record until Mr. Waters brought it to his attention. Such familiarity with the prior divorce proceedings should weigh heavily in the court's consideration of appropriate sanctions. As found by Judge Inveen,

The only time that this [judgment] came to light was when Mr. Waters was trying to get a loan, 2012, what, five or so years later. He's the one that brought it to the folks' attention. It's pretty darn clear Ms. Agars never thought she was owed any money, because over the course of the litigation that's shown in the record, she's been ordered to pay money to Mr. Waters. She hasn't paid. And you'd certainly think that if she thought he owed her money, she would have said hey, let's offset. She didn't do that. She didn't -- she didn't put in her bankruptcy petition that she had a judgment in her favor.

....

I find that [the Writ of Garnishment] was made in bad faith. Ms. Agars knew that she wasn't entitled to this money. It is very, very clear from her behavior over the course of the proceedings she knew that she wasn't -- not entitled to this money . . . so I find that it was in violation of CR 11.

VSP 22-23.

If any doubt about the trial court's decision to invoke CR 11 remains, the court need merely look to Ms. Agars' frivolous filings in

Response to Mr. Waters' Motion to Approve Attorney's Fees and Costs. The Response is a perfect example of the pure speculation and blinkered attempts to shift the burden of proof that defined her case from day one. Ms. Agars again frivolously engaged the trial court in her Response to a straight forward motion for fess -- a motion the trial court instructed Mr. Waters to file.

In her Response, Ms. Agars contended that the trial court did not rule upon the evidence Mr. Waters submitted in his Motion to Quash, and that said evidence served no legitimate purpose. Even now, Ms. Agars continues to object to the introduction into the record of her prior court and administrative actions. Her contentions are not only specious but untimely. Ms. Agars had ample time and opportunity to object to Mr. Waters' evidence or file a Motion to Strike. She did neither. Now, after being awarded sanctions by the trial court, she untimely argues that the Order to Quash was improper and based upon inadmissible evidence.

Incredibly, Ms. Agars not only questions the judgment of the trial court, but the Idaho District Court, the actions of her former bankruptcy attorney and the actions of the Washington Division of Child Support. Her aspersions of blame for her own conduct are endless and frivolous.

Ms. Agars makes bizarre allegations as to her Idaho court orders, her former bankruptcy attorney and the procedures of the Washington

Division of Child Support. See generally CP 207. All of her allegations are either untrue or founded upon wild assumptions as to the motives of these individuals and entities. More troubling is her counsel's active facilitation of these contentions.

“In making its determination [of sanctions], the trial court should use its discretion to fashion ‘appropriate’ sanctions. The rule provides that sanctions may be imposed upon the signing attorney, the party on whose behalf the response is made, or both.” Fisons Corp., 122 Wash.2d at 355. “The purposes of sanctions orders are to deter, to punish, to compensate and to educate.” Id., at 356.

In this case, the trial court did not stack CR 11 sanctions onto Mr. Waters' attorney's fees (despite being requested to do so by Mr. Waters). Judge Invven expressly held that the imposition of CR 11 sanctions would consist of no more than being acknowledged as part of Mr. Waters' attorney's fee award.

MR. MACDONALD:	Sanctions, Your Honor?
THE COURT:	Pardon me?
MR. MACDONALD:	You indicated CR 11 sanctions?
THE COURT:	Yes. Against Ms. Agars.
MR. MACDONALD:	I didn't hear a number for that.
THE COURT:	It would just be -- it would be the attorney's fees, the costs.

VSP at 24.

**I. Mr. Waters is Entitled to Attorney's Fees on Appeal.**

RCW 6.27.230 provides for mandatory assessment of attorney's fees to a party who successfully opposes a writ of garnishment. Lindgren, 58, Wash.App., at 598. Such an award includes costs and attorney fees incurred on appeal. Bartel, 112 Wn. App., at 67, citing Caplan v. Sullivan, 37 Wn. App. 289, 295, 679 P.2d 949 (1984).

In this case, Mr. Waters successfully opposed Ms. Agars' Writ of Garnishment. As explained above, Mr. Waters is the prevailing party because the evidence establishes that Ms. Agars' Writ was improperly issued and was properly quashed. Thus, in accordance with RCW 6.27.230 and RAP 18.1, Mr. Waters respectfully requests an award of attorney fees incurred in this appeal.

**J. The Appellate Court should Consider Sanctioning Ms. Agars and /or her counsel for Filing a Frivolous Appeal.**

RAP 18.9 provides that the appellate court can require a party who "files a frivolous appeal" to pay "terms or compensatory damages" to the party harmed by the violation. In the present case, Ms. Agars has a well-documented history of barraging Mr. Waters, the courts and administrative agencies with frivolous claims, most of which are baffling. The court should put a stop to her frivolous pattern of court filings.

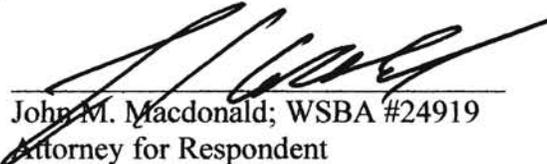
CR 11 permits a court to award sanctions on appeal. “The rule permits a court to award sanctions, including expenses and attorney fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation.” Delany v. Canning, 84 Wn. App. 498, 509, 929 P.2d 475 (1997).

Judge Inveen specified her reasons for quashing Ms. Agars’ frivolous Writ in a written decision. Ms. Agars fails to identify any facts Judge Inven got wrong, and she has not identified any case to suggest that the CR2A Agreement does not mean what it says. Terms should be awarded in a reasonable amount.

## VI. CONCLUSION

Washington courts favors finality in the realm of domestic relations. The case at bar is a shining example of why this policy is promoted. Mr. Waters respectfully requests this court affirm the trial court’s Order Quashing Garnishment and corresponding Order and Judgment. Mr. Waters further requests attorney’s fees and the imposition of sanctions on appeal.

Respectfully submitted this 14 day of May, 2013.

  
John M. Macdonald; WSBA #24919  
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury of the laws of the State of Washington, that on the date indicated below, I caused to be hand delivered, a true and correct copy of the Respondent's Brief to which this certificate is attached.

DATED this 19 day of May, 2013.

  
\_\_\_\_\_  
John M. Macdonald

Matthew I. Cooper Attorney at Law 600 108th Avenue NE, Suite 1002 Bellevue, WA 98004 Attorney for Petitioner Karen Agars.	____ Facsimile at _____ <input checked="" type="checkbox"/> Messenger on May 14, 2013 ____ U.S. Mail ____ Overnight Mail ____ email on _____
Mr. Brian Buckley Fenwick & West LLP 1191 2nd Ave., Fl. 10 Seattle, WA 98101-3438 Attorney for Garnishee Cray, Inc.	____ Facsimile at _____ <input checked="" type="checkbox"/> Messenger on May 14, 2013 ____ U.S. Mail ____ Overnight Mail ____ email on _____

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