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No. 71260-8-1

See Ruling
dated 3-3-14
motion to accept
exhibits attached
denied.
LWD

Court of Appeals of the State of Washington

Division 1

Zachary B Harjo,

Appellant

v.

Gelsey Hanson,

Respondent

Appeal from Superior Court of King County

Honorable Julie Specter, Judge

King County Superior Court Case No. 09-2-25941-1-SEA

Brief of Appellant

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II. INTRODUCTION

Included with a remand from an unpublished decision of this court in case number 66749-1-I it is stated, “In addition to finding that Harjo was entitled to additional compensation for his work in 2009 and 2010, the court also determined that Hanson, who received no compensation or benefits from the business since June 2009, was entitled to share in the profits for 2010. This claim was not liquidated. It appears therefore that the court’s findings about compensation due to Harjo are relevant to the calculation, yet to be determined, of the distribution amount owed to Hanson”. The trial court in a motion from Hanson awarded Hanson a split of profits for 2010 and in a separate motion from Harjo entered an order denying the compensation due to Harjo and awarding Hanson attorney’s fees for bringing an unmerited motion. Harjo appeals both of these judgments denying him compensation and awarding attorney’s fees.

III. ASSIGNMENTS OF ERROR/ISSUES PERTAINING TO

1. The trial court erred in entering a judgment and order on September 17, 2013 denying Harjo’s Motion for Managers Compensation and awarding attorneys fees for CR 11, and denying reconsideration of the Judgment and Order on October 7th 2013.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Is it an abuse of discretion for the court to grant a right in Findings of Fact and Conclusions of Law for equal partner compensation for business capital removed from a jointly held business in violation of a partnership agreement and then to deny a motion that seeks to fulfill that right, accepting an unsupported argument in Response that the withdrawal was pre-separation when the record clearly shows the withdrawal was post separation, and is it an abuse of discretion for the court to expressly grant a right for Manager's Compensation and then to deny a motion seeking that compensation with a rationale that the issue was resolved in trial and affirmed on appeal when the record demonstrates and the higher court states in its decision that the issue is not liquidated?
2. Is it an error for the court to award attorneys fees based on CR 11 with a rationale that there is no arguable merit to a motion when the record demonstrates and the higher court states the issues are not liquidated, and is it an error for the court to not correct one party's blatant misrepresentation of the record and then to base orders on these false statements while failing to exercise its discretion regarding rights

already granted, thereby failing to achieve a settlement that, by its own definition, is just, fair and equitable?

IV. STATEMENT OF THE CASE

This case for dissolution of a committed intimate relationship went to trial on November 1, 2, 3, 4, the morning of November 8, and the morning of November 9, 2010. The trial resulted in 15 pages of Findings of Fact and Conclusions of Law on December 22, 2010, and Harjo in this appeal seeks the binding rights found therein.

Parties were not married but had together acquired a home, a business and a condo during their relationship. The Decree was signed on January 24, 2011 and provided (while establishing a specific definition for “fair and equitable” as a 50/50 split) that 50% of the house, awarded to Hanson, should be offset against 50% of the business, awarded to Harjo, after considering the contributions of each party. The drastically underwater condo was awarded to Harjo, and Hanson’s financial involvement in the business continued to the end of 2010. Harjo appealed based on numerous arithmetical errors and that the final judgment was not supported by the record in that the division was incomplete when compared to the rights established in Findings of Fact. Rights were granted but not awarded regarding management compensation and to

resolve a partnership agreement violation concerning funds Hanson had taken inappropriately. The record states that both of these issues occurred after formal separation leaving only the business relationship. Because these items remain outstanding, the division of property is by the court's own definition not appropriate, fair, and equitable and therefore violates the intention of the court for the intimate relationship dissolution. Court of Appeals Division 1 filed a Decision on the issue of condo rents that it remanded back to the trial court in December 2012 and also points out that profits for 2010 and the manager's compensation for both 2009 and 2010 are not liquidated. Harjo offered Hanson a settlement based on the Court of Appeals Decision to which Hanson responded with a motion to the court for the item on remand for condo rents. In Hanson's Reply she inserted an order for split of 2010 profits and received an award that was based upon a misread of the tax return. The subsequent separate award for condo rents doubles the original error of the court without supporting evidence. Both of these awards to Hanson have been appealed under a separate case number, 70562-8-I. Harjo brought a motion for manager's compensation and for equal partner draws which was denied with the explanation that the matter was resolved at trial and affirmed on appeal, and although Court of Appeals directed parties to address this issue, given

that it is unliquidated, attorney's fees were awarded to Hanson based on CR 11.

Appellant Harjo has agreed to the suggestion by Court Administrator/Clerk of the Court of Appeals that the issues on appeal (70562-8-I and 71260-8-I) be combined for review as they are closely intertwined and should be reviewed together for a full picture of the outstanding issues of the case.

1. Compensation

Equal Partner Draws/Partnership Violation

The court signed a judgment denying Harjo an equalization for business capital Hanson had taken in violation of the partnership agreement stating that the matter had already been resolved at trial and affirmed on appeal. The record shows rights were assigned to Harjo based on evidence at trial but those rights were not awarded, and that the matter was not affirmed on appeal, rather Appeals Court in its decision states the matter is not liquidated. Findings of Fact states that the relationship ended May 31st 2009 and that in June 2009 Hanson had secretly taken \$30,000 from the business operations capital violating the partnership agreement which requires agreed upon equal draws at agreed upon times and that she did this while withholding the books from Harjo and without his knowledge or consent. Hanson stated, per the court record, that her

intention was to take as her personal funds 50% of the business bank account. Harjo was unable to draw an equivalent sum because to do so would have left zero funds for operating capital. Though the court granted Harjo the right for an equivalent payment in Findings, the final tabulation in the decree included no offset. In 2013 the court accepted Hanson's argument that states in her response to Harjo's Motion that her withdrawal of \$30,000 was one of several *pre-separation* draws by parties. The court recorded at the time of trial that the withdrawal by Hanson was *post-separation*. Starting June 1st 2009 the only relationship was a business partnership. Removing the 50% of the business capital was a court-recorded violation of the partnership agreement. The court states in the order denying Harjo's motion that this matter was in no way left ambiguous by the court's Findings and Decree. However, the Findings and Decree are at odds with one another which is why Harjo brought a Motion for Clarification. Findings of Fact explicitly grant Harjo the right for an equalizing offset. No such offset was included or even mentioned in the decree.

The Findings of Fact records the business partnership agreement required that each partner perform an equal amount of the managerial tasks and that each party be given equal draws at agreed upon times. Hanson misleads the trial court by stating that the issue is resolved. In

direct opposition to the record and without any supporting evidence the trial court denied Harjo's motion, accepting Hanson's false statements and signing her proposed order forcing Harjo to seek resolution again in this court.

Managerial Compensation

The court has accepted Hanson's statement that the Manager's Compensation for Harjo was included in the property distribution and that the matter had already been resolved at trial and affirmed on appeal. The record shows that this issue was resolved at trial in Harjo's favor, neither affirmed nor denied on appeal, and Court of Appeals explains that the trial court had not yet made the calculation because the figures were not yet known for 2010. Hanson received additional compensation from employment outside of the business Ocho for the 17 months leading up to the trial and has retained those earnings as her separate property. Findings of Fact grants Harjo the right to managerial compensation for the same timeframe during which he was the sole operator of the jointly held business and for which he has not been compensated. The Court of Appeals states in its Decision that the trial court expressly grants this right to Harjo. The court records Harjo's total compensation in 2009 as \$33,941 and Hanson's as over \$100,000, (including the \$30,000 she took from the business Ocho secretly in June 2009). The court adopted the Agreed Order

Business Valuation as one of its findings, included the value of Zach's labor at \$75,000 per year as a basis for the calculation of the Business Valuation, established his right for compensation, and provided an example of how the manager's compensation should be calculated. The trial court failed to include Manager's Compensation in the original flawed summary tabulation from Findings of Fact. The court then signed a proposed order that was written by Hanson and became the amended decree, which excluded substantial offsets for Harjo, the items in this appeal. Since these original mistakes by the court, Hanson has falsely stated these items were included in the property distribution and the court signs Hanson's orders based on these false statements. Hanson fails to provide evidence and the court fails to explain how or where these items were included in the summary judgment. The itemization from Court of Appeals Decision demonstrates that they weren't included. The Court of Appeals itemization comes from Hanson's own Response to Motion to Clarify Findings of Fact and/or Reconsider Same signed January 10th 2011 (Exhibit #2) and is the basis for the decree property equalization transfer payment of \$52,205.

2. Rules of Professional Conduct/Attorney's Fees, CR 11

Rules of Professional Conduct

Hanson is comfortable, through her personal letters to the court as well as in her Response and proposed orders, making wholly misleading and false statements to the court and the court has signed orders presented by Hanson that include these failures of fact. Because of Hanson's false statements to the court and because the court relies upon Hanson's attorney's integrity as an officer of the court, no resolution is possible that reflects the original intent of the court as recorded in Findings. Hanson's attorney, on her behalf and as an officer of the court, is obligated to present facts to the court in accordance with the record. That, either willfully or in error, these misrepresentations are made to the trial court is a violation of the Rules of Professional Conduct and that the court fails to correct the mistake is an abuse of discretion.

In addition to false statements made in her Response to Motion Hanson sent a proposed order attached to a personal letter that contains misleading and unsupported information to the court. For the *Motion for Reconsideration* on this issue, Hanson inaccurately states to the court in this personal letter that Harjo's Motion for Reconsideration is a repeat of a motion the court denied in June 2013. The motion was not a repeat of the two June Motions for Reconsideration on division of 2010 profits and remand condo rents. The court signed an Order that is identical to Hanson's Proposed Order included with her personal letter to the court

and provides no justification for the perpetuated discrepancy between the Order and the court's own Findings or why the issue identified by Court of Appeals as outstanding has been ignored.

Attorney's Fees, CR 11

The court awarded Hanson attorney fees under CR 11 and states Harjo's *Motion to Clarify Decree* was unmerited and a re-litigation of an issue that was resolved at trial in Hanson's favor and affirmed on appeal when the record clearly shows that it was found in Harjo's favor and the Court of Appeals in its Decision agrees that the matter was expressly found in Harjo's favor. Sanctions are not appropriate for an issue that the court record shows is outstanding. Harjo's motion was necessary because Hanson willfully misrepresents the Court of Appeals Decision by stating that only the issue of condo rents on remand was before the court to address, even though she then secondarily presented an order for the division of 2010 profits (that was to her benefit) on Reply. The 2010 profits was one of three identified by Court of Appeals as open including the issue of compensation due to Harjo which is one that is large, festering, and fully supported by the rights defined in Findings of Fact as recognized by Court of Appeals in its Decision.

Special Concession

Court of Appeals should implement RAP 12.2. Court of Appeals is asked to make the awards final and binding to avoid continued unproductive, costly, and time consuming litigation in Superior Court.

V. ARGUMENT

The established standard of review for this case has been stated as follows:

Property distribution at the end of a meretricious relationship is reviewed for abuse of discretion. *Koher v. Morgan*, 93 Wn. App. 398, 401, 968 P.2d 920 (1998) (citing *In re Meretricious Relationship of Sutton*, 85 Wn. App. 487, 491, 933 P.2d 1069 (1997)). Among other things, discretion is abused when it is exercised on untenable grounds. *State v. Downing*, 151 Wn.2d 265, 272-73, 87 P.3d 1169 (2004). While we review conclusions of law de novo, findings of fact merely need to be supported by substantial evidence. E.g., *Nordstrom Credit, Inc. v. Dep't of Revenue*, 120 Wn.2d 935, 942, 845 P.2d 1331 (1993).

"A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (citing *Mayer*, 156 Wash.2d at 684, 132 P.3d 115). *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010).

Washington has "a three-prong analysis for disposing of property when a meretricious relationship terminates." *In re Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764(2000) (citing *Connell*, 127 Wn.2d at 349). First, the court decides whether a meretricious relationship existed. Second, "the trial court evaluates the interest each party has in the property acquired during the relationship. Third, the trial court then makes a just and equitable distribution of such property." *Id.* *Soltero v. Wimer*, 159 Wn.2d 428, 435, 150 P.3d 552 (2007)

A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* " A trial court's decision is manifestly unreasonable if it ' adopts a view' that no reasonable person would take." *In re Pers. Restraint of Duncan*, 167 Wash.2d 398, 402-03, 219 P.3d 666 (2009) (quoting) *Mayer v. Sto Indus., Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71P.3d 638 (2003»).

Courts review "findings of fact under a 'substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.'" *Korst v. McMahon*, 136 Wn.App. 202, 206, 148 P.3d 1081 (2006) (quoting *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003)). This is a deferential standard, which views reasonable inferences in a light most favorable to the prevailing party. *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 788, 903 P.2d 986 (1995). If there is substantial evidence, then "a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute differently." *Sunny side Valley*, 149 Wn.2d at 879-80. A court will not disturb the trial court's approval of a property distribution unless there is a clear and manifest abuse of discretion. *Baird v. Baird*, 6 Wn.App. 587, 591, 494 P.2d 1387 (1972). A trial court abuses its discretion when its discretion is

manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). This court will not disturb a property valuation having reasonable support in the trial record. *In re Marriage of Hadley*, 88 Wn.2d 649, 658-59, 565, P.2d 790 (1977). However, as stated above "A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

The central issue in this appeal is that the trial court abuses its discretion by denying Harjo rights it had previously granted him and abuses its discretion by signing orders not based on the record. The trial court relies upon unsupported facts, negating rights established in Findings of Fact, and creating new rights that oppose those previously established and for which no evidence has been provided. "A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). Such a failure is abuse of discretion since it results in a factual error, which means the discretion is based on untenable grounds. Alternatively, by its own rulings, the ultimate distribution is unjust and

inequitable. The court went out of its way to specifically establish that Harjo is due Equal Partnership Draws and the Manager's Compensation that the court adopted as part of the Agreed Order Business Valuation. The court's intention in Findings of Fact is to compensate Harjo. It is not reasonable for the court to award Hanson her own separate earnings at a competitor restaurant for the 17 months leading up to trial and grant Harjo the right to compensation for that same timeframe for running the co-owned business and then deny a motion that aims to fulfill that right. It is unreasonable for the court to award Hanson ½ the value of a business at the end of that same 17-month period, without offset to Harjo for Equal Partner Draws and Managers Compensation. To do so is to transfer the obligation for the entire business expense for Management labor to Harjo when Findings states "the income stream for Ocho is, by nature of joint ownership, a joint asset, as are the expenses and liabilities joint obligations". (*Findings of Fact and Conclusions of Law page 10, CP 10*) The unpaid value of the labor for that 17 month period is \$32,921. During that same 17 month period Hanson took \$30,000 from the business, failed in her obligation to the partnership to contribute Management labor, and generated earnings outside of the business which she retained as her separate property for total earnings in 2009 of over \$100,000.

“Gelsey’s 2009 income included wages... for a total of over \$100,000” (*Findings page 13, CP 13*)

Harjo’s compensation in 2009 was \$33,941 (“Zach received sums in 2009 totaling, \$33,941...” *Findings page 9, CP 9*). The court resolved this issue at trial by granting Harjo the right to compensation for his managerial labor. The clarity of the court’s reasoning and intent in this regard is seen in the following paragraphs from findings:

“When the parties’ relationship ended in January 2009, they agreed on a scheduled sharing of duties at the restaurant, and to stay away from Ocho while the other was present working. They verbally amended their partnership agreement, which required that each partner perform an equal amount of managerial tasks and that each party be given equal draws at agreed upon times. Gelsey’s involvement ended on 5/31/09 due to her assault on Zach. Following Gelsey’s arrest, the court entered a No-Contact Order prohibiting Gelsey from returning to the restaurant, thereby preventing her from upholding her end of the partnership agreement. Because of the actions of the Petitioner, Respondent (Zach) bore full responsibility for all aspects of the business.

The worth of the business was evaluated pursuant to an Agreed Order. Pursuant to that Order, James E. Weber, CPA/ABV, CVA, CFE determined the value of the business to be \$222,000. Petitioner and Respondent do not dispute this valuation amount, and the court adopts this figure as one of its findings. Mr. Weber valued Zach’s labor at \$75,000 per year and this formed one premise of his overall value of the business. Both parties contributed equally to the business efforts from January 2008 through May 2009 and thereafter, Gelsey was excluded from the business operations. It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present.

In 2010, Zach received the benefit of \$30,408 as draws/compensation, through 7/9/2010. Through August 2010, the value of his services to Ocho was \$50,000 (based on \$75,000 annual salary) and it is appropriate to compensate him for the difference for the value of his

salary and the compensation/draws he has received. (\$75,000 - \$30,405 or \$44,695).” *Findings of Fact page 7-8, CP 7-8*

“On 6/18/2009, Gelsey withdrew \$30,000 from the business account; an amount she believed represented one-half the account balance at the time, \$60,000.00. She did this without notice to Zach, nor advance agreement, as was required by the partnership agreement”. *Findings of Fact, page 8, lines 21-24 and p 9 line 1*

“The income stream from Ocho is, by nature of joint ownership, a joint asset, as are the expenses and liabilities joint obligations. The parties received approximately equal amounts from the business in 2008, even though tax returns were not prepared or the net income/tax results known by the parties until early 2010. The sums each received in 2009 were not equal. *It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in that year.*” (emphasis added) *Findings of Fact page 10, Cp 10*

This series of quotes illustrates in great detail that the court found a preponderance of evidence sufficient to grant Harjo the right to compensation. The court identified a precise timeframe, itemized each party’s draws and contributions, provided a calculation to follow for the offsets to Harjo in accordance with the value of Harjo’s labor as determined in the business valuation, and found Hanson’s draws required offsets against her. In these quotes pulled from three pages of Findings the court used the phrase “appropriate to compensate” Harjo repeatedly, leaving absolutely no ambiguity as to its intention. There is no logic to an argument that suggests that Hanson won the argument regarding Harjo’s compensation at trial or that Harjo is relitigating issues he lost at trial.

1. Compensation/ Equal Partner Draws

Although the court entered Findings of Fact in regards to the Manager's Compensation of the parties for 2009 and 2010 for the business Ocho, the decree did not award that compensation. Additionally, Hanson took \$30,000 after separation of parties in excess of what Harjo received, without his knowledge. She withdrew this lump sum after she had stopped fulfilling her obligation to the business labor share and while she hid the books of the Corporation from Harjo. The only reason that Hanson's \$30,000 partnership violation wouldn't be defined as embezzlement or theft is in the context of the intimate relationship. Because the violation took place after the close of the intimate relationship it was the trial court's responsibility to grant Harjo a right to an offsetting distribution *and the court did grant Harjo that right*, but then the court failed to factor a corresponding offset into the property equalization payment. On appeal from the Decree, the Court of Appeals states the parties' unequal compensation for 2009 and Harjo's salary for 2009/2010 and the split of profits for 2010 to be not liquidated. The court awarded the profits (but used the wrong number) for 2010 on Petitioner's Reply to her motion for condo rents which were on remand, but denied Harjo's Motion for Manager's Compensation for 2009 and 2010 and Equal Partnership Draws. It is an Abuse of Discretion that the court accepted Hanson's argument and signed her Proposed Order which states, "Respondent's

motion seeks to relitigate issues already resolved through a multi-day trial in 2010, affirmed on appeal, and which are in no way left ambiguous” (*Judgement and Order Denying Respondent’s Motion for Clarification page 2, CP 297*). No rational fair-minded person could have come to this conclusion after reviewing the record because Harjo won this issue in trial, it was neither affirmed nor denied on appeal, rather Court of Appeals considered the issue not liquidated and in this way was left in need of resolution. The trial court’s order relies not just on unsupported facts but on false statements.

A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* " A trial court's decision is manifestly unreasonable if it ' adopts a view' that no reasonable person would take." *In re Pers. Restraint of Duncan*, 167 Wash.2d 398, 402-03, 219 P.3d 666 (2009) (quoting) *Mayer v. Sto Indus., Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71P.3d 638 (2003»).

"A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (citing *Mayer*, 156 Wash.2d at 684, 132 P.3d 115). *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010).

Analysis of False Statements

The following section demonstrates that the court abuses its discretion in denying Harjo’s motion by adopting an unreasonable view and that it incorporates Hanson’s false statements into orders and

judgments. Hanson's flawed argument in *Petitioner's Response in Opposition to Respondent's Motion for Clarification (CP 278-288)* is included here followed by an analysis of each statement's validity in regard to the record. Although tedious, it is important to look at this analysis in painstaking detail because Hanson's willingness to mislead the court is egregious and the court has taken Hanson's statements as fact.

Hanson: "Included in the court's findings were the value of the parties' business, Ocho, and the right to offsets based on the parties' respective contributions to the business and draws from the business. The court considered and valued the funds that Ms. Hanson removed from the business, and considered and valued the parties' respective contributions and incomes. Mr. Harjo details the court's findings in his own materials regarding the various draws from Ocho. These same findings describe the parties' rights with respect to the business and the business draws. In other words, the issues have already been litigated and resolved." (CP 278)

Hanson correctly states, "findings describe the parties' rights with respect to the business and the business draws." She then infers an irrational conclusion from this premise by stating, "In other words, the issues have already been litigated and resolved." That a right was litigated and found does not resolve it if it remains un-liquidated. There are 15 pages of Findings and 4 of these pages are specific about rights for manager's compensation. However there was no allocation of those rights in the distribution of the property.

Court of Appeals points out that the trial court's total property

equalization payment consists of the following:

“In its amended judgment, the court awarded a total property equalization transfer payment to Hanson of \$52,205. This figure is based on the following: Harjo owes Hanson a total of \$117,500 (\$111,000 representing 50 percent of the value of Ocho, plus \$6500 for post separation condo rent). This amount was offset by \$65,295 Hanson owes to Harjo (\$53,054 for Harjo’s interest in the house, \$2241 reimbursement for condo dues, and a \$10,000 “home lien” for Harjo’s labor on the house).” (*Court of Appeals Decision page 3, CP 25*)

Conspicuously absent are offsets for Manager’s Compensation or Equal Partner Draws.

Hanson: “Mr. Harjo appealed the trial court’s decision. Aside from one, small issue, his appeal was denied. On remand, the small issue was again resolved in Ms. Hanson’s favor. Exhibit 1.” (*CP 279*)

While the remand was for the issue of Condo rents (and was “resolved” incorrectly by doubling the original error without the support of any evidence) Court of Appeals pointed deliberately to the unliquidated items of Manager’s Compensation, Equal Partner Draws, and the division of 2010 profits in its Decision (of those three only the 2010 profits were “resolved” by the trial court and that too was awarded incorrectly by a misread of the tax documents):

“The trial court found, in accordance with the business appraisal, that the value of managerial services at Ocho was \$75,000 per year. The trial Court further found that Harjo and Hanson received unequal amounts of compensation for 2009 (Hanson received approximately \$13,000 more than Harjo), and Harjo received less salary than that to which he

was entitled for both 2009 and 2010. The court also expressly found that Harjo should be compensated for the difference between the value of his services in managing the restaurant between June 2009 to the end 2010 and the actual compensation he received.” (*Court of Appeals page 7, CP 29*)

Clearly, between the two above quotes, the Court of Appeals in its Decision recognized that the trial court has expressly granted Harjo rights for Compensation and has not yet included them in the distribution.

Hanson: “On remand, the court also resolved the outstanding question of allocation of business profits from Ocho for 2010. Exhibit 2. While Mr. Harjo appealed both of these orders he did not seek reconsideration.” (*CP 279*)

Hanson misrepresents to the court that the remand was for split of 2010 profits, where the actual remand was for condo rents but, as with Manager’s Compensation, 2010 profits were identified by Court of Appeals as not liquidated. The trial court resolved the 2010 profits (again, incorrectly) but denied the Manager’s Compensation. Harjo did indeed file reconsiderations which were denied. (*Order Denying Respondent’s Motions for Reconsideration and/or to Vacate page 1, CP 190*)

Hanson: “Mr. Harjo now seeks to recalculate the parties’ rights with respect to business income in 2009.” (*CP 279*)

This statement is simply false. Harjo seeks only the offsets for rights already granted in regards to 2009. Hanson uses the word “recalculate” to imply that a calculation has already taken place but

ignores Court of Appeals which states, “This claim is not liquidated. It appears therefore that the courts findings about compensation due to Harjo are relevant to the calculation, yet to be determined, of the distribution amount owed to Hanson for 2010”. (*Court of Appeals page 7, CP 29*)

Hanson: “However these issues have already been litigated, resolved, and affirmed on appeal.” (*CP 279*)

Hanson misleads the court in this claim as while it has been litigated and rights were granted to Harjo, the matter has not been resolved nor was it affirmed or denied on appeal as the above quote from Court of Appeals demonstrates.

Hanson: Argument

Clarification Versus Modification: An ambiguous decree may be clarified, but not modified. A decree is modified when rights given to one party are extended beyond the scope originally intended, or reduced. A clarification, on the other hand, is merely a definition of rights already given, spelling them out more completely if necessary *In re Marriage of Michael, 145Wn.App.854,859,188P.3d529(2008).*

Here, no clarification is necessary or appropriate.” (*CP 279*)

Hanson has achieved a modification in that she has been granted new rights by not being held accountable to the terms of Findings of Fact for the \$30,000 she took violating the Partnership Agreement and Hanson has achieved modification in not being held accountable for the expense of Manager’s Salary, which as a partner in the business through 2010 she is, by definition, responsible for. Both of these items, partner draws and

manager's compensation, were identified by the court as items it would include in the summary judgment (*see above, CP 8-10*) and to omit them from the decree modifies the original rights granted, an untenable abuse of discretion, and shifts 100% of the business expense for Manager's Compensation to Harjo. Rights were granted to Harjo but not awarded. Without a clarification that defines how those rights are protected and implemented, Harjo's rights are violated.

Hanson: "The court did not utterly fail to account for the \$75,000 in compensation in its decree." (*CP 279*)

Here Hanson finally acknowledges both that Findings states that there should be \$75,000 in total annual compensation in the decree for Harjo and that the court did in large part fail to include this in the decree. In a rare moment of honesty Hanson admits that there is \$75,000 owed to Harjo per year but she points to no evidence to support her claim that the court "did not utterly fail" to account for manager's compensation as none exists. The court did utterly fail as Court of Appeals illustrates here, itemizing the components for the Decree award:

"In it's amended judgment, the court awarded a total property equalization transfer payment to Hanson of \$52,205. This figure is based on the following: Harjo owes Hanson a total of \$117,500 (\$111,000 representing 50 percent of the value of Ocho, plus \$6500 for post separation condo rent). This amount was offset by \$65,295 Hanson owes to Harjo (\$53,054 for Harjo's interest in the house, \$2241 reimbursement for condo dues, and a

\$10,000 "home lien" for Harjo's labor on the house)."

Court of Appeals Decision page 3, CP 25)

Hanson: "Those funds were described in the decree and accounted for in the overall allocation of property and liabilities." (CP 279)

In this sentence Hanson is back to her typical mistruths (see above quotes from Court of Appeals, CP 25, CP 29). This appeal is based on the fact that manager's compensation is missing from the decree entirely while Findings of Fact describes Harjo's rights without ambiguity: "It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present." (*Findings of Fact page 7-8, CP 7-8*)

Hanson: "Both parties took pre-separation draws from the business, and these draws were considered by the court (Decree, pages 4-5; Findings, 8-11)." (CP 279)

It is simply not true that pages 4-5 in the decree make any mention of "pre-separation draws considered by the court". This issue is not mentioned anywhere in the decree (CP 16-21). However, pages 7-10 in Findings, (CP 7-10) exhaustively grants rights to Harjo for Manager's Compensation and for Equal Draws. Findings also states in this section that the \$30,000 in draws taken by Hanson was post-separation (CP 2) and in violation of the partnership agreement (CP 7). The statement by Hanson falsely claims that her withdrawal was pre-separation but the court clearly records this as a post separation action:

"The parties formally separated on May 31, 2009"
(*Findings page 2, CP 2*)

“On 6/3/2009 Gelsey withdrew \$7000 from the business account via check cashed for her by Marcia Cote, her aunt and then-bookkeeper at Ocho. A corresponding check for \$7000 was prepared for Zach after the fact. Gelsey’s actions did not comply with the terms of the partnership agreement regarding agreed-upon draws from the business. On 6/18/2009, Gelsey withdrew \$30,000 from the business account; an amount she believed represented one-half of the account balance at the time, \$60,000. She did this without notice to Zach, nor advance agreement, as was required by the partnership agreement.” (*Findings of Fact page 8, CP 8*)

“The sums each received in 2009 were not equal. It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in that year.” (*Findings of Fact page 10, CP 10*)

Hanson: “No further recalculation is appropriate, or even allowed under the law.” (*CP 279*)

Hanson here claims that the “calculation, yet to be determined” called out by Court of Appeals is inappropriate and illegal. Again, to use the word “recalculation” is to imply that a calculation has taken place to begin with which is not so. The court went out of its way to show that a calculation would be forthcoming and even includes an example calculation to dispel any ambiguity or dispute:

“It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present. In 2010, Zach received the benefit of \$30,408 as draws/compensation, through 7/9/2010. Through August 2010, the value of his services to Ocho was \$50,000 (based on \$75,000 annual salary) and it is appropriate to compensate him for the difference for the value of his salary and the compensation/draws he has received. (\$75,000 - \$30,405 or \$44,695).” (*Findings of Fact page 8,*

CP 8)

Hanson: “The court did specifically reserve allocation of profits for 2010, since the trial occurred in 2010 and the annual profits were not yet known. However, the court made no such reservation for 2009. Draws for 2009 by each party occurred prior to separation, and Mr. Harjo is trying through this motion to re-allocate property which the court already considered.” (*CP 280*)

Again from Findings, “It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present.” You can call a duck a cow and try to milk it but you won’t want to put the results in your sandwich. Hanson claims that no rights were granted Harjo for 2009 but in the two quotes above the court clearly did grant him rights for manager’s compensation and for equal draws. Hanson’s repeated efforts to re-write history (and thereby re-litigate in order to establish a more beneficial version of events) that the “draws” were pre-separation are intended to do two things: diminish the severity of the offense from violation of the partnership to simply another of many draws legally acceptable inside a “meretricious relationship”, and to suggest that they were already considered by the court as draws that both parties took and are therefore resolved. This is a blatant attempt to deceive the trial court through false statements and the trial court’s decision is both manifestly unreasonable and untenable as it has no support in the trial record.

“The parties were not Husband and Wife. They were involved in an intimate committed relationship, which terminated in January

2009. The parties formally separated on May 31, 2009, as a result of the assault” (of Gelsey on Zach). (*Findings page 2, CP 2*)
The record clearly shows that Hanson’s withdrawals were in June

2009, post separation (*CP 8*).

Hanson: “This follows Mr. Harjo’s pattern of seeking any angle to avoid fairly compensating Ms. Hanson for her interest in the parties’ property. In the motion before the court, Mr. Harjo is again re-litigating the same issues litigated at trial. In the guise of a motion for clarification, he is essentially arguing that the court should turn upside down the judgments already entered against him, and award a judgment in his favor in the amount of \$43,125. The court has repeatedly rejected his arguments and should do so again.” (*CP 280*)

Harjo was compelled to seek clarification because the rights granting him compensation were soundly and thoroughly established but never awarded. Hanson’s argument appears to be that since the court made an initial error it should *make that error again and again*.

Hanson: “Here, the court has already resolved the issues Mr. Harjo raises (and resolved those issues correctly, and in Ms. Hanson’s favor).” (*CP 280*)

This appeal is based on the fact that these issues were certainly not decided in Hanson’s favor but the court failed to include offsets for Harjo in the property distribution and Hanson tries to capitalize on the court’s mistake in omitting them. Harjo prevailed on these points and was granted the rights to Manager’s Compensation and Equal Partner Draws.

“It is appropriate to compensate Zach for his labor in running the business from June 2009 to present.” (*Findings page 8, CP 8*)

“The sums each received in 2009 were not equal. It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in this year.”
(Findings page 10, CP 10)

Hanson: “While Mr. Harjo is not satisfied with the resolution, our system requires that at some point, orders are final and binding on the parties.”

It appears that Mr. Louden on Hanson’s behalf would like Harjo to simply forfeit his rights granted in Findings and a just resolution after having won these points in a six day trial.

Hanson: “He cannot raise the same issues again and again, forcing Ms. Hanson to incur attorney’s fees in defending his arguments.”
(CP 281)

If Hanson wants to expedite the outcome she can start telling the truth so that a busy trial court judge is not in error for taking statements from an officer of the court at face value. Ms. Hanson laments that she is still involved in this proceeding after refusing a fair settlement and which she prolongs by not accurately representing the facts of the case to the court. That Harjo has yet to see his rights signed into orders and has been kept from a just outcome forces him to pursue his due process.

Hanson: Ultimately, since he is proceeding pro se, there is no legal cost to him. But Ms. Hanson’s judgments will be lost in the cost of paying her attorney to defend Mr. Hanson’s multiple actions. *(CP 281)*

Mr. Harjo considers acting as pro se terribly burdensome and exorbitantly costly in regards to time but does so because he is unable to

afford an attorney. He therefore defends himself and his rights through the avenue provided him by our system; as pro se. That Mr. Louden disagrees that Harjo incurs a cost is ridiculous and is yet another way that Mr. Louden tries to cast Harjo as malicious and errant and his client as a victim. The opposite happens to be the case. Also, Mr. Harjo was never married to his client and is therefore not named "Mr. Hanson".

Hanson: "There is no arguable merit to Mr. Hanson's attempt to relitigate the result at trial, and CR 11 sanctions are appropriate."
(CP 281)

It appears that Mr. Louden is either trying to confuse the court by his repeated use of "Mr. Hanson" or is himself confused.

A careful reading of Hanson's argument reveals that she employs hardly a single factual statement and the only facts she does get right unwittingly support Harjo's argument.

It is an abuse of discretion for the trial court to legitimize these unsupported claims by signing orders and judgments based on the false statements in Hanson's Response and incorporating them into the record. The trial court abused its discretion by signing this order written by Mr. Louden and on Mr. Louden's letterhead:

"This matter having come on for hearing without oral argument and the court having considered the Respondent's Motion for Clarification, the Petitioner's Response, and any reply from the Respondent, and the records herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

The respondent's motion seeks to relitigate issues already resolved through a multi-day trial in 2010, affirmed on appeal, and which are in no way left ambiguous by the court's Findings and Decree. There is nothing to clarify. The motion is denied. Furthermore, there is no arguable merit to the motion. Base on CR11, Petitioner is awarded a judgment against Respondent for \$750 in attorney's fees." (*Judgment and Order denying Respondent's motion for Clarification page 2, CP 297*)

No rational fair-minded person would have come to this conclusion and the court therefore abuses its discretion as it relies on unsupported facts and false statements.

The trial court has accepted Hanson's claims that Harjo is relitigating issues he lost at trial but in fact Harjo won these points and it is Hanson who attempts to ignore Findings by refusing to present facts as they appear in the record. The trial court has yet to correct Hanson's fraudulent claims and therefore Hanson continues to exploit an error the trial court made in the original property equalization transfer payment which hinders resolution.

In direct opposition to Hanson's claim and the signed Order, Court of Appeals in its Decision states that Harjo's compensation is expressly found in Findings:

"The trial court found, in accordance with the business appraisal, that the value of managerial services at Ocho was \$75,000 per year. The trial court further found that Harjo and Hanson received unequal amounts of compensation for 2009 (Hanson received approximately \$13,000 more than Harjo), and Harjo received less

salary than that to which he was entitled for both 2009 and 2010. *The court also expressly found that Harjo should be compensated for the difference between the value of his services in managing the restaurant between June 2009 to the end of 2010 and the actual compensation he received.* [emphasis added] Harjo fails to acknowledge, however, that in addition to finding that Harjo was entitled to additional compensation for his work in 2009 and 2010, the court also determined that Hanson, who received no compensation or benefits from the business since June 2009, was entitled to share in the profits for 2010. *This claim is not liquidated. It appears therefore that the courts findings about compensation due to Harjo are relevant to the calculation, yet to be determined, of the distribution amount owed to Hanson for 2010.* [emphasis added]” (Court of Appeals Decision page 7, CP 29)

2. Rules of Professional Conduct/Attorney’s Fees, CR 11

Rules of Professional Conduct (EX 1)

RULE 3.3

CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Comments

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force.

Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

RULE 8.4

MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

As illustrated above in Analysis of Unsupported Facts Mr.

Louden on Hanson's behalf does not feel compelled to make statements based on fact and in accordance with the record which is misconduct in that it undermines the integrity of the adjudicative process. Compounding the problem, the trial court has failed to correct these violations of conduct and in fact incorporates these false statements into Judgments and Orders. Mr. Loudon as an officer of the court is required to use candor with the tribunal as seen in Rule 3.3 above. Sympathetically, the trial court has an obligation of competency under the Code of Judicial Conduct, and in a matter that involves two parties in dispute over the facts, fact checking is of paramount importance, and would include rejecting the misconduct of an officer of the court, and through thorough and reasonable preparation preventing the incorporation of false statements in orders and judgments.

Code of Judicial Conduct, Canon 2 (EX 1)

RULE 2.5

Competence, Diligence, and Cooperation (A) A judge shall perform judicial and administrative duties, competently and diligently.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

The advocate's function, according to Washington's Rules of Professional Conduct, is to present evidence and argument so that the cause may be decided according to law. Rule 3.3 states "a lawyer shall not knowingly: 1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer". It is required that officers of the court "avoid conduct that undermines the integrity of the adjudicative process." (*Rule 3.3, comment 2, EX 1*)

Also, Harjo has a right to expect that Mr. Louden did not simply make a mistake by claiming only one issue remained and that he reasonably should have known the Court of Appeals decision identifies manager's salary and equal partner draws are issues that remained open along with 2010 profits as Court of Appeals characterizes them as equivalent, grouping them together in the same sentence. Instead, Mr. Louden only singles out of that group the one item that is to his benefit (2010 profits). Then he misleads the court by stating in Responses and by personal letter to the court that Harjo's motions and arguments are without merit, that Harjo was attempting to re-litigate issues lost in trial, and that the issues presented by Harjo were affirmed in Hanson's favor in appeals court so that sanctions are justified under CR 11. But these statements by

Mr. Louden contradict the record and they do undermine the resolution of this case in that Harjo is not relitigating because he already won on these issues of Compensation and Court of Appeals has neither affirmed nor denied this matter, but does state about the matter that “It appears therefore that the court’s findings about compensation due to Harjo are relevant to the calculation, yet to be determined, of the distribution amount owed to Hanson for 2010.” (*Court of Appeals Decision page 7, CP 29*) Harjo seeks the rights granted in 15 pages of Findings based upon the evidence presented in 6 days at trial and identified as open items in Court of Appeals. As noted in the above analysis, Louden has wholly ignored the authority of the Court of Appeals Decision (except in the single issue to his benefit) and the clear rights granted in Findings of Fact to Harjo, and because his statements have been accepted in superior court, Mr. Louden’s actions have been a hindrance in the trial court’s fair and timely resolution of this case. Mr. Louden should be required to correct the false statements already made to Superior Court in accordance with the Rules of Professional Conduct and the orders containing false statements should be rejected.

Attorney’s Fees, CR11

Attorney fees may be awarded on the basis of agreement, statute or recognized ground of equity. *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 106 Wash.2d 826, 849-50, 726 P.2d 8 (1986).

Whether a party is entitled to an award of attorney fees is an issue reviewed de novo. *Ethridge v. Hwang*, 105 Wash.App. 447, 460, 20 P.3d 958 (2001) (citing *Tradewell Group, Inc. v. Mavis*, 71 Wash.App. 120, 126, 857 P.2d 1053 (1993)). Attorney fee awards under that statute are not available in actions arising from committed intimate relationships. *W. Comm'ty Bank v. Helmer*, 48 Wn.App. 694, 699, 740 P.2d 359 (1987).

"A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

The court abuses its discretion in penalizing Harjo for bringing a motion that is clearly not frivolous. The sole basis stated for the award of attorney fees is that "there is no arguable merit to the motion" (*Judgment and Order Denying Respondent's Motion For Clarification page 2, CP 297*). Harjo was forced to bring a Motion for the rights granted him because his good faith attempts to resolve all open issues were ignored; through settlement offer and in his *Response To Petitioner's Motion To Reduce Amounts Owed to Judgment (CP 107-115)*. In this Response to Motion Harjo raised all open items in an effort to come to full resolution. Also, as seen in the above Analysis of False Statements, Harjo was forced to bring a motion for the rights granted him because Hanson argues that offsets for those rights were already a component of the decree equalization payment. It must be noted that the source of Court of Appeals' itemization of that equalization payment is Hanson's own *Response To Motion to Clarify Findings of Fact and/or Reconsider Same*

dated January 10th 2011 (*CP 341-345*) and includes no such offset. Rather, the higher Court indicates the matter of Compensation to Harjo will be resolved along with split of profits 2010 and the remanded item of condo rents.

Hanson in her Response acknowledges that Mr. Louden failed to follow what she points to as appropriate protocol, “counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a [CR 11] motion” (*Petitioner’s Response in Opposition to Respondent’s Motion for Clarification page 4, CP 281*) with an excuse that Hanson “was served with only 6 days’ notice during an extremely busy week in petitioner’s attorney’s office, and there was no time to seek an alternative to court.” (*Petitioner’s Response in Opposition to Respondent’s Motion for Clarification page 4, CP281*) That Mr. Louden on Hanson’s behalf can’t find the time to make a phone call yet can write yet another personal letter of false statements to the trial court while seeking sanctions is disingenuous: “This appears to be a repeat of the motion he made in June... as before I request that Mr. Harjo’s motion be denied.” (EX 3) Here Mr. Louden misleads the trial court that Mr. Harjo’s motion for Reconsideration regarding Manager’s Salary was instead “a repeat” of an unspecified motion from several months prior. Hanson’s

diversionary tactic is accusing Harjo of exactly what she herself is doing: her arguments have no merit as they are based on false statements so she accuses Harjo of lacking merit; she continually re-litigates an issue that she lost at trial so she accuses Harjo of re-litigating that issue (which Harjo won at trial); she stops at no measure, including misconduct, to avoid the fair judgment to Harjo as assigned in Findings, so she accuses Harjo of “seeking any angle to avoid fairly compensating Ms. Hanson” (*Petitioner’s Response in Opposition to Respondent’s Motion for Clarification page 4, CP 281*). Again, the trial court accepts Hanson’s argument that sanctions were necessary on the basis that Harjo’s motion “has absolutely no chance of success... and sanctions are meant to deter frivolous pleadings” (*Petitioner’s Response in Opposition to Respondent’s Motion for Clarification page 4, CP 280*). That the trial court perceives that there is no arguable merit to the case is indicative of her not having yet discerned the misconduct inherent in Ms. Hanson’s false statements. That there is clearly a necessity for Harjo’s motion means that the court is in error and bases CR 11 sanctions on untenable grounds.

3. Special Concession Under RAP 12.2

RAP 12.2 DISPOSITION ON REVIEW

The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require.

Because the court abuses its discretion by failing to award Harjo the rights provided to him in Findings of Fact yet again, without providing any clarification that would justify that denial, and because the court has accepted Hanson's false statements in her signed orders, Harjo requests that the Court of Appeals make the award final in its Decision.

Following the Decision from Court of Appeals in December 2012 which states, "This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision" (*Court of Appeals Decision page 1, CP 22*), the Superior Court proceedings of 2013 demonstrate a disinterest in following the direction of the higher court. The trial court has been negligent in its obligation to insure that the proceedings are conducted fairly and in the pursuit of an outcome that is derived from and flows from the facts of the case. For this reason a special concession is requested of the Court of Appeals whereby a repetition of said negligence is avoided, as is its right under RAP 12.2. As shown throughout this document a "calculation, yet to be determined" is required to finalize the property distribution and the following is presented for that calculation. That the below calculation be used as true and correct is part of this request as the numbers have never been disputed by Hanson and are the result of diligent vetting for fairness

and accuracy and are derived from Findings of Fact and the court accepted IRS form 1065 US Return of Partnership Income.

Calculation for Manager's Compensation and Equal Partner Draws

The value of managerial compensation at \$75,000 is applied to the division of labor (per the calculation *Findings of Fact page 8, line 7-11, CP 7-11*) as follows.

Both parties contributed one-half managerial services equally in 2009 for 5 months ($5/12 \times \$75,000 = \$31,250$), earning \$15,625 each. Zach worked an additional 7 months and should have been compensated additional managerial wages of \$43,750 ($7/12 \times \$75,000$) for total earned compensation in 2009 for Zach of \$59,375 ($\$43,750 + \$15,625$). Zach only received total compensation of \$33,941 in 2009.

“The sums Gelsey received from the business in 2009 totaling \$47,404 (including the \$7,000 withdrawal, the \$30,000 withdrawal and crediting her for the \$7,500 return of funds), a sum reflected on the K-1 Form portion of the business tax returns prepared by CPA Janet Gibb in early 2010, which both parties reviewed and provided input for, and signed before filing their taxes. Zach received sums in 2009 totaling \$33,941 (including the \$7,000 check written to him to balance out the \$7,000 received by Gelsey in early June), as reflected on the K-1 Form.” (*Findings of Fact and Conclusions of Law page 9 of 15 lines 5-12, CP 9*)

Harjo's Compensation, 2009

“It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present. In 2010, Zach received the benefit of \$30,408 as draws/compensation, through 7/9/2010. Through August 2010, the value of his services to Ocho

was \$50,000 (based on \$75,000 annual salary) and it is appropriate to compensate him for the difference for the value of his salary and the compensation/draws he has received. (\$75,000 - \$30,405 or \$44,695).” (*Findings of Fact page 8, CP 8*)

Findings of Fact records Harjo’s draws for 2009 as \$33,941. \$59,375 less \$33,941 results in underpayment of Harjo’s wage by \$25,434.00. As recorded in Findings of Fact, Harjo performed 80% of managerial services in that year.

Hanson’s Draws/Overcompensation, 2009

Findings of Fact records that Gelsey performed 20% ($5/24 \times \$75,000 = \$15,625$) of the work and yet she took \$47,404.00. \$29,500.00 of this amount was taken in lump sum in June, when she was no longer working at Ocho. Hanson exceeded her earned compensation of \$15,625.00 by \$31,779.00 ($\$47,404 - \$15,625 = \$31,779$). This overcompensation by Gelsey to herself was not taken in accordance with the partnership agreement, as recorded by the Court, and still requires offsets to Harjo as both courts have indicated.

“they verbally amended their partnership agreement, which required that each partner perform an equal amount of the managerial tasks and that each party be given equal draws at agreed upon times”. (*Findings of Fact, page 7, CP 7*)

Harjo received no equivalent payment or even his earned compensation while Gelsey took funds after parties’ separation for which she had performed no services to Ocho, a violation of the Partnership Agreement.

“On 6/18/2009, Gelsey withdrew \$30,000 from the business account; an amount she believed represented one-half the account balance at the time, \$60,000.00. She did this without notice to Zach, nor advance agreement, as was required by the partnership agreement”. (*Findings of Fact, page 8, lines 21-24 and p 9 line 1, CP 8*)

Calculation, 2009

It is appropriate to offset the amount awarded to Hanson in the decree by the amount that Harjo is owed for performing managerial services and to equalize partnership draws as per the Partnership Agreement. Harjo’s Motion for Manager’s Compensation included a quote from Mr. Weber who performed the business valuation and explains, “Total owner draws in 2009 of \$81,345 [for Harjo and Hanson] exceed the replacement compensation identified as appropriate for this business... [and] Harjo was not compensated at the level identified as appropriate for someone who managed the business full time. For the methods I used to establish the value of the business I removed actual owner draws of \$81,345 and inserted the appropriate compensation value for Harjo at \$75,000”. (*Motion to Clarify Decree and for Judgment and Order in re Manager’s Compensation from 2009 and 2010, page 5, CP 212*). Because Hanson had withdrawn the \$30,000 in June 2009, the business had already exceeded the owner draws it could reasonably pay out and Harjo could not be reasonably compensated for his work. This calculation is accomplished

using the above over-payment Hanson had made to herself in 2009. The following items apply:

1. The judgment in Hanson's favor is offset by \$25,434.00 of the \$31,779.00 over-payment to her, thereby compensating Harjo for the manager's services he performed in the last 7 months of 2009.
2. The judgment in Hanson's favor is then offset by one-half of the remaining overpayment to Hanson to equalize the owner draws of \$3172 for both parties ($\$31,779 - \$25,434 = \6345) for 2009. This action resolves the discrepancy between the Partnership Agreement as recorded in Findings of Fact (which required equal draws by partners) and Hanson's over-payments.

Summary of offsets for Manager's Compensation

1. Handling of the 2009 manager's compensation in this manner reconciles total manager's payments of \$75,000 in accordance with Findings of Fact and the Business Valuation Agreed Order (\$15,625 for Hanson's Manager Compensation and \$33,941 for Zach's Manager Compensation plus \$25,434 offset to Zach = \$75,000).
2. The actual payouts to partners of \$81,345 for 2009 less the re-distributed Manager's Compensation \$75,000 leaves total draws to partners of \$6345, which is now equally distributed at \$3172 each.

Total owed by Hanson to Harjo for 2009 compensation:	\$25,434.00
Total owed by Hanson to Harjo for 2009 owner draws:	<u>\$ 3,172.00</u>
Subtotal for 2009	\$28,606.00

Calculation, 2010

“In 2010, Zach received the benefit of \$30,408 as draws/compensation, through 7/9/2010. Through August 2010, the value of his services to Ocho was \$50,000 (based on \$75,000 annual salary) and it is appropriate to compensate him for the difference between the value of his salary and the compensation/draws he has received. ($\$75,000 - \$30,405$ or \$44,695)” (*Findings of Fact and Conclusions of Law page 8 lines 12-16, CP 8*)

Harjo was compensated \$66,371.00 (*CP 164*), 2010 US Return of Partnership Income). Applying the court's example above, Harjo has been undercompensated \$8,629.00 half of which (\$4,315.00) offsets Hanson's award; while Harjo is responsible for the remaining \$4,315.00.

Subtotal owed by Hanson to Harjo for 2010 compensation: \$4,315.00

Summary for Management Compensation from 2009 and 2010

Hanson owes Zach for 2009:	\$28,606.00
Hanson owes Zach for 2010:	\$ 4,315.00
Hanson's award is offset, Harjo's favor:	\$32,921.00

Interest Should Not Apply

Since Hanson's first post-trial document from 1/10/2011 she has employed many different and contradictory post-trial arguments on the issue of Harjo's Manager Compensation. As the above argument shows, the trial court relies on the false statements made by Hanson's attorney on her behalf and hinders the timely resolution of this entire case. It is untenable that the trial court allows Hanson to hinder the resolution of this case as 12% accrues against the party who acts in good faith and in the clear light of reason.

Below are Hanson's many efforts to explain away Compensation to Harjo:

"The Court can dispense with this claim by simply saying there is nothing further "owed to Zach" for his operation of the bar/restaurant during the pendency of this case." Response to Motion to Clarify Findings of Fact and/or Reconsider Same, January 10, 2011 (CP 343)

Hanson continues to litigate issues she lost at trial and suggests the court ignore the rights already granted Harjo and flagrantly contradict Findings of Fact.

“However, these values were incorporated into the value of the business. The parties agreed on a value for the business to present to the trial court as of the date of trial. CP 42. Therefore, the draws were already included in the business valuation and no further adjustment is appropriate.” *Responsive Brief of Respondent September, 28 2011 (EX 2)*

Obviously, the Mr. Weber’s Business Valuation did not assign property.

From *Petitioner’s Response in Opposition to Respondent’s Motion for Clarification (CP 278-288). September 13, 2013*, a variety of disparate thoughts:

“These same findings describe the parties’ rights with respect to the business and the business draws. In other words, the issues have already been litigated and resolved... Those funds were described in the decree and accounted for in the overall allocation of property and liabilities... The court did not utterly fail to account for the \$75,000 in compensation in its decree... The court did specifically reserve allocation of profits for 2010, since the trial occurred in 2010 and the annual profits were not yet known. However, the court made no such reservation for 2009. Draws for 2009 by each party occurred prior to separation, and Mr. Harjo is trying through this motion to re-allocate property which the court already considered... He is now asking the court to reverse its 2010 trial decision and award him property that was already allocated in the court’s overall award (which contain multiple offsets). He raises no new issues but is simply re-litigating prior decisions... Both parties took pre-separation draws from the business, and these draws were considered by the court (Decree, pages 4-5) Findings, pages 8-11). No further recalculation is appropriate or even allowed under the law.”

The function of 12% interest in a dissolution is to keep the owing party from being delinquent in its payment. Here, the party with the

summary judgment in their favor is hindering the timely payment through a failure to approach the outstanding issues honestly, prolonging resolution. Hanson makes false statements and omits items that she lost at trial and the trial court has lacked sufficient suspicion of misconduct to intercede on Hanson's deception, and this has been the primary obstacle to a timely resolution for 3 years. After the award of offsets to Harjo for Compensation the remaining sum to Hanson could have reasonably been resolved at the outset and should bear no interest. Justice is not served in the application of interest and should not be applied as it is not reasonable to penalize Harjo when Hanson's attorney on her behalf has violated the Rules of Professional Conduct to achieve the current award. Harjo respectfully requests that the 12% interest be suspended for the period between Hanson's original misrepresentations of the record on January 10, 2011 and the correction by Mr. Loudon of Hanson's false statements to the trial court.

VI. CONCLUSION

A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* "A trial court's decision is manifestly unreasonable if it 'adopts a view' that no reasonable person would take." *In re Pers. Restraint of Duncan*, 167 Wash.2d 398, 402-03, 219 P.3d 666 (2009) (quoting) *Mayer v. Sto Indus., Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71P.3d 638 (2003)).

The perception of the trial court's competence has been eroded in this case. Harjo as pro se lacks faith in his ability to be heard, as his clear reference to the record is ignored in favor of Hanson's false statements. Meanwhile Hanson's personal letters to the court, which mislead the court, are able to evoke Judgments and Orders. Harjo feels that his voice bears less weight to the trial court than that of the opposing Attorney even though that Attorney is at odds with his obligation to the Rules of Professional Conduct and extracts judgments in his favor through falsities and mistruths. To be at once the voice that both adheres to the truth and yet is not heard is both frustrating and a travesty.

That the trial court fails to provide a just resolution by not providing Orders consistent with the record and it has additionally failed to adopt a reasonable view in that it relies not on the facts of the case but on false statements, such a failure is abuse of discretion since it results in a factual error, which means the discretion is based on untenable grounds. Harjo has little confidence that, by its own definition, a just, fair and equitable solution can be achieved via motion before the trial court. Therefore, in order to achieve a result that is by the trial court's definition just and equitable, Court of Appeals is requested to apply RAP 12.2 and "take any other action as the merits of the case and the interest of justice may

require” to render a decision that would amend and finalize the Judgments and Orders consistent with the record.

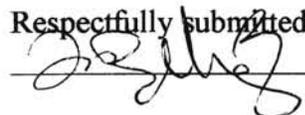
The trial court has an obligation to exercise her discretion in respect to the clearly assigned rights for Harjo’s Compensation and to fail to do so is an abuse of discretion.

A failure to exercise discretion is an abuse of discretion. See *Brunson v. Pierce County*, 149 Wn. App. 855, 861, 205 P.3d 963 (2009)(citing *State v. Pettitt*, 93 Wn.2d 288, 295-96, 609 P.2d 1364) (1980»). Likewise, when a trial judge refuses to exercise her discretion, she abuses that discretion. *State v. Gravson*, 154 Wn.2d 333, 341-42, III P.3d 1183 (2005).

Harjo requests that the Court of Appeals finalize the Judgments and Orders as follows and provide oversight in its implementation. A final Judgment and Order should include the following in order to realize the totality of the court’s original intention for the rights it granted through Findings of Fact:

- A. That an offset for \$32,941 be established in Harjo’s favor for his right to Equal Partner Draws and Manager’s Compensation. That the Orders in conflict with the corrected sums be denied.
- B. That the award of attorney’s fees under CR 11 be denied.
- C. That attorney for Ms. Hanson be required to correct his false statements to the trial court consistent with the Rules of Professional Conduct.
- D. That the 12% interest on the final distribution be retroactively suspended from the date of Hanson’s Response to Motion to Clarify Findings of Fact and/or Reconsider Same on January 10, 2011 and the correction by Mr. Louden of Hanson’s false statements to the trial court..

Respectfully submitted this 21st day of January, 2014

 Zachary B Harjo, Pro Se

VII. Exhibits, Exhibit 1

CODE OF JUDICIAL CONDUCT

CANON 2

A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

COMMENT

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] In accordance with GR 29, a judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

RULES OF PROFESSIONAL CONDUCT (RPC)

RULE 3.3

CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

RULE 8.4

MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

The court made extensive findings on the value of work each party put into the business through the concluding months of the relationship and the course of the litigation. However, these values were incorporated into the value of the business. The parties agreed on a value for the business to present to the trial court as of the date of trial. CP 42. Therefore, the draws were already included in the business valuation and no further adjustment is appropriate. Had a smaller value been used for Harjo's compensation from the business than \$75,000, the business would have had a proportionally higher value, as it would have had that much additional net income. This higher value should then have been distributed between the parties. However, the court incorporated Harjo's anticipated compensation in the valuation used.

Furthermore, it is not an abuse of discretion to decline to allocate the value of that labor through offset. The court's findings show that the court did consider the various draws each party received from the business, and allocated those draws in its overall distribution. While it made detailed findings about the exact amount each party received, this does not necessarily entitle the parties to a dollar-for-dollar offset or credit against amounts received by the other. The court specifically found that "an equitable division, taking into consideration the contributions of each and

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September 26, 2013

The Honorable Julie Spector
King County Superior Court
516 Third Avenue
Seattle, WA 98104

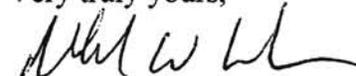
Re: *In re Hanson and Harjo*
King County Superior Court No. 09-2-25941-1 SEA

Dear Judge Spector,

Following your order of September 17, 2013, I received another motion from Mr. Harjo in the above-entitled case, this time requesting oral argument and seeking relief under CR 59 and CR 60. This appears to be a repeat of his motion made in June, with the underlying relief being for reconsideration. Again, pursuant to LCR 59(b), I am not permitted a substantive response unless requested by the court, and the motion will not be granted unless a request from the court is made.

As before, I request that Mr. Harjo's motion(s) be denied, and enclose a proposed order denying the same.

Very truly yours,



Michael W. Loudon

MWL:han

Enclosures

Cc: Mr. Zachary Harjo
Ms. Gelsey Hanson