

71994.7

71994-7

COURT OF APPEALS
DIVISION 1
OF THE STATE OF WASHINGTON
NO. 71994-7-1

NADIA SHAFAPAY
APPELLANT

Vs.

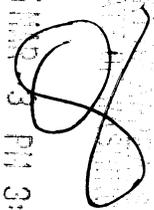
MEHRDAD (MIKE) SHAFAPAY (DECEASED)
RESPONDENT

REPLY BRIEF OF APPELLANT TO RESPONDENT'S LAWYER

JAMES PERKINS
March 3, 2015

TABLE OF CONTENTS

- I. **INTRODUCTION**
- II. **ASSIGNMENT OF ERROR**
- III. **CASE STATEMENT**
- IV. **ARGUMENT**
- V. **CONCLUSION**


 COURT OF APPEALS
 STATE OF WASHINGTON
 DIVISION 1
 2015 MAR 3 PM 3:53

I. INTRODUCTION

The following is my response to Mr. Perkins; although Mr. Perkins has taken it upon himself to address me as Nadia, I do take vehement objection to that level of familiarity and respectfully ask the court to direct him to address me instead as Ms. Shafapay, as I have been thusly addressed for the past 29 years; Mr. Perkins' presumption that I find his familiarity acceptable is completely without merit and demonstrates a level of disrespect which I cannot condone. Additionally, Mr. Perkins' has included a completely unfounded presumption in his conclusion, that my Pro Se filing is due to an inability to locate an attorney able to conclude grounds for appeal existed. I have in fact spoken with several attorneys though legal aid who feel very strongly that I have a strong case toward a successful appeal and I am utilizing the advice they have provided to me. I appreciate Mr. Perkins' patronizing efforts to discourage me – it suggests all the more that my appeal has validity.

The Order on Civil Motion I am requesting to be vacated is the decree from April 23, 2014.

In the opening paragraph of his introduction, Mr. Perkins states, "Nadia and the Respondent Mehrdad Shafaypay, who shall be referred to from here on as "the decedent" were married for some years". I consider this to be an insultingly reductive characterization as the decedent and I were in fact married for 29 years beginning September 15, 1985. Over the course of my marriage to the decedent, we had four children together. At the decedent's time of the death on September 27th 2014, two of our children were under 18 years of age and still residing with me. Under the Muslim marriage practices by which we were bound, the decedent refused to release me from the marriage. I was released from the marriage only as a result of his death, despite repeated efforts by my pastor and mosque community, Iman Center of Kirkland.

I told the decedent I had the right to move on with my life too as he had already moved on with his life even prior to the end of our marriage as decreed under King County Superior Court, finalized on June 25, 2012. The activity I am using to determine his "moving on" was his development of a sexual relationship outside of our marriage resulting in the birth of his son, born at Yakima General Hospital on May 5, 2011, over a year prior to our divorce being finalized under civil law. The mother of his new son was his 22 year old girlfriend Gardena Mendoza. Ms. Mendoza was not married to my decedent but proceeded to transfer the property rights to an unknown person. This property was in the decedent's name and was fraudulently transferred. My claims to it have been rejected although he owned this property during our marriage and must be considered as community property. I hired a private investigator on contingency, Benny Bridges, to investigate the matter and I have submitted his report to the court which outlines the fraudulent transfer of the community property done without my knowledge or consent. Mr. Bridges is entitled to 30% of the outcome of the disposition.

The decedent was diagnosed with Stage 4 cancer on February 14th, 2014 and failed to set his affairs in order and produce a will to officially recognize my rights to the community property in question, although my successor rights are established under the community property provisions under Washington laws. I have filed this cause under Case number: 14-4-06093-6 with the King County Superior Court on behalf of my children who will otherwise obtain no financial support from his estate.

The Bank of America has filed a Creditor's Claim against me with regard to this property. It would be reasonable that the Bank of America would only be in contact with me if they had a cause to believe that this property must be under my control, but it is not. The claim amount made is for \$101,636.77, which I have no means of paying without recognition of my rights to the property so that it can be sold or otherwise liquidated to satisfy the creditor's claim. I was served with this claim on January 27, 2014, over a year and a half following our divorce. Ultimately, I should have no accountability for this creditor's claim under Washington State Law.

Additionally, the Yakima Cancer Center has also sent me a creditor's claim in the amount of \$13,982.03 due to unpaid services. As his diagnosis of cancer was similarly made after our divorce and related treatments took place after diagnosis, I should have no accountability for the creditor's claims under Washington State Law.

The decedent went delinquent on his child support obligations for our 15 year old daughter soon as he was diagnosed with cancer. The response to my complaint to DCS was that the decedent had sold his business and could not make payments due to hardship. I cannot reconcile the idea that the sale of his business would not have supplied him with suitable funds to pay his child support obligation and he never applied to the court for any revision of child support with the completion of a new child support worksheet. The sale of his business clearly did not provide him in life, or now me after his death, with the funds to settle the property matter with the Bank of America and similarly did not supply the funds to respond to the debt left by his medical treatments. His obligation remained outstanding prior to his death. An immediate result, however, of the sale of his business was to rent and reside in a 5 bedroom luxury house with a swimming pool in Las Vegas and the rent on the house remained paid for 3 months after his death. The lease expired at the end of 2014. I have relied on help from my family members and public assistance, and from the Iman Center of Kirkland which has generously helped me to pay our electricity bills. Right now my daughter and I live on the \$1,063 from social security survival benefits, which keeps up at 100% below the poverty line.

I respectfully ask that the court readdress the question of vacating the Decree under a number of provisions under Civil Rule 60(b). It is my respectful position that the Decree was entered in error due to the fact that the decedent provided fraudulent testimony, as the newly obtained evidence provided by my investigator's efforts shows.

Contained in the investigator's report is the necessary evidence that the properties held by Ms. Mendoza, and property put into the name of our daughter, Natasha Shafapay, were in fact done so that the decedent could defraud the court in his testimony

that he had no such claim to ownership of the properties, to remove them from the realm of community property.

I present the following with respect to Civil Rule 60:

Under CR 60(a), I request the leave of the Appellate Court to vacate the Decree based on the oversight and omission of the specific facts as presented by my former attorney Adam Shapiro, with respect to his failure to precisely identify the facts for the consideration of the court which were fully necessary to be supplied for consideration for deliberations. I intend to identify the facts which he neglected to present, such as the transfer of the property at 9406 Occidental Road, Yakima, WA which was purchased in 2006 during the marriage, was therefore community property and transferred without my consent or knowledge. Additionally, the transfer of this property should receive consideration under CR 60(b)(3) as it demonstrated gross misconduct by the opposing party, now the decedent, and successful misrepresentation intended to deceive the court with respect to the proper listing of the decedent's assets.

The facts of the newly discovered evidence provided in the investigator's report support the use of CR 60(b) to vacate the Decree. I request the application of excusable neglect as per CR 60(b)(1) for the failure to bring this evidence to the trial court's attention before the entry of the Decree due to the fact that my trial attorney, James Hendry, failed to review the financial declaration of the decedent prior to presentation to the trial court and failed to perform due diligence to verify the proper ownership of the declared properties. I further request the vacation of the Decree under excusable neglect due to the failure of Mr. Hendry to advise that my window to appeal the matter was only 30 days.

I request relief from the Final Judgment on the basis of new evidence under CR 60(b)(2), newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b) due to the fact that the Bank of America demanded I remove myself, my children and all our property from this house on November 15, 2014.

I request relief from the Final Judgment on the basis of new evidence under CR 60(b)(3), Grounds for Relief from a Final Judgment, Order, or Proceeding on motion and just terms dealing with fraud as the matter of the property at 11601 NE 67th St., Kirkland, WA which was purchased in 1999, had been sold without my knowledge or consent in 2006. The fact that this residence was awarded to me by the court in the property settlement agreement on June 25, 2012 clearly demonstrates the fraudulent testimony of the decedent as the court would not and could not have awarded the property without his fraudulent claim of ownership in the listing of assets and misconduct with respect to the sale of the community property.

At a minimum, the Decree should be vacated due to the newly discovered evidence of Mr. Shafapay's interest in previously non-disclosed properties under CR60(b)(3) with the remaining aforementioned provisions of relief under CR 60 supporting the claims.

II. ASSIGNMENT OF ERROR

On page four of the Respondent's brief it is mentioned, is states:

Although at motion hearing the Appellant sought to show "new evidence" had been discovered which would support a reopening of the decree, my attorney failed to list the assets but Judge had them all in front of her in the private investigator report.

Since his death in September 2014, no will has been discovered that I know of the name of my oldest, Natasha Shafapay, has been stated in the death certificate as an important person who still has a property under her name. 9406 Occidental Rd. Yakima, WA was bought in 2006 when Natasha was only 18 and free and clear title. Natasha and I are presently estranged due to her refusal to recognize the misconduct of her father in transferring the property to her in order to defraud the court and hide his assets so they would not be included for consideration in the property settlement agreement.

III. CASE STATEMENT

Mr. Perkins states on page 2 of the Respondent brief that after 5 months, no will has been located. The existence of a will should not determine the outcome of the court's decision as the property had been community property and it would have passed to me if no fraud had been committed by the decedent.

IV. ARGUMENT

Civil Rule 60 (b) is my primary legal authority for moving to vacate my divorce decree with support of the other aforementioned provisions under Civil Rule 60. Adam Shapiro failed to succinctly list the new discovery assets that were to be presented to the court, otherwise provided within in 250 pages of the private investigator's report. Respectfully, I believe an abuse was made by the court in its findings by not considering the additional material which was provided in the investigator's report.

Marriage of Tang referenced.

Gordon C.Y. Tang appeals from the trial court's order under CR 60(b), which vacated a dissolution decree and set aside the property settlement agreement incorporated in the decree. He asserts the trial court erred in determining as a matter of law that the decree was defective because (1) it failed to list, characterize and evaluate the items of property owned by the parties.

TABLE OF AUTHORITIES

CASES

In re Marriage of Tang,
57 Wn.App. 648 (Wash.App. Div. 1 1990)

V. CONCLUSION

My decree I am appealing occurred as a result of my trial attorney Mr. James Hendry's failed performance of due diligence in the investigation of the assets of the decedent. This has been proven by the results of the private investigator. This was professional negligence on the part of my attorney, a failure to represent my best interests. The court could only respond to the information provided by either my trial attorney or my appeals attorney, Mr. Adam Shapiro, who also failed in his duty to succinctly explain the facts of the case to the court. The court, as a result of the failure of my attorneys, made certain judgments which were invalid, such as the award of the Kirkland house. I respectfully continue to request the vacation of the Divorce Decree finalized by the court on June 25, 2012.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Superior Court of Washington
County of King**

In re the Marriage of: NADIA SHAFAPAY and MEHRDAD SHAFAPAY		No. 11-3-03503-8 SEA Motion/Declaration for Ex Parte Restraining Order and for Order to Show Cause (MTSC)
Petitioner.		
Respondent.		

I. Motion

Based upon the declaration and information provided to this court as part of this motion, the undersigned moves the court for a temporary order and order to show cause.

1.1 Ex Parte Restraining Order

A temporary restraining order should be granted without written or oral notice to the other party or the other party's lawyer because immediate and irreparable injury, loss, or damage will result before other party or the other party's lawyer can be heard in opposition. This order should restrain or enjoin:

The respondent, his spouse (Lannena Boersma) or live-in girlfriend Gardenia Mendoza from transferring, removing, encumbering, concealing or in any way disposing of any assets or property, including but not limited to: 3605-3609 W. Nob Hill Road, Yakima, WA 98908; 9406 Occidental Road, Yakima, WA; 5220 Norman Rd., Yakima, WA; 11601 NE 67th St., Kirkland, WA; 5224 & 5226 Norman Road, Yakima, WA; 306 W. California St., Union Gap, Yakima County, WA; 904 South 6th Avenue, Yakima WA; 1305 South 22nd Ave., Yakima WA; Harley Davidson Motorcycle; except in the usual course of business or for the necessities of life and requiring each party to notify the other of any extraordinary expenditures made after the order is issued.

1
2 The respondent should also be required to appear and show cause why these restraints
should not be continued in full force and effect pending final determination of this action.

3 **1.2 Other Ex Parte Relief:** Does not apply.

4 **1.3 Surrender of Deadly Weapons**

5 Does not apply.

6
7 **1.4 Other Temporary Relief**

8 The respondent should also be required to appear and show cause why the court should
not enter an order which:

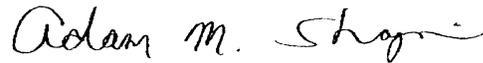
9 Vacates the Findings of Fact and Conclusions of Law and Dissolution Decree
10 entered on June 25, 2012 and re-open the dissolution proceedings *ab initio* due to
11 misrepresentation and fraud under Civil Rule 60 (4) and (11).

12 Authorize petitioner to engage in discovery to further investigate respondent's
assets and this claim of indebtedness at the time of trial.

13 Require the respondent to pay petitioner's professional fees and costs related to
14 bringing this motion and for future legal representation of the petitioner in the re-
opened dissolution case.

15 Require the respondent to pay petitioner temporary maintenance.

16
17
18 Dated: 4/4/14



19 Adam M. Shapiro, WSBA No. 21472
Attorney for Nadia Shafapay

20 **II. Declaration**

21 **2.1 Injury to be Prevented**

22 The ex parte restraining order requested in paragraph 1.1 and 1.2 above is to prevent the
following injury:

23 To ensure that the respondent does not transfer, remove, encumber, conceal or in any way
24 dispose of any assets or property so petitioner can pursue discovery and all assets and liabilities
25 which should have been before the court during the original dissolution proceedings can be brought
before the court for fair and equitable division.

26 Respondent was recently diagnosed with cancer. I have been told my family members that he is
27 intending to liquidate his assets in order to pay for his medical treatment. I believe some of assets
he intends to liquidate are community property (see property listed under section 1.1) which the

respondent failed to disclose or lied about at our dissolution trial. These assets need to be preserved in case this Court the Dissolution Decree and Findings of Fact/Conclusions of Law are vacated and this case is re-opened.

2.2 Reasons why the Injury may be Irreparable

This injury may be irreparable because: respondent may hide, transfer or liquidate assets tied to the marital community and which should be available for division. Respondent may also use community assets to pay for his medical care and such assets would not be recoverable if used in this way.

2.3 Clear and Convincing Reasons why Weapons Should be Surrendered

Does not apply.

2.4 Reasons for a Temporary Order

It is necessary that the court issue a temporary order with the relief requested in paragraph 1.4 above for the reason set forth below: so the dissolution case can be re-opened and the truth about the assets and liabilities of the marital community be properly investigated.

Mehrdad Shafapay committed fraud on me and this Court. As a result, I did not receive any property or assets from our dissolution while he hid and controlled significant assets. The house in which I have lived for the past 15 years is about to be auctioned off. I don't have savings or income sufficient to meet my cost of living. I need maintenance and funds from the respondent so I can support my basic needs, have somewhere to live and to continue this litigation.

2.5 Service Member or Dependent of Service Member

Does not apply.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) Kirkland (state) WA on (date) 3-31-14

Martin Shafapay
Signature of Requesting Party

Nadia Shafapay
Print or Type Name

SUPERIOR COURT OF WASHINGTON
FOR _____ KING _____ COUNTY

Estate of

MEHRDAD SHAFAPAY,

Deceased.

NO. 14-4-06093-6

**CREDITOR'S CLAIM
(RCW 11.40.070)**

Claimant's Name: Bank of America, N.A.

Bank of America, N.A.

and Address: C/O DCM SERVICES 7601 PENN AVE S SUITE A600
MINNEAPOLIS, MN 55423-5004

If Claim made by Claimant's Agent: Agent's Name: _____

Ben P. Olson
Authorized Representative
AUTHORIZED REPRESENTATIVE ON BEHALF OF CLAIMANT, BANK OF AMERICA, N.A.

C/O DCM SERVICES 7601 PENN AVE S SUITE A600

and Address: MINNEAPOLIS, MN 55423-5004

Nature of Agent's Authority: _____ Authorized Representative for claimant
Facts and circumstances surrounding the Claim:

See attached claim detail for claim basis

Amount of Claim: \$ 101,636.77

If Claim is secured, the nature of the security; if not yet due, the date when it will become due; and if contingent, the nature of the uncertainty:

N/A; unless noted on attached claim detail

Claimant's Signature: _____

Ben P. Olson
Authorized Representative
AUTHORIZED REPRESENTATIVE ON BEHALF OF CLAIMANT, BANK OF AMERICA, N.A.
C/O DCM SERVICES 7601 PENN AVE S SUITE A600

SUPERIOR COURT OF WASHINGTON

FOR KING COUNTY

Estate of

MEHRDAD SHAFAPAY

Deceased.

NO. 14-4-06093-6

CREDITOR'S CLAIM (RCW 11.40.070)

Claimant's Name: Yakima HMA, LLC (WA) D/B/A Yakima Regional Medical & Cardiac Center et al. Yakima HMA, LLC (WA) D/B/A Yakima Regional Medical & Cardiac Center et al.

and Address: PROBATE DEPARTMENT 7100 COMMERCE WAY, SUITE 100 BRENTWOOD, TN 37027

If Claim made by Claimant's Agent: Agent's Name: JASON M. WILLIS AUTHORIZED REPRESENTATIVE et al. Yakima HMA, LLC (WA) D/B/A Yakima Regional Medical & Cardiac Center et al.

and Address: PROBATE DEPARTMENT 7100 COMMERCE WAY, SUITE 100 BRENTWOOD, TN 37027

Nature of Agent's Authority: Authorized Representative for claimant Facts and circumstances surrounding the Claim:

See attached claim detail for claim basis

Amount of Claim: \$ 13,982.03

If Claim is secured, the nature of the security; if not yet due, the date when it will become due; and if contingent, the nature of the uncertainty:

N/A; unless noted on attached claim detail

Claimant's Signature:

[Handwritten Signature]

JASON M. WILLIS AUTHORIZED REPRESENTATIVE

Yakima HMA, LLC (WA) D/B/A Yakima Regional Medical & Cardiac Center et al.

PROBATE DEPARTMENT 7100 COMMERCE WAY, SUITE 100

BRENTWOOD, TN 37027

(888) 702-2922

[Your Name, Address, & Phone]



2015 MAR -3 PM 3:53
 COURT OF APPEALS
 STATE OF WASHINGTON

To: Mr Richard Johnson
 Fax: 206 389 2613
 From: Nadia Shafiq
 Date: 3/3/15
 Re: Appellate Respond To Brief (revised)

This transmission has 9 pages including the cover.

It was sent from the following fax number:

(206) 205-2905

This transmission is being sent as a service by Public Law Library of King County on behalf of the person named above. Public Law Library of King County assumes no liability for its content or for transmission errors or confidentiality.

Please report any problems to the librarians at (206) 477-1316.

The correction was made. vacated order is
 April 22, 2014.
 and it is less than required 10 pages for fax.
 Also was made to other side @ Jim @ LbPlaw.com