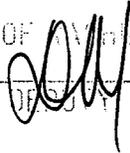


FILED
COURT OF APPEALS
DIVISION II

No. 41722-7-II

11 OCT 13 PM 1:50

IN THE COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON
BY  DEPUTY

FOR THE STATE OF WASHINGTON

BRUCE BLATCHLEY

Appellant

v.

SANDRA PETRANEK

Respondent

APPELLANT'S REPLY BRIEF

Ted Knauss
WSBA #9668
Shane Seaman
WSBA #35350
Knauss & Seaman PLLC
203 A. West Patison St.
Port Hadlock, WA 98339
(360)379-8500
Attorneys for Appellant

Table of Contents

A. The Trial Court Should Not Have Vacated The Original Decree Because The Failure To List All Properties In The Original Decree Was Neither “Extraordinary Circumstances” Nor A “Manifest Injustice”	1
1. LISTING ALL PROPERTIES IS NOT REQUIRED	1
2. “INADVERTENT” FAILURE TO LIST PROPERTY IS NOT “EXTRAORDINARY”, AND A REMEDY IS TIME LIMITED.	2
B. The Trial Court Should Not Have Vacated The Original Decree Because The Original Decree Was Not Ambiguous	3
1. THE PARTIES HAD EQUITABLY DIVIDED MUTUAL PROPERTY BEFORE ENTERING THE ORIGINAL DECREE.	3
2. THE TERM “EQUITY” DOES NOT MAKE THE ORIGINAL DECREE SO AMBIGUOUS THAT VACATION IS THE APPROPRIATE REMEDY.	4
C. The Trial Court Erred Because The Original Decree Memorialized The “Fully And Voluntarily” Made Agreement To Split The Property	5
D. Petranek Should Be Held To The Original Decree	10
E. Blatchley Argues For A Fair And Equitable Distribution, Not A Per Se Bar	11
F. Petranek Failed To Prove The Source Of Funds Used To Purchase Community Assets	12
1. PETRANEK DID NOT HAVE SUFFICIENT EVIDENCE TRACING HER INHERITANCE AS THE SOURCE OF THE COMMUNITY ASSETS, THEREFORE THERE IS INSUFFICIENT EVIDENCE OF ORIGIN OF THE COMMUNITY ASSETS.	12
2. THE ORIGIN WAS NOT ESTABLISHED BY CLEAR COGENT AND CONVINCING EVIDENCE.	13
G. Petranek Cannot Deny The Existence Of The Original Agreement Memorialized By The Original Decree.	16
H. Family Law Courts Favor Finality	18
I. The Order Directing Conveyance On The Judgment Violated Cr 62.	19
J. Conclusion.	21

Table of Authorities

Cases

<u>In re Marriage of Curtis</u> , 106 Wash. App. 191, 197, 23 P.3d 13 (2001)	7
138 Wn.2d 612, 980 P.2d 1248 (1999).....	3
<u>Buchanan v. Buchanan</u> , 150 Wash.App. 730, 735, 207 P.3d 478 (2009)..	0
<u>Buchanan v. Buchanan</u> , 250 Wn. App. 730, 207 P.3d 478 (2009).....	10
<u>Burlingame v. Consolidated Mines and Smelting Company, Ltd.</u> , 106 Wn.2d 328, 336, 722 P.2d 67 (1986).....	11
<u>DewBerry v. George</u> , 115 Wash. App. 351, 363, 62 P.3d 525, (2003)	9
<u>Hurley v. Wilson</u> , 129 Wn. 567, 568, 225 P. 441 (1924)	12
in <u>In re Marriage of Burkey</u> , 36 Wash.App. 487, 675 P.2d 619 (1984)	0
<u>In re Estate of Borghi</u> , 167 Wn.2d 480, 490, 219 P.2d 932 (2009)	19
<u>In re Marriage of Chumbley</u> , 150 Wn.2d 1, 74 P.3d 129 (2003).....	15
<u>In re Marriage of Cohn</u> , 18 Wash.App. 502, 506, 569 P.2d 79 (1977).....	5
<u>In re Marriage of Nuss</u> , 65 Wash.App. 334, 828 P.2d 627 (1992)	14
<u>In re Marriage of Skarbeck</u> , 100 Wash.App. 444, 448, 997 P.2d 447 (2000).....	13
<u>In re Marriage of Tang</u> , 57 Wash. App. 648, 789 P.2d 118 (1990).....	2
<u>Pamelin Indust., Inc. v. Sheen-U.S.A., Inc.</u> , 95 Wn.2d 398, 622 P.2d 1270 (1981).....	11
<u>Ross v. Pearson</u> , 31 Wash.App. 609, 614, 643 P.2d 928 (1982)	1
<u>State v. Keller</u> , 32 Wash.App. 135, 647 P.2d 35 (1982).....	11
<u>State v. Scott</u> , 20 Wash.App. 382, 387, 580 P.2d 1099 (1978)	10
<u>Stokes v. Polley</u> , 145 Wn.2d 341, 37 P.3d 1211 (2001).....	4

Statutes

RCW 26.09.050	5
---------------------	---

Treatises

19 Wash. Prac., Fam. And Community Prop. L. § 19.13	8
---	---

A. The Trial Court Should Not Have Vacated The Original Decree Because The Failure To List All Properties In The Original Decree Was Neither “Extraordinary Circumstances” Nor A “Manifest Injustice”

Petranek argues the court was correct in vacating the original decree because it did not list all the properties owned by Petranek and Blatchley. Petranek cites no case law for this proposition for a good reason: there is none.

1. Listing all properties is not required

There is no legal requirement that dissolution decrees contain all property owned by divorcing couples. This is not a basis to vacate a decree under CR 60(b)(11). The failure to list all properties is sufficiently common that courts have fashioned a straightforward remedy: property not divided by a decree is held as tenants in common. See e.g. Buchanan v. Buchanan, 150 Wash.App. 730, 735, 207 P.3d 478 (2009). Court’s have routinely rejected vacation as the appropriate remedy.

The Court of Appeals considered a similar motion to vacate a dissolution decree in In re Marriage of Burkey, 36 Wash.App. 487, 675 P.2d 619 (1984). The trial court found no fraud, overreaching, or collusion between the parties, and found the parties were all aware of the properties and their values, but granted the wife’s motion to vacate based on inadequate legal representation provided to the wife by her attorney.

Id. at 490. The Court of Appeals found an abuse of discretion because none of the reasons set forth in CR 60 had been established. Id. at 491.

In the instant case, there is no allegation of hiding properties – all parties were **fully** informed at the time they entered the original decree. (RP 312-14). There were simply no circumstances bringing CR 60(11) to bear. The trial court abused its discretion in vacating the original decree.

2. “Inadvertent” failure to list property is not “extraordinary”, and a remedy is time limited.

“Extraordinary circumstances” do not include the “inadvertent” failure to include community property in a divorce decree. Ross v. Pearson, 31 Wash.App. 609, 614, 643 P.2d 928 (1982). The failure to include property is properly addressed by CR 60(b)(1), which relates to “mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order” and must be brought within one year of the decree. Id. at 614. Petranek did not seek a timely remedy.

The case In re Marriage of Tang, 57 Wash. App. 648, 789 P.2d 118 (1990) is directly on point. It was determined the trial court abused its discretion in setting aside an incorporated property settlement agreement for alleged errors of failure to list, value, and characterize property and for converting spouses' property to tenancy in common ownership. Id. at 653-654. The Court held those alleged errors were legal, rather than factual,

issues that were properly appealable, but were not suitable for motion for relief from judgment. Id.

The trial court abused its discretion in vacating the original decree. The original decree granting 1/3 of the value (or “equity”) of the South Edwards to Blatchley should be reinstated.

B. The Trial Court Should Not Have Vacated The Original Decree Because The Original Decree Was Not Ambiguous

The trial court abused its discretion by vacating the original decree as the facts do not support a finding that justified reopening the judgment.

1. The Parties had equitably divided mutual property before entering the Original Decree.

Petranek relies on In re Marriage of Jennings, stating the disposition was “ambiguous” and therefore should be vacated. 138 Wn.2d 612, 980 P.2d 1248 (1999). However, Jennings presents a vastly different factual scenario. In Jennings, a change in the characterization of military retirement benefits resulted in a greatly reduced monthly distribution to the former wife. Id. This change was not contemplated by the parties at the time they entered into the original decree, and the Supreme Court allowed the decree to be modified, finding “extraordinary circumstances” under CR 60(b)(11). Id. at 625-626.

In the present case, there is no such change in circumstances leading to a frustration of the intent of the original decree. All parties were

fully aware of all the properties when they drafted and signed the original decree. (RP 312-14) In November of 2007, Blatchley purchased a vacant lot in Hawaii for approximately \$40,000.00 from his share of the Greenway proceeds. (RP 312-14) The record is clear that Petranek was informed of the purchase and made no objection. (RP 312-14). No evidence presented at the hearing on the CR 60(b)(11) motion suggests that anyone withheld information from the other.

Petranek didn't include the Hawaii parcel on the petition for dissolution because Blatchley and she "have equitably divided mutual property" (as stated on the petition) (CP 1, p.3 par.1.8). The trial court was aware of these facts; according to Blatchley's declaration against vacation of the April 11, 2008 decree, only the South Edwards property remained to be divided between them (CP 17, page 4 ln. 6-15). Petranek never rebutted this information, rather, Petranek just changed her mind some seventeen months later, and decided to try again.

2. The term "equity" does not make the original decree so ambiguous that vacation is the appropriate remedy.

Petranek also criticizes the use of the term "equity" in the original decree (a term drafted by her), citing Stokes v. Polley, 145 Wn.2d 341, 37 P.3d 1211 (2001). Stokes recommends that courts "should" award property in its entirety to one spouse and an offsetting monetary award to

the other spouse, but does not create a legal requirement to do so, nor does it designate the failure to do so an “extraordinary circumstance” justifying the vacation of a valid decree. Id. at 347-48. Even accepting that the term “equity” is poorly chosen by pro se litigants in light of Stokes, its use does not give rise to a complete vacation of the April 11, 2008 decree. At most, the court should have clarified the decree, looking to the parties’ intent and keeping the agreement to split South Edwards 1/3-2/3 intact.

C. The Trial Court Erred Because The Original Decree Memorialized The “Fully And Voluntarily” Made Agreement To Split The Property

Petranek claims that the parties did not “fully and voluntarily” enter into an agreement concerning splitting Greenway’s proceeds and funding South Edwards. Petranek argues the decree drafted by her and Blatchley, approved by the court in April 2007, was not enforceable because it does not recite the “full” agreement reached by the parties. (Brief of Respondent at 24) Petranek confuses the law by rearranging the terms.

The Cohn case sets forth the following test for a valid settlement agreement:

- 1) Was there full disclosure of the amount, character, and value of the property involved, and

- 2) Was the agreement entered into fully and voluntarily on independent advice and with full knowledge of the spouse of her rights.

In re Marriage of Cohn, 18 Wash.App. 502, 506, 569 P.2d 79 (1977).

The word “full” modifies the disclosure, the voluntary nature of entering into the agreement, and the knowledge of rights. The word “full” does not modify the word “agreement”. There is simply no requirement that the decree include all agreements as to all properties.

RCW 26.09.050 requires the court to make provision for the disposition of property and liabilities of the parties. Although the best practice, especially with the help of an attorney is to identify all property, there simply is no legal requirement that all properties be listed in a divorce decree, especially by pro se litigants, and the failure to include a property does not invalidate the decree.

Petranek cannot simply insert a requirement that is not contained in statute or case law, and argue that the lack of the “requirement” causes the agreement to fail. The Trial Court erred by failing to treat the original agreement memorialized in the April 11, 2008 decree as a pro se settlement supporting the evidence of a binding oral agreement.

Blatchley explained to the court in detail why the agreement did not include the Hawaii parcel, financial accounts and the personal

property. (CP 17) They had already divided their belonging between them. (CP 17) To the pro se parties, there was no reason to include these on the April 11, 2008 decree. Their failure did not invalidate the decree.

A party who voluntarily chooses not to value an asset before settlement should not be allowed to return to court to do what should have been done prior to entry of the final decree. In re Marriage of Curtis, 106 Wash. App. 191, 197, 23 P.3d 13 (2001). The fact that a party received inadequate counsel is not a basis to vacate an otherwise valid dissolution decree. Id. The overall fairness of a settlement is not an adequate ground to vacate a final decree of dissolution. Id.

Petranek claims that the trial court was correct in finding the parties had not reached a “full” agreement because the parties had not addressed who had the “right to occupy the property, or which, if either, party had the right to sell, mortgage or otherwise encumber the property,”. (Brief of Respondent at p. 25). Petranek cites no authority for this position, and clearly a long line of case law as it applies to tenants in common addresses these precise issues. This did not invalidate the decree.

Petranek claims that Blatchley offered “no explanation of why he abandoned the property, why he abdicated all financial responsibility.” (Brief of Respondent at pg. 25). Petranek’s claim is contradicted by her own evidence. A letter written by Petranek and dated June 23, 2008, made

part of the record, states, “I realized I did NOT want him living with P. and I any longer- he was not paying rent...**I asked him to move out**...He moved out in April after he started dating a women [sic] in Olympia.” [emphasis added] (CP 20, (attached memorandum of petitioner)). The evidence clearly shows the parties attempted to jointly live on South Edwards, and that Petranek became dissatisfied with the arrangement.

Petranek claims that the “murky” notions of the future responsibility between the parties, with Blatchley residing on 1/3 of the property so that he could co-parent their daughter, is additional evidence that she had not “fully and voluntarily” agreed to split Greenway 50/50 and fund South Edwards. Nonetheless, her “murky” notions have no bearing here, because she ultimately voluntarily agreed in the April 11, 2008 decree on how to split the South Edwards property. She was not coerced into making this agreement. She split it 2/3-1/3 with Blatchley, which is roughly proportional to the funding of the purchase and directly relates back to the oral agreement to split Greenway 50/50. The record before the trial court directly supports this agreement, for example Petranek admits that “Bruce and I decided to divorce in the summer of 2007” (CP 16, pg. 2, ln. 4). Petranek prepared exhibit 54¹, which was part of the record at the CR 60 hearing (CP 17. Ex. B). Her words were

¹ Exhibit 54 was introduced at trial, but was also part of the record before the court when it considered the validity of Petranek’s CR 60(b) motion.

“Bruce and Sandra split the Net Proceeds 50%” in regards to the sale of Greenway in August 2007.

But, the bottom line is that if a spouse had a reasonable opportunity to determine the value of assets and had an opportunity to consult with separate counsel, a contract that is freely and voluntarily executed, even if economically disadvantageous to that spouse, will be found to be fair at the time of execution. A contract is a contract and it is not for the court to save a spouse from a voluntary, but economically unfavorable, agreement. Under the statute “amicable agreements are preferred to adversarial resolution of property and maintenance questions.” It is not the role of the court to permit a spouse to engage in adversarial conduct to escape a contract.

19 Wash. Prac., Fam. And Community Prop. L. § 19.13

A court may find the existence of an oral agreement regarding property during a marriage. DewBerry v. George, 115 Wash. App. 351, 363, 62 P.3d 525, (2003). The evidence is clear in this case: the parties agreed to split Greenway 50/50, and to then fund South Edwards approximately 1/3-2/3. It’s plainly stated by Petranek on Exhibit 54. Blatchley performed precisely in accordance with the terms of the agreement. Petranek never objected. Even if there was doubt as to the precise terms of the oral agreement, there is no question that the parties memorialized that agreement when it was reduced in writing on the original April 11, 2008 decree. Petranek wrote it, she agreed to it, and she signed it. The court reviewed, approved and entered it. There is no

question that Petranek was “fully” aware of the all the real and personal properties and that she “voluntarily” entered into this agreement.

The trial court abused its discretion by vacating the original decree. The trial court erred by not considering the original decree as evidence of the parties agreement to split South Edwards.

D. Petranek Should Be Held To The Original Decree

Petranek argues that the court was not “modifying” the original decree but was creating a “just and equitable” post-divorce division of property, citing Buchanan v. Buchanan, 250 Wn. App. 730, 207 P.3d 478 (2009). This argument is without merit. The Court clearly “modified” the original decree when it removed the agreed provisions concerning splitting South Edwards.

First, CR 60(b) is the exclusive remedy for modifying or vacating final judgments. State v. Scott, 20 Wash.App. 382, 387, 580 P.2d 1099 (1978). Petranek cannot skirt the requirements of CR 60 by trying to rename the action of the court.

Second, modifying or vacating a judgment under CR 60(b) is not available to remedy legal errors. Burlingame v. Consolidated Mines and Smelting Company, Ltd., 106 Wn.2d 328, 336, 722 P.2d 67 (1986). The proper means of remedying legal errors is direct appeal. Id., citing State v. Keller, 32 Wash.App. 135, 647 P.2d 35 (1982); see also Pamelin Indust.,

Inc. v. Sheen-U.S.A. , Inc., 95 Wn.2d 398, 622 P.2d 1270 (1981).

Petranek did not timely appeal the April 11, 2008 decree. Referring to a motion to brought under CR 60(b), the Supreme Court stated, “[w]e have too often held that such a proceeding as this **cannot be used as a means for the court to review and revise its own final judgment . . .**”.

(Emphasis added.) Hurley v. Wilson, 129 Wn. 567, 568, 225 P. 441 (1924).

Petranek’s position that the court was legally required, under RCW 26.09.080, to divide all properties in the decree alleges a legal error that could only be remedied by direct appeal, not by a motion under CR 60(b). Petranek did not timely appeal.

E. Blatchley Argues For A Fair And Equitable Distribution, Not A Per Se Bar

Blatchley is entitled to an award of property that is fair and equitable. He does not argue that the Court adopt a per se inflexible rule. He simply argues that under the circumstances of this case, the enormous disparity between the award to himself (25%) and to Petranek (75% + additional separate property) was unfair and unreasonable and should be overturned. The trials court’s decision was not supported by the evidence and was contrary to established law.

F. Petranek Failed To Prove The Source Of Funds Used To Purchase Community Assets

Petranek claims she contributed the most to the marriage by her inheritance of \$538,000.00. (Brief of Respondent at p. 18) Petranek contends that the parties did not earn sufficient income to amass the \$447,420.00 in community assets, asking the Court to make the unsubstantiated leap that it must be the \$538,000.00 that led to the stated value of the community. This position completely ignores the evidence and the trial court was not “justified in concluding the source of most, if not all, of the community property was Petranek’s inheritance.” (Brief of Respondent, pps. 18-19). Petranek admits she cannot trace the source of the funds used by the couple to purchase the various properties and to support themselves, and admits the South Edwards property is community, yet she relies on the supposed source to justify the massively unequal division of property. (Brief of Respondent at 18)

1. Petranek did not have sufficient evidence tracing her inheritance as the source of the community assets, therefore there is insufficient evidence of origin of the community assets.

Petranek admits she cannot trace the source of the funds used by the couple to purchase the various properties and to support themselves, yet she relies on the supposed source to justify the massively unequal division of property. She cannot have it both ways. Community funds are presumed to be community property. In re Marriage of Skarbeck, 100

Wash.App. 444, 448, 997 P.2d 447 (2000). The burden is on the spouse asserting separate funds to trace them to a separate source, by clear cogent and convincing evidence. Id. The purpose of tracing is to establish that separate funds were used to purchase a marital asset, such that the asset is properly characterized as separate rather than community. Her admission of insufficient tracing directly contradicts her claim that she presented sufficient evidence establishing the source of the funds used to purchase marital assets.

2. The origin was not established by clear cogent and convincing evidence.

It has been held that the court may consider the separate origin of community property when awarding a disparate share of community property to one side. In re Marriage of Nuss, 65 Wash.App. 334, 828 P.2d 627 (1992). While tracing, if properly established, can result in property obtained during a marriage being separate, Nuss supports a trial court finding a community asset should be awarded to the party who's separate property is the origin of that asset. The trial court relied upon Nuss to justify the 75/25 division. This reliance was misplaced. In Nuss, the case that established the origin rule, it was undisputed that the community property in question, a piece of real estate, was originally the husband's separate property. The origin was never in question. But logic

dictates that the proof of the origin should be held to the same degree of particularity required for tracing, that is, by clear and convincing evidence. In re Marriage of Chumbley, 150 Wn.2d 1, 74 P.3d 129 (2003). Petranek admits she cannot do this. (Brief of Respondent at p. 18.)

Petranek failed to present the court with clear and convincing evidence of the origin of the funds for the community assets. The amount of her inheritance was unclear, and market fluctuations caused undetermined changes to the separate funds. She simply failed to present competent evidence supporting her claim that her inheritance was the source of most if not all the community assets. The trial court abused its discretion in finding a separate origin to the community assets in justifying its award of 75/25.

Petranek seems to argue Blatchley contributed nothing, which ignores the evidence. The following facts were not adequately rebutted at trial:

- Petranek admitted she had no record of receiving \$538,000, only the \$338,000.00 thus a finding of \$200,000 of “separate property” is unsubstantiated. (RP 187-88). Further how that money was used to “fund” the marriage was inconclusive, and Petranek then conceded the marital assets were community property because of her lack of ability to trace.

- Petranek lost a large portion of her inheritance in the market. (RP 193, 271, 274; Ex. 16; Ex. 37)
- The court failed to adequately consider Blatchley's contributions, which were the **only** reportable community wages in the marriage. (RP 73-79) This directly contradicts a finding that all the community assets were from the inheritance.
- Blatchley's separate personal injury settlement money contributed to the community, and Petranek agreed they used a portion of it to purchase Blossom Lane (RP 178) When Blossom Lane increased in market value, it was sold and the proceeds used to purchase the next property.

It is impossible to conclude that the source of most, if not all, the community property was Petranek's inheritance. Starting with the first property, 142 Blossom Lane in Port Townsend purchased for \$33,000.00 with Blatchley's PI settlement, sold for \$138,995.00, all the way to Greenway, Blatchley demonstrated that simple tracing would have given him 48% and Petranek 52% interest in Greenway. (CP 43) Their division of 50/50 of the proceeds was fair. Regardless, it cannot be ignored that Petranek conceded their property was community due to her lack of ability to trace. The trial court erred by applying Nuss.

G. Petranek Cannot Deny The Existence Of The Original Agreement Memorialized By The Original Decree.

Petranek contends that there was no agreement to split Greenway 50/50 and fund the purchase of South Edwards approximately 1/3-2/3. Petranek concludes there was no evidence to support any conclusion other than that the parties purchased South Edwards as community property, using community funds. (Brief of Respondent at pgs. 22-23)[emphasis added]. This response ignores the existence of Exhibit 54, a document prepared by her, which states:

Concerning Greenway -“Net Proceeds Total \$449, 402.00 (Bruce and Sandra split the Net Proceeds 50%)”
Concerning S. Edwards- “Source of Funds \$200,000 from Sandra’s net proceeds from the sale of 334 Green Way, PT and \$115,000 from Bruce’s net proceeds from the sale of 334 Green Way, PT for D.P.”

(Ex. 54). Petranek was not coerced in preparing this document to explain the history of the purchase of the real properties during the marriage. (RP 243-244). She wrote “Bruce and Sandra split the net proceeds 50%”, and she contributed \$200,000.00 and Blatchley contributed \$115,000.00 to purchase South Edwards. (Ex 54). Nothing could have been clearer than her admission to their agreement in black and white on Exhibit 54, yet, the trial court declined to find the existence of the agreement.

Petranek helped prepare the original dissolution decree of April 11, 2008, voluntarily agreed to it, and signed it as an act of free will. (RP 259,

268). She was **fully** aware of the extent of the parties real and personal properties when she did this. Petranek drafted the words “Husband will retain 1/3 equity” and “Wife will retain 2/3 equity”, pertaining to their only remaining real property, South Edwards. (CP 11) There was no evidence she was coerced into writing this. Yet Petranek still clings to her coercion position. (Brief of Respondent at p. 23, fn.1.) She wants this Court to believe her subjective feelings, raised 17 months after the decree, are credible evidence that an agreement to split Greenway or fund South Edwards as they did never existed, while simultaneously demanding that this Court ignore the plethora of evidence of the agreement.

The evidence of the agreement is as follows:

- Petranek admits that “Bruce and I decided to divorce in the summer of 2007” (CP 16, pg. 2, ln. 4). The proceeds from Greenway were split in August 2007,
- Exhibit 54 and Blatchley’s testimony of the agreement (RP 312),
- the fact that Blatchley withdrew the exact amount of funds from the joint checking in August 2007 as per the agreement (RP 32; Ex. 35),
- Blatchley purchasing the Hawaii parcel, Petranek knowing of it and not including it on the April 11, 2008 decree (RP

255-257) because the parties were already treating their individual portions of the proceeds from Greenway as their separate property,

- Petranek's testimony to the "many discussions" regarding the agreement (RP 244, 258-59, 268),
- Petranek's preparation of the April 11, 2008 decree. (RP 315) (CP 11), where she voluntarily divided South Edwards 1/3-2/3

There was an agreement on how to split up their property acquired during marriage and it was memorialized in the April 11, 2008 decree. Despite the substantial evidence before it, the trial court sided with Petranek, who only offered the testimony that she no longer agreed with how they split the property. (RP 280-81). This was an error.

The only possible evidence Petranek can adhere to is that fact that the title to South Edwards was taken in the names of the parties as husband and wife. The manner in which title is held creates no presumption as to its character. In re Estate of Borghi, 167 Wn.2d 480, 490, 219 P.2d 932 (2009).

H. Family Law Courts Favor Finality

Petranek cites several cases for the proposition that parties seeking a fair and equitable distribution of assets and liabilities are best served by

finality. Brief of Respondent at 16. Blatchley completely agrees – the original decree should not have been disturbed some 17 months after it was created, reviewed and entered. Petranek forced Blatchley to readdress and litigate the division of their property after she no longer agreed with her voluntary division set forth in the April 11, 2008 decree.

I. The Order Directing Conveyance On The Judgment Violated Cr 62.

Petranek contends that the trial court did not execute on the judgment when it ordered Blatchley to convey the real property at the expiration of 10 days after entry of judgment. The statutory definition of execution is.

There shall be three kinds of executions: second, for the delivery of the possession of real or personal property or such delivery with damages for withholding the same.

RCW 6.17.060.

Petranek was able to convince the trial court to direct Blatchley to execute and deliver a quit claim deed within 10 days. This action extended beyond simply entering the final dissolution decree awarding the property to Petranek; it was an order by the trial court to convey real property by a certain date absent the filing of an additional stay.

The issue is not whether Blatchley intended to convey the real property after the automatic stay, rather it's whether or not the court's order violated CR 62. The language is clear that "no execution shall issue

upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.” As Professor Tegland stated, “[t]he procedure is often referred to in a general way as a stay of execution, but the term stay of enforcement is more accurate because a stay bars all enforcement of a judgment, not just enforcement through execution proceedings.” 4 Wash. Prac., Rules Practice CR 62 (5th ed.)

Blatchley was required to convey the property within 10 days, but the court rule would have stayed the enforcement for at least 14 days. “Upon the filing of a notice of appeal, enforcement of judgment is stayed until the expiration of 14 days after entry of judgment.” CR 62. A party has 30 days to file a notice of appeal.

Blatchley was forced into a dilemma, either he had to obey the trial court order and convey the property, or he had to seek other immediate relief during the next 10 days by filing a motion for reconsideration, or a notice of appeal and request the judgment be stayed, with the likelihood of a large supersedeas bond. But this dilemma was more of a Hobson’s choice, presenting only one real option: convey the property. The likelihood of the motion for reconsideration was extremely low given the comments from the court concerning saving Petranek’s counsel the trouble of appointing a special master. The trial court cut short his time frame to

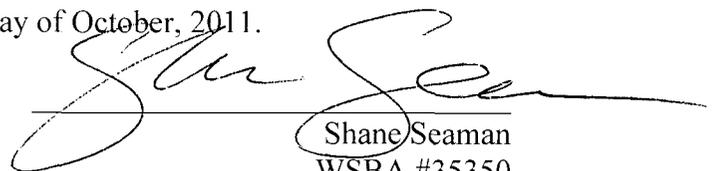
file an appeal and have the enforcement of the judgment stayed 14 days.²

This would have been avoided if the trial court had simply adhered to the plain language of CR 62 and denied Ms. Bierbaum's demands that Blatchley convey the property 10 days after entering the decree.

J. Conclusion.

Blatchley respectfully request the trial court be reversed and the original decree dated April 11, 2008 be reinstated and that the parties be treated as tenants in common. If the Court chooses not to reverse the vacation of the original decree then Blatchley request that the Court find that the trial court erred by not utilizing the April 11, 2008 decree as evidence of the parties agreement on how to divide their properties and that the Court reverse the judgment entered in this case.

Respectfully submitted this 12 day of October, 2011.



Shane Seaman
WSBA #35350
Attorney for Appellant

² This is not to say that the court cut short the 30 days to file an appeal. Rather, it's the fact that he lost the ability for an automatic stay of the enforcement of the judgment for 14 days, because he had already been ordered to convey the property in 10 days from when the judgment was entered. So instead of having 30 days to file an appeal and have time to move for a stay, potentially preserving his 1/3 interest in South Edwards, he had 10 days to decide or be in violation of the court's order if he didn't convey the property as required.