

Court of Appeals No. 45275-8-II

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IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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ANTHONY J. BUDZIUS and MONICA BUDZIUS,  
Husband and wife,  
Plaintiffs/Appellants,

vs.

LESLIE D. MILLER (fka BUDZIUS),  
Respondent.

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**BRIEF OF APPELLANTS**

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By:

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### III. ASSIGNMENTS OF ERROR

1. The trial court in Finding of Fact 1 misinterpreted the Decree of Dissolution of the parties' marriage by finding that it contemplated a subsequent order and did not deal with the mechanism of payment.
2. The trial court in Findings of Fact 3, 5, 7 mischaracterized the Amendment to Decree of Dissolution Re Division of Retirement Benefits as a qualified domestic relations order (QDRO).
3. The trial court in Finding of Fact 6 misinterpreted the Decree of Dissolution of the parties' marriage by finding that it indicated that a further order would be entered.
4. The trial court erred in Finding 7 that a QDRO was entered ex parte with the approval of appellants' former attorney.
5. The trial court erred in Finding 9 by finding that at the deposition of appellants' former attorney, attorney client privilege was exercised so he did not fully allow inquiry into whether appellant Anthony Budzius received the Amendment to Decree of Dissolution Re Division of Retirement Benefits.
6. The trial court erred in Conclusion 2 by concluding that giving respondent 50 percent of the pension earned during the marriage is not inequitable.

7. Findings 1, 3, 5, 6, 7, and 9 do not support Conclusion 2.
8. The trial court erred in Conclusion 3 by misinterpreting *Graves v. P.J. Taggares Co.*, 94 Wn. 2d 298, 616 P. 2d 1223 (1980).
9. The trial court erred in Conclusion 3 by concluding that appellant Anthony Budzius had not met his burden to show that he had no knowledge of the entry of the Amendment to Decree of Dissolution Re Division of Retirement Benefits by appellant's former attorney.
10. Findings 1, 3, 5, 6, 7, and 9 do not support Conclusion 3.
11. The trial court erred in Conclusion 4 by concluding that it would be inequitable to vacate a 1993 stipulated order.
12. The trial court erred in Conclusion 6 by concluding that respondent should recover her statutory costs.
13. Findings 1, 3, 5, 6, 7, and 9 do not support Conclusion 6.
14. The trial court erred in entering Judgment dismissing appellants' claim.
15. The trial court erred in the Judgment by awarding respondent her statutory costs.
16. The trial court erred in denying appellant's request for attorney fees.

#### IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does the Amendment to Decree of Dissolution Re Division of Retirement Benefits (Amendment) qualify as a qualified domestic relations order? (Pertains to Assignments of Error Nos. 2, 4).
2. Did the trial court mischaracterize the Amendment as a qualified domestic relations order? (Pertains to Assignments of Error Nos. 2, 4).
3. Is a qualified domestic relations order permitted to alter or amend the substantive provisions of the decree? (Pertains to Assignments of Error Nos. 2, 4).
4. Did the changes made by the Amendment to paragraph 3.11 of the Decree of Dissolution render the Amendment void? (Pertains to Assignments of Error Nos. 2, 4).
5. Did the trial court violate rules for construing judgments by characterizing the Decree of Dissolution as contemplating a subsequent order or a further order? (Pertains to Assignments of Error Nos. 1, 3).
6. Did the trial court abuse its discretion by failing to apply the general rule in *Graves v. Taggares*, 94 Wn. 2d 298, 616 P. 2d 1223 (1980), that an attorney is without authority to surrender a substantial right of a client unless special authority from his client has been granted him to do so, to the facts of this case? (Pertains to Assignment of Error No. 6, 8, 9, 11).

7. Did the trial court abuse its discretion by failing to apply the general rule followed by Washington courts that an attorney is without authority to surrender a substantial right of a client unless express authority from his client has been granted him to do so, to the facts of this case? (Pertains to Assignment of Error No. 6, 8, 9, 11).

8. Did the trial court abuse its discretion by misallocating to Appellants the burden of proving the exception to the general rule that an attorney is without authority to surrender a substantial right of a client unless express authority from his client has been granted him to do so? (Pertains to Assignment of Error No. 9).

9. Absent Tony's express consent to the Amendment or compliance with RCW 26.09.170 (1), did the trial court lack the power to modify the terms of paragraph 3.11 of the Decree of Dissolution? (Pertains to Assignments of Error No. 6).

10. Did entry of the Amendment without providing Appellants prior notice or opportunity to be heard deprive them of their property without due process of law? (Pertains to Assignments of Error Nos. 6, 11-16).

11. Is the Amendment void for lack of due process of law? (Pertains to Assignments of Error Nos. 6, 11-16).

## V. STATEMENT OF THE CASE

### A. FACTS

Plaintiff Anthony Budzius (Tony) and Defendant Leslie Miller (Leslie) were married on July 19, 1980. EX 2 p. 2. During his marriage to Leslie, Tony was employed as a police officer with the City of Fife Police Department. RP 15-16. Before, during and after his marriage to Leslie, Tony accrued retirement benefits under LEOFF 2 with the Washington State Department of Retirement Systems (DRS). EX 12, 15.

Tony and Leslie separated in January 1990. EX 2 p. 2. In 1991, Leslie filed an action in Pierce County Superior Court Cause No. 91-3-03188-5 for dissolution of her marriage to Tony. EX 2. Attorney Joseph Lombino represented Tony in the dissolution. EX 2.

On November 13, 1992, the Court entered a decree of dissolution wherein, in Paragraph 3.13, the court ordered that a qualified domestic relations order should issue, such that Leslie should be awarded fifty percent of the \$27,210.00 value of the community interest in Tony's retirement rights with the State of Washington. EX 3 at 4; App. 3.

The decree of dissolution did not award Leslie the right to any monthly payments from Tony's retirement. RP 19; EX 3 at 4; App. 3. Nor would Tony have agreed to such monthly payments, as he was then ready, willing and able to pay Leslie the full amount awarded to her, \$13,605.00.

RP 20. Tony's attorney, Mr. Lombino, advised Tony not to do so, and he informed Tony that the amount would be paid from his retirement account upon his retirement. RP 21. Tony followed the advice of Mr. Lombino, and did not pay Leslie directly the amount awarded to her as her interest in Tony's retirement. RP 36.

Approximately eight months later, on July 27, 1993, without Tony's knowledge or consent, Mr. Lombino in conjunction with Leslie's attorney, Geoffrey Cross, undertook to execute and file on Tony's behalf an Amended Decree, in which Leslie was awarded a percentage of Tony's monthly retirement payments, determined by the number of months the marital community was in existence, divided by the number of months of service credit earned by Tony at retirement, times 50 percent. EX 4; App. 4. There is no evidence in this case that Mr. Lombino ever had the express authority to make such a radical alteration of the property division in the original Decree.

The provision in the Amended Decree for monthly payments to Leslie has no support in the language of the original Decree. Moreover, Tony did not, does not, and would not have agreed to such payments, even if he had been informed thereof, which he was not. RP 24.

On June 9, 1992, eleven months prior to entry of the Amended Decree, in response to a subpoena issued by Mr. Cross, DRS wrote a letter to him explaining details of Tony's state retirement account. EX 5. In that letter, DRS informed Mr. Cross of a then-recent change in Washington public retirement statutes:

Beginning July 27, 1991, a new mechanism became available to divorced spouses to satisfy a court awarded property division obligation. Chapter 365, Laws of 1991, allows the Department to make direct payment of a portion of the member's monthly retirement allowance *or lump sum withdrawal to the member's ex-spouse in certain circumstances*.... (Emphasis added).

EX 5.

Leslie's attorney thus knew eleven months prior to the entry of the Amended Decree that DRS would not require payment to an ex-spouse of a portion of the member's monthly retirement allowance, but would also allow a lump-sum withdrawal. Paragraph 3.13 of the original Decree called for just such a lump-sum distribution. EX 3 at 4; App. 3. Therefore, there was never a need to change the distribution of Tony's retirement benefit from the lump sum called for in the original Decree to the monthly percentage payment authorized by the Amended Decree.

In September, 2011, for the first time, Tony and his wife, Monica, learned from DRS that the Amended Decree had been entered giving Leslie a right to monthly payments out of his retirement. RP 23.

Other evidence in the record supports Tony's testimony on this issue. The docket in Pierce County Cause No. 91-3-03188-5 contains no evidence that a copy of the Amended Decree was ever served upon Tony. EX 21. Mr. Cross testified in his deposition that he never sent Tony a copy of the Amended Decree either before or after its entry. EX 22, p. 11 lines 6-17. The evidence in this case thus demonstrates that at no time prior to September, 2011, did Mr. Lombino or anyone else inform Tony or Monica of the existence of the Amended Decree or the alleged amount owed to Leslie. At no time prior to September, 2011 were Tony or Monica provided with a copy of the Amended Decree. RP 24.

Tony retired from the Fife Police Department on a medical disability in December, 2008. EX 10. At his retirement, Tony had 28.8 years of service. *Ibid.* DRS did not start paying Leslie from Tony's state retirement until September, 2011. EX 8.

In its letters of September 15, 2011 to Tony and Leslie, DRS freely acknowledged that, despite having received a copy of the Amended Decree in July, 1993, DRS did not process the Amended Decree until September, 2011. (*"Unfortunately, the Department failed to process the*

*order at the time that Anthony retired.”) EX 8, 9. See also, EX 14 (“Amended Decree, Not Processed at Retirement in Error”).*

As a result of the Amended Decree, the State of Washington compelled Tony to repay the State \$20,682.24, for underpayment allegedly owed to Leslie, which amount Tony has paid. EX 8, 9, 11, 14, 16, 17. Further, the State of Washington deducted from Tony’s monthly retirement check the sum of \$653.42 for Leslie. EX 9, 10, 12, 13. None of those amounts was authorized under the original Decree. EX 3. All of those amounts stem from the unauthorized actions of Mr. Lombino in entering the Amended Decree. EX 4.

Tony and Monica could not have sooner moved to vacate the Amended Decree, as they were without knowledge of the Amended Decree or the alleged amount owed to Leslie until September, 2011. RP 24. Nor could Tony or Monica in the exercise of reasonable diligence have earlier discovered the existence of the Amended Decree or the alleged amount owed to Leslie, as DRS had admittedly failed to process the Amended Decree for over 18 years. EX 8, 9, 14.

## **B. PROCEDURAL HISTORY**

Tony and Monica filed summons and a complaint to vacate judgment against Leslie on June 1, 2012. CP 2-17. Leslie filed an answer on June 29, 2012. CP 37-39. Trial in this action was held on July 23, 2013. RP 1.

On August 2, 2013, the trial court entered findings of fact, conclusions of law and a judgment dismissing Tony's complaint. CP 282-286. On August 26, 2013, Tony and Monica filed a notice of appeal from the findings, conclusions and judgment. CP 288-94.

## V. ARGUMENT

### A. Standards of review

An order denying a motion to vacate a judgment is reviewed for abuse of discretion. *In re Marriage of Dugan-Gaunt*, 82 Wn. App. 16, 18, 915 P. 2d 541 (1996). A trial court abuses its discretion if its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *Farmer v. Farmer*, 172 Wn. 2d 616, 625, 259 P. 3d 256 (2011). A discretionary decision is based on untenable ground' or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. *T.S. v. Boy Scouts of America*, 157 Wn. 2d 416, 423-24, 138 P 3d 1053 (2006). A trial court also abuses its discretion if its decision is based on an erroneous view of the law. *Choate v. Choate*, 143 Wn. App. 235, 240, 177 P. 3d 175 (2008).

The language of a decree of dissolution and a domestic relations order is reviewed *de novo*. *In re Marriage of Gimlett*, 95 Wn. 2d 699, 704-05, 629 P. 2d 450 (1981); *Marriage of Smith*, 158 Wn. App. 248, 255, 241 P. 3d 449 (2010).

**B. The trial court erred by misinterpreting the Decree of Dissolution.**

Appellants assign error to the following portion of Finding 1: “*The order [Decree] contemplated entry of a subsequent order and did not deal with the mechanism of payment.*” CP 282: App. 1. Appellants further assign error to Finding 6 in which the trial court found that the Decree indicated that a “*further order*” would be entered. CP 283; App. 1.

The Decree did not contemplate entry of a “*subsequent order*” or a “*further order*”. Instead, paragraph 3.11 of the Decree provides as follows: “*The value of the community interest in the respondent’s retirement rights is \$27,210.00, and that a Qualified Domestic Relations Order should issue, such that the petitioner be awarded fifty percent (50%) of said \$27,210.00.*” EX 3 at 4; App. 3.

The distinction between a “*subsequent order*” or a “*further order*” and the QDRO called for in paragraph 3.11 of the Decree is apparent. If the Decree had contemplated a generic “*subsequent order*” or a “*further order*”, then entry of the Amendment to Decree of Dissolution Re Division of Retirement Benefits would not have presented any conflict with the Decree. Further, Tony would have been put on notice of any order that was subsequently entered. But the paragraph 3.11 of the Decree called for a specific order, a QDRO awarding Leslie 50% of \$27,210.00.

Tony had the right to expect that the trial court would enter the specific QDRO called for in paragraph 3.11 of the Decree, and not some other order. Finding 1's finding that the Decree contemplated a "*subsequent order*" and Finding 6's finding that the Decree indicated that a "*further order*" are therefore mischaracterizations of the terms of the Decree.

The mischaracterizations of paragraph 3.11 of the Decree in Finding 1 and Finding 6 violate accepted rules of construction. When interpreting a judgment, courts employ the same rules applicable to statutes, contracts and other writings. *In re Marriage of Gimlett*, 95 Wn. 2d 704-05; *Callan v. Callan*, 2 Wn. App. 446, 448-49, 468 P. 2d 456 (1970). The court must read a decree in its entirety and construe it as a whole to give effect to every word and part, if possible. *Marriage of Smith*, 158 Wn. App. 256; *Callan v. Callan*, 2 Wn. App. 448-49. Courts may not rewrite a judgment under the guise of interpreting it. *McCormick v. Dunn & Black*, 140 Wn. App. 873, 891-92, 167 P. 3d 610 (2007). Finding 1 and Finding 6 violated these rules by ignoring the language of Paragraph 3.11 of the Decree regarding a QDRO for a specific amount and by substituting instead the misleading and ambiguous terms "*subsequent order*" and "*further order*". Findings 1 and 6 should therefore be reversed.

**C. The trial court erred by mischaracterizing the Amendment to Decree of Dissolution Re Division of Retirement Benefits as a QDRO.**

Appellants assign error to the trial court's Findings 3, 5, and 7 wherein the trial court characterized the Amendment to Decree of Dissolution Re Division of Retirement Benefits as a QDRO. CP 282-83; App. 1. On its face, the Amendment does not satisfy the requirements for a QDRO. A qualified domestic relations order is an enforcement tool to secure compliance with the substantive provisions of the decree. *Wilson v. Wilson*, 878 N. E. 2d 16, 17 (Ohio 2007) (“*The QDRO implements a trial court’s decision of how a pension is to be divided incident to divorce or dissolution.*”); 2 Equitable Distribution of Property, 3d § 6:20. A qualified domestic relations order is not permitted to alter or amend the substantive provisions of the decree. *Gainous v. Gainous*, 219 S.W.3d 97, 107 (Tex. App. 2006) (“*[A]s with any post-divorce enforcement or clarification order, a QDRO may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment.*”).

Here, the Amendment substantially altered the distribution of Tony’s State retirement as set forth in the original Decree by altering paragraph 3.11’s provision for a lump sum distribution to an award of periodic payments based upon a formula of months that the marriage was in

existence divided by number of months of service earned by Tony at the time of his retirement times 50 percent. EX 4, App. 4. The Amendment therefore cannot be considered to be a QDRO. *Gainous*, 219 S.W.3d 107. Further, the changes made by the Amendment to paragraph 3.11 of the Decree render the Amendment void. *See Gainous*, 219 S.W.3d 112.

Because it is an amendment and not a QDRO, the Amendment is governed by RCW 26.09.170 (1): “...*The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.*” The record in this case does not reveal any effort by respondent to comply with RCW 26.09.170 (1). Nor did the trial court make any finding in the Amendment regarding the existence of conditions that justify the reopening of a judgment under the laws of this state. EX 4; App. 4. The Amendment is therefore not supportable under RCW 29.09.170 (1).

**D. The trial court abused its discretion by refusing to apply either *Graves v. Taggares*, 94 Wn. 2d 298 or other Washington cases that require express authority from a client to enable an attorney to surrender a substantial right of a client.**

Appellants assign error to the first sentence in Conclusion 3: “*The irregularities, if any, do not arise to the level of Graves v. Taggares*, 94 Wn. 2d 298 [616 P. 2d 1223 (1980)].” CP 284; App. 1. In Conclusion 3,

the trial court misinterpreted *Graves* by refusing to apply its rule beyond the particular facts of that case. In *Graves*, the court stated that general rule as follows:

The general rule regarding an attorney's authority to bind his client to stipulations or compromises in the conduct of litigation is tersely stated in 30 A.L.R.2d 944, s 3 (1953): "an attorney is without authority to surrender a substantial right of a client unless special authority from his client has been granted him to do so." This rule is supported by the many cases listed in the A.L.R. annotation as well as many cases from this jurisdiction. E. g., *Barton v. Tombari*, 120 Wash. 331, 207 P. 239 (1922); *Morgan v. Burks*, 17 Wash.App. 193, 563 P.2d 1260 (1977); *In re Coggins*, 13 Wash.App. 736, 537 P.2d 287 (1975); *Grossman v. Will*, 10 Wash.App. 141, 516 P.2d 1063 (1973); *In re Houts*, 7 Wash.App. 476, 499 P.2d 1276 (1972).

94 Wn. 2d 303.

Equally important as the general rule recognized in *Graves* is the purpose underlying that rule. Note *Graves*:

This rule is necessary to protect clients from possibly serious consequences arising from a misunderstanding between the client and the attorney. It assures that clients will be consulted on all important decisions if they so choose. This rule is consistent with ethical considerations 7-7 and 7-8 in the Washington Code of Professional Responsibility. In certain areas of legal representation not affecting the merits of the cause or

substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client . . .  
(CPR) EC 7-7 (1972).

94 Wn. 2d 304.

The general rule recognized in *Graves* was far from new, as indicated by the court's reliance upon the earlier Washington cases in *Barton v. Tombari*, 120 Wash. 331, 207 P. 239 (1922), *Morgan v. Burks*, 17 Wash.App. 193, 563 P.2d 1260 (1977), *In re Coggins*, 13 Wash.App. 736, 537 P.2d 287 (1975), *Grossman v. Will*, 10 Wash. App. 141, 516 P.2d 1063 (1973) and *In re: Houts*, 7 Wash.App. 476, 499 P.2d 1276 (1972). 94 Wn. 2d 303. Moreover, the general rule recognized in *Graves* was not intended to apply solely to the particular facts of that case, as indicated by the court's reliance in *Graves* upon those earlier cases. Instead, by relying upon those earlier Washington cases and EC 7-7, the court in *Graves* recognized that the rule it applied was one of general application.

Subsequent decisions also follow the general rule recognized in *Graves*. In *Marriage of Maxfield*, 47 Wn. App. 699, 737 P. 2d 671 (1987), the court applied the rule in *Graves* to void a contempt order approved by the appellant's attorney without the appellant's consent. 47 Wn. App. 706-07. In *Mitchell v. Kitsap County*, 59 Wn. App. 177, 184,

797 P. 2d 516 (1990), the court ruled, *citing Maxfield*, that the appellant's attorney was without authority to waive the appellants' right to consent to the appointment of a judge *pro tempore*.

Application of the general rule requires proof that a substantial right has been impaired. *Graves*, 94 Wn. 2d 303-04. Here, paragraph 3.11 of the Decree awarded Leslie a lump sum payment of a specific amount, valued at \$13,605.00. EX 3 at 4; App. 3. In contrast, the Amendment awarded her periodic payments based upon the number of months the marital community was in existence divided by the number of months of service credit earned by Tony at the time of his retirement times 50 percent of such payments. EX 4; App. 4. Under the Amendment, as of July, 2013, Leslie had received \$35,057.48 from Tony's account with the Department of Retirement Systems. EX 20. By any measure, the Amendment has affected a substantial right of Tony.

The trial court's failure to follow *Graves* or any of the decisions cited in *Graves* or the subsequent decisions that follow *Graves* undermines the second sentence of Conclusion 3: "*Mr. Budzius has not met his burden to show that he had no knowledge of the entry of the decree modification by his attorney.*" CP 284; App. 1. Under *Graves*, an attorney is without authority to surrender a substantial right of a client unless "*special authority*" from his client has been granted him to do so.

94 Wn. 2d 303. Under *Grossman v. Will*, an attorney is without authority to surrender a substantial right of his client unless express authority has been given by the client. 10 Wn. App. 149 (“*An attorney, even with authority to appear for a client, absent an emergency otherwise requiring, does not have implied authority to compromise and settle his client’s rights. Express authority is required.*” (Emphasis added)). See also, *Morgan v. Burks*, 17 Wn. App. 199-200.

The trial court made no finding that Tony ever gave special authority or express authority to his attorney to execute the Amendment. The trial court’s failure to enter a finding regarding express authority constitutes an implied negative finding against Leslie on this issue. *In re: Welfare of A.B.*, 168 Wn. 2d 908, 927, 232 P. 3d 1104 (2010) (“[L]ack of an essential finding is presumed equivalent to a finding against the party with the burden of proof... (Footnote omitted)”).

Leslie had the burden of proving that Tony had given his attorney express authority to make the concessions made in the Amended Decree, as the party asserting an exception to a general rule has the burden of proving the exception. 29 Am Jur 2d Evidence § 176 (“...*One who relies on an exception to a general rule...has the burden of proving that the case falls within that exception, unless the nonexistence of the exception is made a condition of the application of the rule.*”). The trial court violated

this rule by concluding in Conclusion 3 that Tony had not met his burden of showing that he had no knowledge of the entry of the decree modification by his attorney.

There is no evidence in the record that Tony gave his former attorney express authority to surrender any part of his retirement that had not already been distributed in the Decree of Dissolution. Instead, Tony testified unequivocally that he did not give such consent:

- Q. Did you give Mr. Lombino any authority after entry of the decree to change the distribution of your state retirement allotment?
- A. No, I did not.

RP 22 l. 22-25.

Tony further testified as follows:

- Q. Did you ever authorize Mr. Lombino to sign the amended decree on your behalf?
- A. No.
- Q. Did you ever after July 27, 1993 approve of Mr. Lombino's signing of the amended decree?
- A. No.
- Q. Would you have approved of Mr. Lombino's signing of the amended decree on your behalf if you had learned of it earlier?
- A. No.

RP 24 l. 20-RP 25 l. 4.

The trial court found in Finding 5 that Mr. Lombino remained as attorney for Mr. Budzius throughout the trial, the modification, and subsequent proceedings after the QDRO. CP 283; App. 1. Mr. Lombino's continued representation of Tony by itself does not supply the required express consent to execute the Amendment. Finding 5 points to nothing in Mr. Lombino's continued representation of Tony that supplied that express consent.

In the absence of a finding that Mr. Lombino had express authority from Tony to execute the Amendment, under *Graves*, *Grossman*, *Morgan*, *Maxfield* and *Mitchell* it follows that Tony's attorney had no authority to execute the Amendment.

Conclusion 3 sets a dangerous precedent by allowing an attorney to give away his client's property on something less than express authority from the client. Tony requests that Court to reverse Conclusion 3 and thereby reaffirm the rule in Washington that an attorney may give away a substantial right of a client only with the express authority of the client.

The trial court's misinterpretation of *Graves v. Taggares*, its failure to follow *Grossman*, *Morgan*, *Maxfield* and *Mitchell*, and its misallocation of the burden of proving express consent demonstrate an erroneous view of the law and therefore an abuse of discretion. *Choate v. Choate, supra*.

**E. Finding 5 does not support the trial court's conclusions.**

Appellants assign error to the following portion of Finding 5: “*Mr. Lombino remained as attorney for Mr. Budzius throughout the trial, the modification, and the subsequent proceedings after the QDRO.*” CP 283; App. 1. To the extent that the trial court entered the challenged portion of Finding 5 to establish Mr. Lombino’s implied authority to execute the Amendment, the finding will not support any of Conclusions 1 through 4 or 6. As discussed in paragraph V D, *supra*, anything less than express authority to execute the Amendment will not suffice. As discussed in *Graves, Grossman and Morgan, supra*, only express authority from Tony would have authorized Mr. Lombino to execute the Amendment. No such express authority was ever given by Tony.

**F. Finding 7 is not supported by substantial evidence.**

Appellants assign error to the following portion of Finding 7: “*...the QDRO which was entered Ex-Parte with the approval of his attorney.*” CP 283; App. 1. As discussed in *Graves, Grossman and Morgan, supra*, only express authority from Tony would have authorized Mr. Lombino to execute the Amendment. No such express authority was ever given by Tony. It follows that Mr. Lombino lacked the authority to approve the Amendment. Finding 7 is therefore not supported by

substantial evidence and must be reversed. *Miles v. Miles*, 128 Wn. App. 64, 70-71, 114 P. 3d 671 (2005).

**G. Finding 9 is not supported by substantial evidence.**

Appellants assign error to the following portion of Finding 9: “*At Mr. Lombino’s deposition, attorney privilege was exercised so he did not fully allow inquiry into this material issue.*” CP 283; App. 1. Mr. Lombino’s deposition was not introduced at trial. At trial, Leslie’s attorney asked Tony on cross-examination if Mr. Lombino did not answer certain unspecified questions on the grounds of attorney client privilege. RP 36. There is nothing in the trial court record whereby the trial court could find which matters an attorney client privilege was exercised. Leslie’s attorney argued in the trial court that attorney client privilege was invoked in Mr. Lombino’s deposition. RP 52. Argument by Leslie’s attorney does not qualify as substantial evidence. *State v. Frost*, 160 Wn. 2d 765, 782, 161 P. 3d 361 (2007). It therefore follows that the challenged portion of Finding 9 is not supported by substantial evidence and must be reversed. *Miles v. Miles*, 128 Wn. App. 70-71.

**H. The trial court erred in concluding that Tony failed to reach his burden to overcome the presumption that the contract is good.**

Appellants assign error to the following portion of Conclusion I: “*Mr. Budzius has failed to reach his burden to overcome the presumption*

*that the contract is good.*” CP 284; App. 1. As set forth in paragraph in paragraph V D above, the trial court made no finding that Tony ever gave special authority or express authority to his attorney to execute the Amendment. It therefore follows, under *Graves, Grossman, Morgan, Maxfield* and *Mitchell*, that Tony’s attorney had no authority to execute the Amendment.

**I. The trial court erred in concluding that giving Leslie 50 % of the pension earned during the marriage is not inequitable.**

Appellants assign error to Conclusion 2: “*That giving Mrs. Miller 50% of the pension earned during the marriage in not inequitable.*” CP 284: App. 1. In paragraph 3.11 of the Decree, the trial court had already made a just and equitable division of Tony’s pension. EX 3; App. 3. Absent Tony’s express consent to the Amendment or compliance with RCW 26.09.170 (1), the trial court lacked the power to modify the terms of paragraph 3.11. *Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P. 2d 499 (1999).

The 14<sup>th</sup> Amendment to the United States Constitution provides, in pertinent part, as follows: “[N]or shall any State deprive any person of ...property, without due process of law...” Washington Constitution Article 1, Section 3 provides, in pertinent part, as follows: “No person shall be deprived of ...property, without due process of law.”

An essential element of due process of law is notice and a reasonable opportunity to be heard. *Marriage of Maxfield*, 47 Wn. App. 704. Tony testified without controverting evidence that the first time that he learned of the Amended Decree was in September, 2011, when he was so informed by DRS. RP 23. The docket in Perce County Cause No. 91-3-03188-5 contains no indication that a copy of the Amended Decree was ever served upon Tony either before or after its entry. EX 21. Mr. Cross testified that he did not provide Tony with any notice of the Amendment after it was filed. EX 22 p. 11, lines 15-17. There is no evidence that Tony gave his attorney express authority to execute the Amendment.

As a result of entry of the Amendment, appellants have suffered the loss of \$653.42 per month. EX 20. As of July, 2013, appellants had suffered the loss of \$21,452.48 above and beyond the \$13,605.00 which has been paid to Leslie. EX 20. Appellants suffered this loss without having been afforded prior notice of or any opportunity to be heard or object to the Amendment. Appellants have thereby been deprived of their property without due process of law, rendering the Amendment void. *Marriage of Maxfield*, 47 Wn. App. 706.

Appellants were entitled to an order vacating the Amendment void for lack of due process whether or not they requested such relief in their complaint. Civil Rule 54 (c) provides, in pertinent part, that "... [e]xcept

*as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.” See also, Kelly v. Powell, 55 Wn. App. 143, 148-49, 776 P. 2d 996 (1989).*

It also follows that as set forth above, Findings 1, 3, 5, 6, 7 and 9 are in error or are unsupported by substantial evidence, that those findings do not support Conclusion 2. *Miles v. Miles, 128 Wn. App. 71.*

**J. The trial court erred in concluding that Tony had not met his burden to show that he had no knowledge of the entry of the decree modification by his attorney.**

Appellants assign error to the following portion of Conclusion 3: “*Mr. Budzius has not met his burden to show that he had no knowledge of the entry of the decree modification by his attorney.*” CP 284; App. 1. In Conclusion 3, the trial court again misallocated the burden of proof regarding the express permission exception to the general rule announced in *Graves, Grossman and Morgan, supra*. The trial court’s misallocation of the burden of proof demonstrates an erroneous view of the law and therefore an abuse of discretion. *Choate v. Choate, supra*.

It also follows that as set forth above, Findings 1, 3, 5, 6, 7 and 9 are in error or are unsupported by substantial evidence, that those findings do not support Conclusion 3. *Miles v. Miles, 128 Wn. App. 71.*

**K. The trial court erred in concluding that it would be inequitable to vacate a 1993 stipulated order.**

Appellants assign error to Conclusion 4: “*That it would be inequitable to vacate a 1993 stipulated order.*” CP 284; App. 1. As set forth in paragraphs V D, E, F, H, I, the Amendment is void for lack of express authority from Tony, and because the trial court lacked authority to make a post-decree modification of paragraph 3.11 of the Decree and because the Amendment violated Tony’s right to due process of law. Therefore, the trial court has a mandatory duty to vacate the Amendment as a void order. *Marriage of Maxfield*, 47 Wn. App. 703. A void order may be vacated irrespective of the lapse of time. *Marriage of Leslie*, 112 Wn. 2d 612, 618, 772 P. 2d 1013 (1989). The trial court therefore erred in entering Conclusion 4.

**L. The trial court erred in entering judgment dismissing appellants’ claims.**

Appellants assign error to the Judgment. CP 285-86; App. 2. Appellants incorporate herein the arguments and authorities in paragraphs V A-K above.

**M. The trial court erred in denying appellants' request for attorney fees.**

Appellants assign error to the Judgment. CP 285-86; App. 2. Appellants were entitled to an award of attorney fees in order to place appellants in the same position as if the Amendment had never been entered. *See Graves v. Taggares*, 94 Wn. 2d 306.

**N. The trial court erred in awarding Leslie statutory costs.**

Appellants assign error to Conclusion 6: "*Respondent should receive her statutory costs.*" CP 284; App. 1 Appellants also assign error to the Judgment. CP 285-86; App. 2. Costs are awardable only to a prevailing party. RCW 4.84.030. As set forth in paragraphs V A-L above, because the Amendment is void, Leslie cannot be the prevailing party in this action. The trial court therefore erred in awarding Leslie statutory costs.

**O. Appellants request an award of attorney fees on appeal**

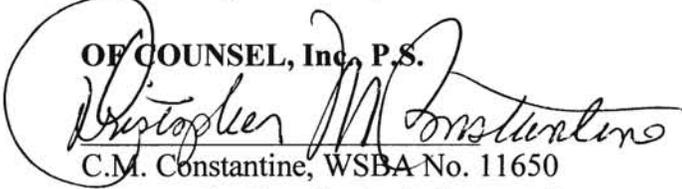
In the event that they prevail on appeal, appellants request the Court, pursuant to RAP 18.1 and *Graves v. Taggares* for an award of attorney fees on appeal. Appellants are entitled to an award of attorney fees in order to place appellants in the same position as if the Amendment had never been entered. *See Graves v. Taggares*, 94 Wn. 2d 306.

## VI. CONCLUSION

The trial court's Findings 1, 3, 5, 6, 7, 9 and Conclusions 1, 2, 3, 4, 6 and the Judgment should be reversed. The Amendment to Decree of Dissolution Re Division of Retirement Benefits should be vacated. The case should be remanded to the trial court with instructions to allow Appellants restitution of the amounts that Respondent has received from DRS in excess of the \$13,605.00 awarded by the Decree of Dissolution. Appellants should be awarded their attorney fees in the trial court and in this appeal.

Respectfully submitted,

**OF COUNSEL, Inc. P.S.**

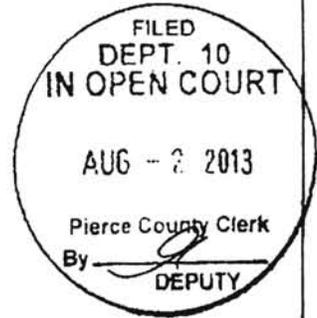
  
C.M. Constantine, WSBA No. 11650  
Attorney for Appellants Anthony and  
Monica Budzius

## **VII. APPENDICES**

1. Findings of Fact and Conclusions of Law
2. Judgment
3. Decree of Dissolution
4. Amendment to Decree of Dissolution Re Division of Retirement  
Benefits



12-3-02097-2 40990716 FNFL 08-06-13



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

ANTHONY J. BUDZIUS and MONICA )	NO. 12-3-02097-2
BUDZIUS, husband and wife, )	
)	
Petitioners, )	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
vs. )	
)	
LESLIE D. MILLER (fka BUDZIUS) )	
)	
Respondent. )	

FINDINGS OF FACT

I.

A Decree of Dissolution was entered in 1992 establishing \$27,210.00 as the community interest in Mr. Budzius's police retirement. The order contemplated entry of a subsequent order and did not deal with the mechanism of payment.

II.

The order did not require immediate payment.

III.

At no time did Mr. Budzius tender \$13,665.<sup>00</sup> to Mrs. Miller. The QDRO provided for 50% of value of the account based on Mr.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 1 of 3

LAW OFFICES OF  
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,  
TACOMA, WASHINGTON 98466  
TELEPHONE: (253) 272-8988  
FAX: (253) 572-8946  
GCROSS.EMAUGHAN@YAHOO.COM

ORIGINAL

1 Budzius's earnings during the marriage to be paid to respondent..

2 IV.

3  
4 There was no issue about the calculation by the Department of  
5 Retirement Systems as to the proportionate share of the pension  
6 earned during the marriage.

7 V.

8 The parties contemplated a QDRO after the trial. Mr. Lombino  
9 remained as attorney for Mr. Budzius throughout the trial, the  
10 modification and the subsequent proceedings after the QDRO.

11 VI.

12 Mr. Budzius received a copy of the Decree that indicated that  
13 a further order would be entered.

14 VII.

15 Mr. Budzius denied getting a copy of the QDRO which was  
16 entered Ex-Parte with the approval of his attorney.

17 VIII.

18 Only two witnesses could say whether or not Mr. Budzius  
19 received the 2<sup>nd</sup> order.

20 IX.

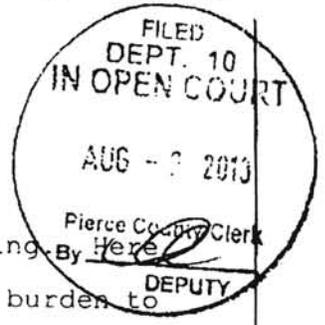
21 At Mr. Lombino's deposition, attorney privilege was exercised  
22 so he did not fully allow inquiry into this material issue. Mr.  
23 Cross had no duty and was professionally restricted from directly  
24 sending any court orders to Mr. Budzius.

25 From the foregoing Findings of Fact, the Court makes the  
26 following:

27 FINDINGS OF FACT AND  
28 CONCLUSIONS OF LAW - 2 of 3

LAW OFFICES OF  
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,  
TACOMA, WASHINGTON 98466  
TELEPHONE: (253) 272-8998  
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CONCLUSIONS OF LAW

I.

An agreement is binding unless fraud or over reaching. there was no fraud. Mr. Budzius has failed to reach his burden to overcome the presumption that the contract is good.

II.

That giving Mrs. Miller 50% of the pension earned during the marriage is not inequitable.

III.

The irregularities, if any, do not arise to the level of Graves vs. P.J. Taggares Co., 94 Wn. 2d 298. Mr. Budzius has not met his burden to show that he had no knowledge of the entry of the decree modification by his attorney.

IV.

That it would be inequitable to vacate a 1993 stipulated order.

V.

Rule 11 sanctions should not apply.

VI.

Respondent should recover her statutory costs.

DATE: 8/2/2013

[Signature] JUDGE/COURT COMMISSIONER

Presented by: [Signature]

Approved: Garold E. Johnson

GEOFFREY C. CROSS, WSB #3089 Attorney for Respondent

CHRISTOPHER M. CONSTANTINE, WSB # 11650 Attorney for Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 3 of 3

LAW OFFICES OF GEOFFREY C. CROSS, P.S., INC. 1902 64TH AVENUE WEST, SUITE B, TACOMA, WASHINGTON 98488 TELEPHONE: (253) 272-8998 FAX: (253) 572-8946 GCROSS.EMAUGHAN@YAHOO.COM

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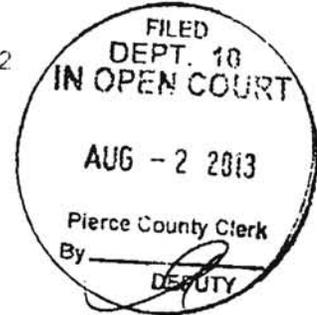
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

9

ANTHONY J. BUDZIUS and MONICA )  
BUDZIUS, husband and wife, )

NO. 12-3-02097-2



Petitioners, )

JUDGMENT

10

vs. )

11

LESLIE D. MILLER (fka BUDZIUS) )

12

Respondent. )

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JUDGEMENT SUMMARY

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- A. Judgment creditor: Leslie D. Miller
- B. Judgment debtor: Anthony J. Budzius
- C. Principal judgment amount \$
- D. Interest to date of judgment \$
- E. Statutory Attorney fees \$200.00
- F. Costs \$
- G. Other recovery amount \$
- H. Principal judgment shall bear interest at % per annum
- I. Attorney fees, costs and other recovery amounts shall bear interest at % per annum
- J. Attorney for judgment creditor: Geoffrey C. Cross
- K. Attorney for judgment debtor: Christopher M. Constantine
- L. Other:

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ORDER

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THIS MATTER having come on regularly before the above entitled  
Court, the Petitioners being represented by Christopher M.

25

26

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JUDGMENT - 1

28

ORIGINAL

LAW OFFICES OF  
GEOFFREY C. CROSS, P.S., INC.

1902 64TH AVENUE WEST, SUITE B,  
TACOMA, WASHINGTON 98468  
TELEPHONE: (253) 272-8998  
FAX: (253) 572-8946  
GCROSS.EMAUGHAN@YAHOO.COM

1  
2 Constantine, Respondent being represented by Geoffrey C. Cross, the  
3 Court having heard the testimony of the Petitioners and Respondent  
4 and considering the affidavits on file herein, Now, Therefore it is  
5 hereby

6 ORDERED, ADJUDGED and DECREED that this matter is dismissed with  
7 prejudice. It is further

8 ORDERED, ADJUDGED and DECREED that respondent shall receive  
9 judgment for statutory attorney fees in the sum of \$200.00.

10  
11 DATE: August 8, 2013

  
JUDGE/COURT COMMISSIONER

Garold E. Johnson

12  
13 Presented by:

Approved:



14  
15 GEOFFREY C. CROSS, WSB #3089  
16 Attorney for Respondent

CHRISTOPHER M. CONSTANTINE, WSB # 11650  
Attorney for Petitioners



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WFF DR 04.0400 (8/91)

FILED  
IN COURT CLERK'S OFFICE  
AM NOV 13 1992  
PACIFIC JUDICIAL DISTRICT  
TENDRUT COUNTY  
BY \_\_\_\_\_

SUPERIOR COURT OF WASHINGTON  
COUNTY OF PIERCE

In re the Marriage of:

LESLIE D. BUDZIUS,  
Petitioner,

and

ANTHONY J. BUDZIUS,  
Respondent.

NO. 91-3-03188-5  
DECREE OF DISSOLUTION  
(DCD)  
(Clerk's Action Required)

I. JUDGMENT SUMMARY

Does not apply.

II. BASIS

The findings of fact and conclusions of law have been entered in this case.

III. DECREE

IT IS DECREED that:

3.1 STATUS OF THE MARRIAGE.

The marriage of the parties is dissolved.

3.2 PARENTING PLAN.

The parties shall comply with the Parenting Plan signed by the court, which is attached or filed. The Parenting Plan signed by the court is approved and incorporated as party of this Decree.

DECREE  
RCW 26.09.030, 040, 070(B)  
Page 1

ORIGINAL

LAW OFFICE OF  
KENYON E. LUCE, P.S.  
5304 12th STREET EAST  
TACOMA, WASHINGTON 98404  
Tel: (206) 820-8734 Fax: (206) 820-8735

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WPP DR 04.0400 (8/91)

**3.3 CHILD SUPPORT.**

Child support shall be paid in accordance with the Order of Child Support signed by the court, which is attached or filed. This Order is incorporated as part of this Decree.

**3.4 PROPERTY TO BE AWARDED THE HUSBAND.**

The husband is awarded as his separate property the property set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

**3.5 PROPERTY TO BE AWARDED TO THE WIFE.**

The wife is awarded as her separate property the property set forth in Exhibit B. This exhibit is attached or filed and incorporated by reference as part of this decree.

**3.6 OBLIGATIONS TO BE PAID BY THE HUSBAND.**

The husband shall pay the community or separate obligations set forth in Exhibit C. This exhibit is attached or filed and incorporated by reference as part of this decree.

**3.7 OBLIGATIONS TO BE PAID BY THE WIFE.**

The wife shall pay the community or separate obligations set forth in Exhibit D. This exhibit is attached or filed and incorporated by reference as part of this decree.

**3.8 HOLD HARMLESS PROVISION.**

Each party is required to pay all debt incurred since the date of separation and to hold the other party harmless from any collection action relating to separate or community debt, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

**3.9 SPOUSAL MAINTENANCE.**

The husband shall pay \$200.00 maintenance. Maintenance shall be paid monthly. The first maintenance payment shall be due on July 1, 1992. The obligation to pay future maintenance is terminated:

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WPF DR 04.0400 (8/91)

The husband's obligation to pay spousal maintenance to the wife shall cease upon the death of either party, upon the remarriage of the wife, or at such time as the family home located at 12021 - 41st Street East, Puyallup, Washington is sold, whichever shall first occur. Any and all spousal maintenance paid on or after October 1, 1992 shall be repaid to husband by wife pursuant to the terms set forth in paragraph 3.13 herein.

Payments shall be made directly to the other spouse.

Other:

Husband shall pay spousal maintenance to the wife to assist in making the house payment until such time as the house is sold.

3.10 ZONE CHANGES.

Does not apply.

3.11 CONTINUING RESTRAINING ORDER.

Does not apply.

3.12 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

Attorney's fees, other professional fees and costs shall be paid as follows:

Each party shall be responsible for his or her respective attorney's fees and costs.

3.13 OTHER:

The family home located at 12021 - 41st Street East, Puyallup, Washington should be immediately listed for sale, and the wife is to use her best efforts to effect the sale of the house.

The husband shall be reimbursed by the wife the total amount of spousal maintenance paid by the husband from October 1, 1992 until such time as the family home located at 12021 - 41st Street East, Puyallup, Washington is sold. Upon the sale of the family residence located at 12021 - 41st Street

WSP No. 04 2400 (8/91)

... Washington, the proceeds shall first be applied to pay the underlying mortgage, selling costs and ... and any monies remaining shall then be applied to the wife's reimbursement of spousal maintenance ... as set forth in paragraph 3.9 herein. ... should any monies remain, the remaining balance of any such proceeds from the house shall be divided equally and paid forthwith to each of the parties.

The petitioner shall provide and maintain a life insurance policy on herself, naming the children herein as irrevocable beneficiaries in a face amount of at least \$30,000.00.

The respondent shall provide and maintain a life insurance policy on himself, naming the children herein as irrevocable beneficiaries in a face amount of at least \$180,000.00.

The value of the community interest in the respondent's retirement is \$27,310.00, and that a Qualified Domestic Relations Order should issue, such that the petitioner should be awarded fifty percent (50%) of said \$27,310.00.

Dated: 11/19/92

*T. Wright*  
IN COUNTY CLERK'S OFFICE  
NOV 23 1992  
DEPT. OF COUNTY CLERK  
BY \_\_\_\_\_ CLERK

WSP No. 04 2400 to June 25, 1992.

Presented by: *[Signature]*

Approved for entry:  
Notice of presentation waived:

*[Signature]*  
GEOFFREY C. CROSBY, #14745  
Attorney for Respondent

*[Signature]*  
GEOFFREY C. CROSBY, #3089  
Attorney for Petitioner

DIVORCE INFORMATION  
COMPLETED July 1992

STATE OF WASHINGTON, County of Pierce  
I, Kevin Stock, Clerk of the above  
Said Court, do hereby certify that this  
instrument is a true and correct  
copy of the original now on file in my office.  
GEOFFREY C. CROSBY, I hereunto set my  
hand and seal of said Court this  
19th day of November, 1992.

DEPT. OF COUNTY CLERK  
BY \_\_\_\_\_ CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

FILED  
IN COUNTY CLERKS OFFICE

A.M. JUL 27 1993 P.M.

PIERCE COUNTY, WASHINGTON  
TELETYPE COUNTY CLERK  
CERITY

In re the Marriage of

LESLIE D. BUDZIUS,

Petitioner,

NO. 91-3-03188-5

and

ANTHONY J. BUDZIUS,

AMENDMENT TO DECREE OF  
DISSOLUTION RE DIVISION  
OF RETIREMENT BENEFITS

Respondent.

THIS MATTER coming on the ex-parte application of Geoffrey Cross, attorney for petitioner, the respondent being represented by Joseph Lombino, the Court being advised that the petitioner was awarded 50% of respondent's retirement benefits of \$27,210.00, the Court being otherwise fully advised, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the provisions of the Decree of Dissolution entered on November 13, 1992 with respect to the division of the community interest in the respondent's retirement rights be and is hereby amended as follows:

If Anthony J. Budzius (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the Department of Retirement Systems shall pay to Leslie D. Budzius (the obligee) \$N/A dollars from such payments or a fraction where the numerator is equal to 115, the number of months the marital community was in existence, and the denominator is equal to the

1 - Amendment to Decree

ORIGINAL

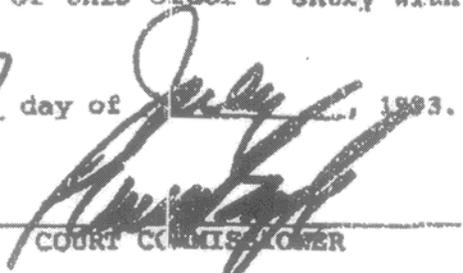
LAW OFFICES OF  
GEOFFREY D. CROSS, P.S., INC.  
222 3RD AVE  
TACOMA, WASHINGTON 98402  
478-8800

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number of months of service credit earned by the retiree at the time of his retirement x 50 percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If Anthony J. Budzius (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the Department of Retirement Systems shall pay to Leslie D. Budzius (the obligee) \$13,605.00 dollars plus interest at the rate paid by the Department of Retirement Systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record. \*

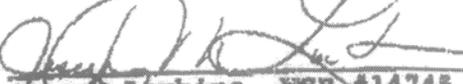
DONE IN OPEN COURT this 27 day of July, 1993.

  
COURT COMMISSIONER

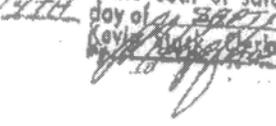
Presented by:

  
Geoffrey Cross, WSB #3089  
Attorney for Petitioner

Approved:

  
Joseph Lombino, WSB #14745  
Attorney for Respondent

\* The November 13, 1992 Decree of Dissolution shall remain in full force and effect as to all provisions contained therein except as specifically otherwise set forth herein this Order.

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
27th day of July, 1993.  
  
OFFICE OF  
KEVIN STOCK, CLERK OF COURT  
1001 BROADWAY  
TACOMA, WASHINGTON 98402  
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**VIII. CERTIFICATE OF MAILING**

STATE OF WASHINGTON

The undersigned does hereby declare that on December 31, 2013, the undersigned deposited a copy of BRIEF OF APPELLANTS filed in the above-entitled case into the United States mail, first-class postage addressed to the following persons:

Geoffrey C. Cross  
1902 64<sup>th</sup> Avenue West, Suite B  
Tacoma, WA 98466

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DATED this 3<sup>rd</sup> day of January, 2014.

By:   
Christopher M. Constantine

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Court of Appeals No. 45275-8-II STATE OF WASHINGTON

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IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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ANTHONY J. BUDZIUS and MONICA BUDZIUS,  
Husband and wife,  
Plaintiffs/Appellants,

vs.

LESLIE D. MILLER (fka BUDZIUS),  
Respondent.

---

*Errata*

~~ADDENDUM TO APPELLANTS' BRIEF~~

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By:

Christopher M. Constantine, WSBA, No. 11650  
Of Counsel, Inc., P. S.  
Attorney for Appellants  
P. O. Box 7125  
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**ADDENDUM TO APPELLANTS' BRIEF**

The citation to Paragraph 3.11 of the Decree of Dissolution is changed to Paragraph 3.13 at the following locations in the Appellants' Brief:

Page 3: Issue 4

Page 4: Issue 9

Page 11: Second and third paragraphs

Page 12: First and second paragraphs

Page 13 Second paragraph

Page 14: First paragraph

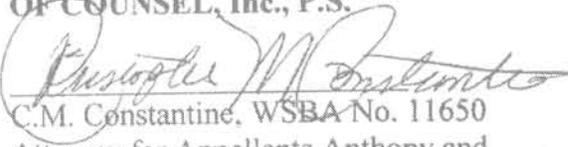
Page: 17: Second paragraph

Page 23: Second paragraph

Page 26: First paragraph

Respectfully submitted,

**OF COUNSEL, Inc., P.S.**

  
C.M. Constantine, WSBA No. 11650  
Attorney for Appellants Anthony and  
Monica Budzius

### III. CERTIFICATE OF MAILING

The undersigned does hereby declare that on February 13, 2014, the undersigned deposited a copy of ADDENDUM TO APPELLANTS' BRIEF filed in the above-entitled case into the United States mail, first-class postage addressed to the following persons:

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- Via E-mail
- Via Hand Delivery

DATED this 13<sup>th</sup> day of February, 2014.

By:

  
Christopher M. Constantine