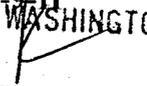


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COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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ALEXANDRINA VAN GINNEKEN

Plaintiff

v.

MARINUS VAN GINNEKEN

Appellant.

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REPLY BRIEF OF APPELLANT

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## **I. REPLY TO MS. VAN GINNEKEN'S RESPONSE BRIEF**

### **1. Reply to Ms. Van Ginneken's Statement of Facts**

The Appellant, Marinus Van Ginneken, (hereafter Marinus) clarifies the Plaintiff's, Alexandrina Van Ginneken, (hereafter Ms. Van Ginneken), statement of facts.

On page 2 of Ms. Van Ginneken's Response filed on December 19, 2014, her attorney, Dana Williams (hereafter Mr. Williams), states that the "Property Settlement Agreement was subject to no negotiations on terms whatsoever", citing VRP at 107. However, Ms. Van Ginneken, her daughter, Leona, and her son-in-law, David were present at the signing. (VRP at 107). Furthermore, Leona advised her mother not to sign the document and Ms. Van Ginneken disregarded the advice of her daughter by signing the Property Settlement Agreement. (VRP at 107.) Furthermore, the Petition for Dissolution was filed approximately six (6) months prior to the Property Settlement Agreement (Exhibit 83) and Ms. Van Ginneken had full access to all the accounts. (VRP at 33).

On page 2 of the Ms. Van Ginneken's Response filed on December 19, 2014, Mr. William's states Ms. Van Ginneken was "not represented by counsel. . ." citing VRP at 83. To clarify, Ms. Van Ginneken signed the Property Settlement Agreement with a clause advising her of her right to seek counsel. (CP 8). The trial court stated, "I'm not going to get into

whether there was some legal ethical obligation that was overstepped here because of Ms. Van Ginneken not being represented. There is a clause in the Property Settlement Agreement that advises her that she has the opportunity to seek legal counsel if she wants.” (VRP at 153). In addition, Ms. Van Ginneken had her daughter present at the signing of the Property Settlement Agreement and the Quit Claim Deed to advise Ms. Van Ginneken. (VRP at 83).

On page 2 of Ms. Van Ginneken’s Response filed on December 19, 2014, Mr. William’s states, “after having been coerced and intimidated by Appellant, Marinus Van Ginneken, Respondent signed the property settlement agreement. . . .” Ms. Van Ginneken, the Petitioner, did not argue intimidation or coercion at trial. Ms. Van Ginneken did not plead intimidation or coercion in her Petition. (CP 1). Leona McCray, Ms. Van Ginneken’s daughter, witness, and the person by her side at the signing of the agreement (who counseled her at the signing) also stated on the record that Ms. Van Ginneken wanted to enforce the Property Settlement Agreement at this trial. (VRP at 93). Ms. Van Ginneken stated that she wanted to enforce the Property Settlement Agreement at the trial. (VRP at 123).

On page 3 of Ms. Van Ginneken's Response filed on December 19, 2014, Mr. William's states the "Property Settlement Agreement was signed by Respondent shortly after she had been hospitalized in December 2007 for a mental breakdown," citing VRP at 57-58. The term "mental breakdown" was never mentioned in the VRP or at trial. Furthermore, Ms. Van Ginneken claims to have been hospitalized due to an emotional breakdown (CP 18); however, no evidence has been presented in any cause of action to indicate such emotional breakdown or hospitalization. (VRP at 105). Marinus stated at trial that he never even met with a doctor regarding the alleged hospitalization or mental evaluation. (VRP at 25). Ms. Van Ginneken never had any information admitted as evidence regarding such evaluation or hospitalization. However, even if a "mental breakdown" is found to have occurred, there is no allegation Ms. Van Ginneken was not of sound mind prior to or during the execution of the Quit Claim Deed or Property Settlement Agreement, which occurred more than six (6) months after the alleged "hospitalization."

On page 3 of Ms. Van Ginneken's Response filed on December 19, 2014, Mr. William's states the "conveyance out by the parties of interest in their community real estate as joint tenants with right of survivorship left the ownership of the real property in exactly the same status as had been the case prior to the execution of the deed and prior to

the parties' marriage having been dissolved." This assertion by Mr. Williams is inaccurate because the property previously held as Tenants in Common was properly converted to Joint Tenants with the Right of Survivorship by the recording of a Quit Claim Deed. (CP 17).

On page 4 of Ms. Van Ginneken's Response filed on December 19, 2014, Mr. William's states that "during the period of post dissolution decree cohabitation, Appellant Marinus Van Ginneken continued to control all aspects of the parties' finances, collecting proceeds from at least three pensions and depositing them to an account, from which he (appellant) paid out whatever he wanted, citing VRP 33, 65-66. Mr. Williams fails to provide that Ms. Van Ginneken "had access to the amount of money" in the accounts and Marinus "always paid the bills" and kept paying the bills. (VRP at 33).

On page 4 of Ms. Van Ginneken's Response filed on December 19, 2014, Mr. William's states, "Marinus Van Ginneken had no intention whatsoever to divide the parties' real property interests or financial accounts, citing VRP at 43-44. Mr. Williams fails to include the fact that Marinus agreed in his Answer to Petitioner to sell the home and divide the profit (CP 5), but also requested of Ms. Van Ginneken a year or two prior to her filing the Petition "for the house to be sold" and "never had a reply

to that.” (VRP 43). In addition, neither Ms. Van Ginneken nor anyone acting on her behalf requested payments. (VRP at 34).

On page 4 of Ms. Van Ginneken’s Response filed on December 19, 2014, Mr. William’s states that Marinus “declined throughout the period of post decree cohabitation to provide Respondent Alexandrina van Ginneken any accounting whatsoever for the money which was being received into an account exclusively controlled by Marinus Van Ginneken.” This assertion is neither cited nor supported by the record. Ms. Van Ginneken had knowledge and access to the bank accounts, Account # 1167 and Account #3745-0. (VRP at 31.) Furthermore, neither Ms. Van Ginneken, nor anyone acting on her behalf, requested the money in the accounts. (VRP at 34).

On Page 6 of Ms. Van Ginneken’s Response filed on December 19, 2014, Mr. William’s states “Respondent exercised no independent control or management over jointly held financial assets”, citing VRP at 67. However, Mr. Williams does not state that Ms. Van Ginneken admitted that she would deposit funds into the account while the parties were married and withhold cash money for groceries and expenses. (VRP at 5, 19). Following dissolution, Ms. Van Ginneken independently diverted her pension funds from the joint accounts into separate accounts;

without the assistance or knowledge of Marinus. (VRP at 9, 37, 62 and 71).

On Page 6 of Ms. Van Ginneken's Response filed on December 19, 2014, Mr. William's states Marinus "did not disclose substantial financial assets to Respondent at the time of the signing the Property Settlement Agreement," citing VRP at 87-88. Marinus contends no evidence was presented to show undisclosed funds; only speculation. Mr. Williams fails to state that on October 18, 2006, \$200,000.00 was direct deposited into account number xxxx-xxxxxx3745-0 which were proceeds from the sale of the Texas home. (CP 22). On March 19, 2007, approximately \$170,000.00 was withdrawn and used towards the purchase of the Rochester property in which the respondent is currently residing. (CP 22) During this period of time (October 18, 2006 through March 19, 2007), the parties accrued \$2,913.01 in interest off of the \$200,000.00 in account no. 7450. (CP 22).

On Page 7 of Ms. Van Ginneken's Response filed on December 19, 2014, Mr. William's states "the Property Settlement Agreement did not mention two bank accounts from which the parties received interest in the amount of \$3,200.00 for the 2007 tax year, citing VRP at 89-90. First, Mr. Williams fails to consider the sale of the home in the State of Texas,

as is explained above. Second, the accounts in reference were closed during marriage. (CP 21). (CP 22).

## 2. Argument

- a. Reply to Ms. Van Ginneken's First Argument that "Although these parties had a right to voluntarily contract to divide their property, the division of property within the Property Settlement Agreement was actually no division at all and was a product of coercion, fraud, duress making that Property Settlement Agreement Void."

Ms. Van Ginneken argues the Property Settlement Agreement and Quit Claim Deed do not dispose of the property because "there was no property settlement agreement 'fairly reached' which appropriately divided these parties' real property and personal property interests, including financial accounts." (Response Brief, Page 11). Ms. Van Ginneken relies heavily on the case of *Bernier v. Bernier*, 44 Wn.2d 447, 267 P.2d 1066 (1954).

Frist, the facts and circumstances in this case differ from *Shaffer v. Shaffer*, 43 Wn2d. 629, 262 P.2d 763 (1953) and *Bernier v. Bernier*, 44 Wn.2d 447, 267 P.2d 1066 (1954) cited by the trial court and Ms. Van Ginneken. Second, Ms. Van Ginneken at all times in her pleadings and testimony, plead the enforcement of the Property Settlement Agreement

entered into more than five years prior to Ms. Van Ginneken's Petition for Partition being filed.

As previously argued in Marinus' Opening and Supplemental briefs, as well as the Response to the Motion on the Merits, both *Shaffer* and *Bernier* were decided prior to the 1973 Dissolution Act, Laws of 1973, 1<sup>st</sup> Ex. Sess., Ch. 157, and prior to RCW 26.09.070 and RCW 26.09.080, which departed from the former RCW 26.08.110. In addition, the Van Ginneken property was not distributed by a trial court after trial; it was upon agreement. Unlike other cases, the Van Ginneken agreement entered into by the parties is over five (5) years old and both parties consented to the arrangement by actions. And lastly, both parties have only sought to enforce the Property Settlement Agreement and determine whether there would be any offsets after an accounting of the payments on the property.

Courts give much greater deference to agreements of the parties to dispose of property than prior to 1973. The encouragement of voluntary agreements are promoted and supported throughout RCW 26.09, including RCW 26.09.070 (Separation Contracts), RCW 26.09.015 (Mediation Proceedings), RCW 26.09.138 (Mandatory Assignment of Public Retirement Benefits), RCW 26.09.184 (Permanent Parenting Plan), and RCW 26.09.187 (Criteria for Establishing Permanent Parenting Plan).

Each provision of RCW 26.09 references agreements between the parties. “The entire sequence of statutes enacted by the same legislative authority, relating to the same subject matter, should be considered in placing a judicial construction upon any one of the acts.” *State ex rel. Washington Mut. Sav. Bank v. Bellingham*, 183 Wn. 415, 48 P.2d 609 (1935). *Little v. Little*, 96 Wn. 2d 183, 189, 634 P.2d 498, 502 (1981).

Second, the trial court cited cases are factually different since the Van Ginneken agreed to the Property Settlement Agreement and only sought to enforce the Agreement five (5) years later. Marinus does not believe those cases specifically address this set of facts. A case involving a voluntary agreement that converted the property via Property Settlement Agreement and recorded Quit Claim Deed from Tenants in Common to Joint Tenants with the Right of Survivorship.

Ms. Van Ginneken sought to enforce the Property Settlement Agreement between the parties approximately five (5) years after it was entered. Ms. Van Ginneken had the opportunity to seek counsel and was advised of her rights to seek counsel pursuant to the Property Settlement Agreement. (CP 2). The trial court even acknowledged Ms. Van Ginneken’s rights in the PSA to seek independent legal counsel. (VRP at 153). Ms. Van Ginneken acknowledged the Property Settlement Agreement was voluntarily and freely signed. (CP 2). Ms. Van Ginneken

acknowledged the Property Settlement Agreement was fair and equitable. (CP 2). Ms. Van Ginneken had her daughter Leona present at the signing of the Property Settlement Agreement advising her. (VRP at 82). Ms. Van Ginneken testified at trial that she was enforcing the Property Settlement Agreement. (VRP at 123).

For five (5) years, Ms. Van Ginneken operated under the Property Settlement Agreement allowing Marinus to pay all the household bills and expenses to his financial detriment out of their accounts, which was outlined in Marinus' Trial Memorandum. (Trial CP 10). At no time did Ms. Van Ginneken request of Marinus to change the circumstances of him paying their household expenses out of the joint account. (VRP at 34). Instead, Ms. Van Ginneken, with full access to all the accounts, merely opened up new accounts and diverted her pensions to those new accounts. (VRP at 9, 37, 62 and 71)

Ms. Van Ginneken and her counsel could have chosen to challenge the validity of the Property Settlement Agreement and Quit Claim Deed; however, Ms. Van Ginneken chose to enforce the Property Settlement Agreement and Quit Claim Deed in pleadings and at trial through testimony. (VRP at 18, 93, 123). It was only after Judge Hunt found the property was "not disposed" and dismissed the trial before Marinus could

put on his case that Ms. Van Ginneken then turned 180 degrees and chose to file a Motion to Vacate the Property Settlement Agreement.

As outlined in Marinus' Opening Brief and Supplemental Brief, the trial was dismissed on the trial court's sua sponte motion without having given Marinus the opportunity to present his witnesses or evidence. The parties agreed to partition the property in their pleadings and at trial. The issue was whether or not there would be an offset or set-off for Marinus, in consideration of the payments he made toward the expenses and the amount owed by Marinus under the Property Settlement Agreement. Approximately eighty (80) exhibits were offered via ER 904 regarding the financial circumstances (income and expenses) but Marinus never had the chance to offer them on direct; despite the fact there appeared to be no objection to the ER 904 documents.

Following trial, Ms. Van Ginneken plead to vacate the Property Settlement Agreement because of fraud, coercion, and misrepresentation. The Court of Appeals should not consider issues raised for the first time on appeal. The issues regarding fairness, fraud, coercion, and misrepresentation now being argued should not be considered by the Court of Appeals because those issues were not raised by Ms. Van Ginneken during the Petition for Partition trial. The issues of validity raised by Ms. Van Ginneken in her Motion on the Merits were neither plead nor argued.

Plaintiff, Ms. Van Ginneken, sought to enforce the Property Settlement Agreement between the parties, approximately five (5) years after it was signed, by filing a Petition to Partition under Lewis County Superior Court Cause No. 12-2-01220-1. Lewis County Superior Court Judge Nelson Hunt dismissed the trial after Ms. Van Ginneken rested her case determining the Property Settlement Agreement and Quit Claim Deed, which converted the property from Joint Tenants in Common to Joint Tenants with the right of survivorship, did not dispose of their property pursuant to RCW 26.09.080 making the Property Settlement Agreement completely void. Marinus appealed Judge Hunt's dismissal.

Following the Notice of Appeal, Judge Hunt vacated the PSA under Lewis County Superior Court Cause No. 07-3-00472-8, finding not only that the Property Settlement Agreement did not properly dispose of the community property because the property was converted to Joint Tenancy with the Right of Survivorship, but also that the Property Settlement Agreement "appears it may not be fair and equitable" (CP 28) and "appears it may not be free of undue influence." (CP 28). Neither issues of fairness nor undue influence were argued or plead during trial. The decision by Judge Hunt to vacate the Property Settlement Agreement was also appealed and the cases consolidated for argument.

An issue, theory, argument or claim of error not presented to the

trial court will generally not be reviewed by the Court of Appeals. *Lindblad v. Boeing Co.*, 108 Wn.App. 198, 207, 31 P.3d 1 (2001). In order to raise an issue or error for the first time on appeal, the error must be "manifest" and truly of constitutional dimension. *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). Marinus does not believe "the Property Settlement Agreement appears it may not be fair and equitable" and "the Property Settlement Agreement appears it may not be free of undue influence" rises to the level of "manifest". It does not even appear that Ms. Van Ginneken proved the documents were not fair and equitable and free of undue influence; merely an appearance after one-half of trial.

A reviewing court may consider an issue, theory or argument if the record reveals that the issue was presented to the trial court, and the trial court was both aware of and had an opportunity to consider it. *Washburn v. Beatt Equipment Co.* 120 Wn.2d 246, 291, 840 P.2d 860, (1992). *reconsideration denied*.(emphasis added). To raise the issue or theory for the first time on appeal, "the precise point on which appellant relies for reversal must have been brought to attention of trial court and passed upon". *State v. Reano*, 67 Wn.2d 768, 771, 409 P.2d 853, (1966) (*citations omitted*). The issue of coercion, bad faith, and misrepresentation was passed upon by Ms. Van Ginneken and the argument abandoned in trial.

The issue of “good faith” or “bad faith” was not plead or presented to the court. (VRP at 18). Furthermore, the issue was passed upon by the Court and Ms. Van Ginneken and abandoned by Ms. Van Ginneken upon colloquy with the trial court. Both parties only attempted to enforce the PSA five (5) years after it was entered, and calculate offsets following their agreement to sell the family home. Ms. Van Ginneken’s counsel clarified to Judge Hunt why they did not plead fairness and sought to enforce the Property Settlement Agreement; stating:

“No, and I’ll tell you why. Because basically we had two options here, and basically the reason that we present evidence as to unfairness or anything else in the putting together of this agreement and its effect is that the remedy being sought is offset, which is equitable, and the conduct of the party seeking equitable relief is always an issue for presentation of evidence. What we say is we want this money, and we want the property to be sold and divided. What Mr. Van Ginneken says is, “All that’s fine and good, but in the end I’m not going to owe Mrs. Van Ginneken anything because there’s this offset, and offset is an equitable remedy.” So to explain the case better, yes, we could have gone back in, and one of our options was to go back into the case pursuant to CR 60(b), and sought relief to set aside or vacate the judgment and find all of that, including the property settlement agreement, to have been improperly put together, which would have required that we prove that our client was probably not competent, so our option was to seek partition. That’s what we did. (VRP at 12)”.

At trial, after Marinus’ counsel objected to irrelevant questioning, the Court inquired of Ms. Van Ginneken’s counsel “Can you please tell me what this has to do with enforcing the property settlement, please?”

(VRP at 25). Counsel for Ms. Van Ginneken responded, “It doesn't have to do with enforcing a property settlement agreement that we're asking to be enforced. . . .” (VRP at 25). Counsel for Ms. Van Ginneken withdrew his line of questioning. (VRP at 26).

Leona McCray, Ms. Van Ginneken's daughter, witness, and the person by her side at the signing of the agreement (who counseled her at the signing) also stated on the record that Ms. Van Ginneken wanted to enforce the Property Settlement Agreement at this trial. (VRP at 93). Ms. Van Ginneken stated that she wanted to enforce the Property Settlement Agreement at the trial. (VRP at 123).

Marinus believes the court should consider the issues of the trial first and bifurcate the arguments when considering newly raised issues that the Property Settlement Agreement was not fair and equitable and not free of undue influence. Those issues were not raised at trial and only argued as part of the Motion to Vacate after the trial. Those new issues should not be considered by the Court of Appeals when determining whether Judge Hunt improperly dismissed the Petition for Partition trial before Marinus was able to present evidence and witnesses.

If the property was properly disposed through the Property Settlement Agreement and Quit Claim Deed, then the case should be remanded for Marinus to present his case without the issues of fairness

and undue influence arguments being considered. The Order to Vacate the Property Settlement Agreement would need to be vacated as well.

If the Court of Appeals determines the validity of the Property Settlement Agreement should be considered for its fairness, then the court looks to the test set forth in *Friedlander* and *Hamlin*. The test is: (1) whether full disclosure has been made by Respondent of the amount, character and value of the property involved, and (2) whether the agreement was entered into fully and voluntarily on independent advice and with full knowledge by the spouse of her rights. *In re Marriage of Cohn*, 18 Wn. App. 502, 505-06, 569 P.2d 79, 81 (1977). *Friedlander v. Friedlander*, 80 Wn.2d 293, 494 P.2d 208 (1972). *Hamlin v. Merlino*, 44 Wn.2d 851, 272 P.2d 125 (1954).

Analyzing the second part of the test, the trial court found that Ms. Van Ginneken knew of her right to seek independent counsel and chose not to seek independent counsel (VRP at 153) and the trial court adopted that finding that there as clause and opportunity for Ms. Van Ginneken to seek legal counsel. Furthermore, Ms. Van Ginneken had her daughter, Leona, with her to advise her. Leona advised Ms. Van Ginneken to not sign the documents. (VRP at 93-94). Ms. Van Ginneken chose to sign the documents against the advice of her daughter. (VRP at 94). Ms. Van Ginneken also signed and acknowledged as being entered into freely and

voluntarily and as a fair and equitable division of property. (Trial Exhibit 83). Unlike the cases of *Cohn*, *Friedlander*, and *Hamlin*, the parties agreed to the Property Settlement Agreement at the time of dissolution without any dispute or trial, operated within and outside of the Property Settlement Agreement for more than five years, and both parties filed to enforce the Property Settlement Agreement with offsets and set-offs. Ms. Van Ginneken should be barred from not claiming it was not fair and equitable or there was undue influence because of her unreasonable delay.

Analyzing the first part of the test, Ms. Van Ginneken had full knowledge of the assets and debts of the parties and admitted she had access to the bank accounts. (VRP at 127). Ms. Van Ginneken deposited and withdrew money from the account. (VRP at 98-99). After the parties dissolved their marriage, Ms. Van Ginneken allowed Marinus to continue to pay the mortgage and other bills and, knew of, and allowed, her pensions to be deposited in the joint accounts. (VRP at 102, 119). Both parties' pensions were used to pay the household expenses.

Ms. Van Ginneken was able to withdraw her pension deposits from the joint accounts and open up her own bank accounts without the assistance or knowledge of Marinus. Ms. Van Ginneken knew how much money was being deposited and to which accounts she needed to transfer the money from. (VRP at 9, 37, 62 and 71). In 2011, Ms. Van Ginneken

diverted her Canadian Pension funds from the joint account. (VRP at 9, 37, 62 and 71). Marinus continued to pay all the expenses from the joint account with his pensions, minus Ms. Van Ginneken's Canadian Pension contribution. Ms. Van Ginneken then diverted her Dutch Pension from the Joint Account in 2013. (VRP at 9, 37, 71). Marinus continued to pay all the expenses from the joint account with his pensions, minus Ms. Van Ginneken's Canadian and Dutch pensions. (Trial CP 10). The reason Marinus was seeking an adjustment is because Marinus was paying all the household expenses after Ms. Van Ginneken withdrew her pensions from the accounts paying the expenses.

Ms. Van Ginneken makes unsubstantiated claims of Marinus having \$300,000.00 in their accounts, hidden from Ms. Van Ginneken at the time of the dissolution. This was based on an IRS Form 1099 from 2007 that showed just under \$3,200.00 in interest had accrued in one of their old accounts. (VRP at 88). Ms. Van Ginneken jumped to the conclusion that the interest rate must have been 10% and there was \$300,000.00 of undisclosed funds. (VRP at 88).

On October 18, 2006, \$200,000.00 was direct deposited into account number xxxx-xxxxxxx3745-0 which were proceeds from the sale of the Texas home. (CP 22). On March 19, 2007, approximately \$170,000.00 was withdrawn and used towards the purchase of the

Rochester property in which the plaintiff is currently residing. (CP 22) During this period of time (October 18, 2006 through March 19, 2007), the parties accrued \$2,913.01 in interest off of the \$200,000.00 in account no. 7450. (CP 22).

These transactions all occurred during the course of the parties' marriage and Ms. Van Ginneken is listed on this account during this time period. (CP 21) (CP 22). On February 22, 2008, the account was closed, with a balance of \$39,676.10 and account no. 8472 was opened. (CP 21) (CP 22). These funds were transferred to acct. no. 8472, with a beginning balance of \$48,561.49. (CP 21) (CP 22). During the period between February, 2008 and June, 2008, \$1,900.00 was withdrawn for household expenses (Marinus was living in the family residence during this time). (CP 21) (CP 22). In addition, \$3,000.00 was withdrawn for legal expenses by Mr. Van Ginneken. (CP 21) (CP 22).

At the time of the entry of the Property Settlement Agreement, the amount remaining in account no. 7450 (which in actuality was now account no. 8472) was awarded to Marinus. (CP 21) (CP 22). The remaining balance in this account was \$43,995.21, which included YTD interest in the amount of \$430.89 – thus, the provision was entered ordering an equalizing payment of community monies in the amount of \$22,542.50 (while the math was not exact and should have actually been

\$21,997.605, I believe there is a reasonable understanding of this equalizing payment). (CP 21) (CP 22). Despite this actual evidence, Ms. Van Ginneken continues to argue funds were concealed to support her Motion to Vacate.

### 3. Conclusion

On October 18, 2013, the trial court dismissed Ms. Van Ginneken's Petition for Partition trial after Ms. Van Ginneken rested and did not allow Marinus to present his case or call witnesses to refute her claims. The court stated that the Property Settlement Agreement that Ms. Van Ginneken was trying to enforce was "completely void" because the parties did not dispose of their property. There was no mention by the court of undue influence or fairness at trial.

On October 25, 2013, the trial court denied Marinus' Motion for Reconsideration stating that "real property division was not properly determined" **and** "there are significant questions regarding the equitable division of the property." Despite the fact that equitable division at the formation of the Property Settlement Agreement had never been plead or argued and Marinus had not been allowed to present his case.

Marinus appealed the trial court's decision by filing a Notice of Appeal on November 13, 2013. On November 15, 2013, the trial court heard argument on Ms. Van Ginneken's Motion to Vacate the Property

Settlement Agreement. Marinus argued that RAP 7.2 applied and Ms. Van Ginneken would need to seek leave from the Court of Appeals to enter an order, the trial court and Ms. Van Ginneken disagreed and the trial court vacated the Property Settlement Agreement. The Order was entered, including Findings of Fact and Conclusions of Law, on December 10, 2013. Marinus believes the court erred in finding that although the issue of the Property Settlement Agreement was the same, RAP 7.2 does not apply where the cause numbers are different.

Marinus also believes the trial court erred by determining that there was substantial evidence to support the Findings of Fact. First, the court only heard one-half of the trial; Ms. Van Ginneken's half of the trial. Second, Ms. Van Ginneken filed no supporting documentation or evidence other than her self-serving declarations. Marinus supported his claims with substantial financial evidence. Marinus' documents, pleadings, and exhibits evidence that their financial accounts were known by all parties and each party had full access.

Marinus is asking the court to find the parties disposed of their property and find the Property Settlement Agreement is a valid agreement. The Court should vacate the Order to Show Cause, which vacates the Property Settlement Agreement. Marinus should be allowed to present his case, free of the fairness and coercion claims brought five years after the

