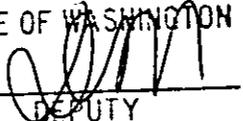


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DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

APARNA AVALA,
Appellant,

v.

SREENARESH GOPU
Respondent.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. The trial court erred by incorrectly applying RCW 26.04.130 instead of the later enacted RCW 26.09.040 to the present despite the legislative intent to occupy the field of fraud as to the “essentials of marriage” exclusively with RCW 26.09.040.

Findings of Fact and Conclusions of Law, 09/04/15 (CP 73-79)
Decree of Dissolution re: Invalidity of Marriage, 09/04/15 (CP 80-83)
07/30/15 VRP 5-8

2. The trial court erred by finding that the Petitioner committed fraud as to the “essentials of marriage.”

Findings of Fact and Conclusions of Law, 09/04/15 (CP 75)

3. The trial court erred by finding fraud without findings as to the nine specific elements of fraud proven by clear, cogent, and convincing evidence.

Findings of Fact and Conclusions of Law, 09/04/15 (CP 75)

4. The trial court erred by not making a finding that the parties ratified the marriage through cohabitation despite any potential fraud per RCW 26.09.040.

Findings of Fact and Conclusions of Law, 09/04/15 (CP 73-79)

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by incorrectly applying RCW 26.04.130 instead of the later enacted RCW 26.09.040?

Assignment of Error 1.

2. Did the trial court err by finding that the Appellant committed fraud as to the “essentials of marriage.”?

Assignment of Error 2,
Assignment of Error 3.

3. Did the trial court err by not making a required finding as to whether or not the marriage was ratified per RCW 26.09.040 despite the existence of any alleged fraud as to the “essentials of marriage”?

Assignments of Error 4.

¶

STATEMENT OF THE CASE

A dissolution proceeding with no minor children underlies this appeal. At issue is the trial court's ruling that declines to enter a Decree of Dissolution and instead voids the marriage and enters a Decree of Dissolution re: Invalidity of Marriage. 07/30/15 Verbatim Report of Proceedings (VRP) 5-8.

Factual background

The Appellant, Ms. Avala, is an Indian citizen who came to the United States in September 2010 through her employment on an H-1B Visa. 06/23/15 VRP 31; 07/27/15 VRP 33. Upon coming to the United State Ms. Avala resided in an apartment in the Newark, NJ area. 06/23/15 VRP 31. While Ms. Avala resided and worked in the United States her family in India sought to arrange a marriage for her. Ultimately Ms. Avala's family arranged a marriage with the Respondent, Mr. Gopu. 06/23/15 VRP 31.

According to Indian custom the families in India handled virtually all of the decisions regarding the marriage. 07/28/15 VRP 25. Mr. Gopu testified that:

...Our marriage is a typical, traditional, South Indian marriage, arranged marriage; and there's a lot of process involved in that. Like, it starts from

criteria matching, like, region, community, cast, and also looking at horoscope – horoscope matching, which is very important for us, and then kind of discuss about the outlook of how the families will gel together; and we discuss about having family, the social status, like, how we are spending, if there is an issue who we are going to get it resolved...If it was not agreed upon or missing, we would not have gone forward with the marriage. 07/28/15 VRP 25.

The families arranged virtually all of the details regarding the marriage.

In February 2011 Ms. Avala met Mr. Gopu for the one and only time prior to their arranged marriage taking place in India on March 7, 2012. 06/23/15 VRP 32. During their meeting in San Francisco the parties discussed a number of items, including the expectations that each supports their family (per custom) in India, assets, and immigration status. 06/24/15 VRP 66-67; 07/27/15 VRP 35; 45-46; 07/28/15 VRP 15-16.

Ms. Avala discussed with Mr. Gopu her immigration status including that her company sponsors Green Card processing for its employees. 07/27/15 VRP 34-35. Mr. Gopu disclosed that he was a

naturalized US citizen at the time of trial however was a green card holder at time of marriage. 07/28/15 VRP 5; 07/28/15 VRP 62.

On March 7, 2012 the parties participated in a large traditional Indian wedding in Ms. Avala's hometown in India. 06/23/15 VRP 32; 07/28/15 VRP 6. Over one thousand people attended the lavish wedding. Although Ms. Avala's family paid all of the wedding costs, Ms. Avala borrowed approximately \$30,000.00 in order to help pay for the wedding. 06/23/15 VRP 119.

Immediately following the wedding the parties honeymooned and began trying to have a family:

A couple days later, we went to a place called Dirudadhi; so there we were able to consummate marriage, and she got up and left and said she didn't have - take the birth control pills, so she didn't want to go for it anymore... 07/28/15 VRP 73-74.

After the completion of the honeymoon trip the parties ultimately returned to the United States.

Ms. Avala returned to Newark until approximately August 2012 to complete her job assignment and prepare to move. In August 2012 she relocated to a home owned by Mr. Gopu in the DuPont, WA area. 06/23/15 VRP 51. During, and prior to marriage, Mr. Gopu

resided in DuPont and worked for IBM. 06/23/15 VRP 51. Upon arriving to Washington State, Ms. Avala obtained work in the Bellevue area. The work allowed her to occasionally work out of the family home. 06/23/15 VRP 150.

Throughout the marriage the parties continued to attempt to start a family. Ms. Avala testified that she did not take any birth control except for a one-month period of time:

Q: Did you, during the marriage, try to have a family?

A: Yes. 07/28/15 VRP 142, 143.

Despite the attempts by the parties to have a child no child was born of issue during the marriage. Mr. Gopu believed that as early as the "first night" that Ms. Avala had no intention of having a family with him:

It's called the Maiden Night where the married couple, first time, consummate the marriage. She didn't want to consummate the marriage at the time. She said she was not comfortable. 07/28/15 VRP 73.

Despite Mr. Gopu's reservations about Ms. Avala's intent he continued to cohabit and live with her as a married couple.

Unfortunately, the parties began to have marital difficulties and Ms. Avala sought the assistance of her parents in 2013 per Indian

custom. 06/23/15 VRP 83. Despite the efforts of Ms. Avala's family to intervene, the family was not able to salvage the marriage. Mr. Gopu exhibited highly controlling behavior which upset Ms. Avala to the point of her pleading for him to attend counseling with her; however, Mr. Gopu was not interested in attending. 07/27/15 VRP 30; 07/28/15 VRP 147. The marriage ultimately collapsed when Mr. Gopu attacked Ms. Avala in the family home. The attack resulted in Ms. Avala fleeing the family home on May 24, 2015 to reside at her sister's home in California. 07/28/15 VRP 6, 148.

Procedural Background

After physically separating from Mr. Gopu, Ms. Avala filed a Petition for Dissolution of Marriage on 06/13/14. Clerk's Papers (CP) 1-4. Temporary orders were entered on 07/01/14. The temporary orders contained mutual restraining order. On 06/26/14 Mr. Gopu filed a response to the petition that contained no counter petition. CP 46-47. Mr. Gopu denied that the marriage was irretrievably broken and plead, "Hopefully, this marriage is not irretrievably broken and the Petitioner and I can work towards reconciliation." CP 47.

Mr. Gopu subsequently filed an "Amended Response to Petition" on 10/20/14 and a "Corrected Amended Response to

Petition" on 10/23/14 alleging that the marriage was invalid due to the Petitioner's fraud. CP 67-72.

On 06/23/15 the matter came before the court for trial. The parties offered substantial testimony regarding financial matters. Mr. Gopu provided sparse testimony regarding his assertion that Ms. Avala committed fraud as to induce him into marriage.

After considerable testimony the court entered final pleadings on 09/04/15 declaring the marriage invalid pursuant to a Decree re Invalidity. The finding of invalidity was based upon the trial court's finding that the Petitioner committed fraud as to the "essentials of marriage." The trial court made no finding as to whether any alleged fraud was ratified by the continued cohabitation of the parties. The trial court declined to divide assets and liabilities acquired during the marriage and instead returned the parties to their respective positions prior to marriage. 07/30/15 VRP 7.

Ms. Avala moved for reconsideration on 10/09/15. The trial court decided Ms. Avala's motion for reconsideration without oral argument. The trial court denied the motion on 10/09/15 without findings CP84-108. Ms. Avala timely appeals.

ARGUMENT

I. THE TRIAL COURT ERRED BY INCORRECTLY APPLYING RCW 26.04.130 TO THE PRESENT CASE INSTEAD OF RCW 26.09.040(4).

Standard of Review.

The meaning of a statute is a question of law that is reviewed de novo. *State v. Breazeale*, 144 Wash.2d 829, 837, 31 P.3d 1155 (2001) (overruled in part on other grounds). In interpreting a statute, the court's fundamental objective is to ascertain and carry out the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9, 43 P.3d 4 (2002). The court should review the court's application of RCW 26.04.130 de novo and apply the legislature's intent to occupy the field of fraud as to the "essentials of marriage" through the subsequent enactment of RCW 26.09.040.

Generally, a trial court's fraud determination is reviewed for abuse of discretion. See *In re Patterson*, 93 Wn. App. 579, 586, 969 P.2d 1106 (1999). A court abuses its discretion when its reasons are untenable. *In re Marriage of McDole*, 122 Wash.2d 604, 610, 859 P.2d 1239 (1993). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the

factual findings are unsupported by the record; [and] it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Fiorito*, 112 Wash. App. 657, 664, 50 P.3d 298 (2002). Clear, cogent, and convincing evidence is required to support a trial court's finding of fraud. *Williams v. Joslin*, 65 Wash.2d 696, 697, 399 P.2d 308 (1965).

Public policy strongly favors marriage. *Davis v. Davis*, 3 Wash. 2d 448, 453-55, 101 P.2d 313, 315-16 (1940); see also 1 Washington State Bar Ass'n, *Family Law Deskbook*, § 10.6 at 10-14. (2^d ed. 200 & Supp. 2012). There is a presumption that a marriage is valid when the parties cohabit and hold themselves out as husband and wife. *Nelson v. Carlson*, 48 Wash. 651, 94 P. 477 (1908). Due to the strong public policy in favor of marriage and presumption of validity, the weight of persuasion to challenge a marriage is clear, cogent, and convincing evidence. *Thorne v. Farrar*, 57 Wash. 441, 445, 107 P. 347, 349 (1910). The court should apply the clear, cogent, and convincing evidentiary standard to challenges to marriages based upon fraud as to the "essentials of marriage."

The trial Court erred by applying RCW 26.04.130 instead of RCW 26.09.040.

The trial court based its decision to find that marriage between the parties voidable on RCW 26.04.130. The statute provides the court with broad authority to find a marriage voidable. The statute provides:

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed. RCW 26.04.130.

The enactment of RCW 26.04.130 dates back to Washington's Code of 1881. Despite existing for over 100 years, the statute is largely unused in Washington's case law with only three cases applying the statute since the enactment of RCW 26.09.040. See *In re Estate of Aslup*, 327 P.3d 1266, 181 Wn.App 856 (2014); *State v. Denton*, 983 P.2d 693, 97 Wn.App. 267 (1999); *Matter of Estate of Lint*, 957 P.2d 755, 135 Wn.2d 518 (1998).

The Washington legislature subsequently enacted RCW 26.09.040 in 1973 as part of Washington's Dissolution Act. RCW 26.09.040 provides in part:

The marriage or domestic partnership should not have been contracted because of ... fraud involving the essentials of marriage or domestic partnership, and that the parties have not ratified their marriage or domestic partnership by voluntarily cohabiting after ... discovery of the fraud, shall declare the marriage or domestic partnership invalid as of the date it was purportedly contracted.... RCW 26.09.040(4)(b)(i) (emphasis added).

RCW 26.09.040 notably limits the ability of the court to find a marriage invalid without a finding that the alleged fraud goes to the essentials of marriage and that the parties did not ratify the fraud by continuing to cohabit after the fraud is discovered. This statute stands in stark contrast to the much broader language of RCW 26.04.130.

The court previously held that divorce became the exclusive remedy for dissolving voidable marriages under RCW 26.04.130. *Saville v. Saville*, 271 P.2d 432, 44 Wn.2d 793 (1954). The *Saville* court reached this conclusion based upon the now repealed RCW 26.08.020(1) containing all of the grounds found in RCW 26.04.130 that make a marriage voidable. Although the *Saville* court pre-dated the enactment of RCW 26.09.040 the reasoning used by the court remains sound. RCW 26.09.040 addresses all of the factors that give

rise to a voidable marriage under RCW 26.04.130. In other words, the legislature has occupied the field of voidable marriages with the enactment of RCW 26.09.040.

Case law indicates that RCW 26.04.130 currently is applied almost exclusively to estate cases and not dissolution proceedings. The court recognizes that "[t]here are also cases where, under exceptional circumstances indicating fraud of the grossest kind, without apparent opportunity to detect or correct the inequity during the lifetime of the deceased spouse, a collateral attack after death has been permitted." *In re Romano's Estate*, 40 Wash.2d 796, 806, 246 P.2d 501 (1952); *Matter of Estate of Lint*, 957 P.2d 755, 135 Wn.2d 518 (1998).

In the present case the court made a finding that the fraud was to the "essentials of marriage." CP 75. By making such a finding the court must apply RCW 26.09.040 as the legislature intended the statute to occupy the field of fraud as the "essentials of marriage." This is in contrast to the *Lint* court where fraud of the "grossest kind" was not enumerated in RCW 26.09.040 and therefore the court determined that the legislature intended to not have RCW 26.09.040

applied and left the court free to use RCW 26.04.130. *Lint*, 957 P.2d 755, 135 Wn.2d 518.

The legislature further demonstrates its intent for RCW 26.09.040 to be the exclusive remedy through its limited application to situations where both spouses are alive at the time that the marriage is challenged. RCW 26.09.040(4). This is in contrast to RCW 26.04.130 which the court has previously indicated may be applied to situations in which one of the spouses is deceased. *Lint*, 957 P.2d 755, 135 Wn.2d 518 (1998). It is noteworthy that the court has almost exclusively applied RCW 26.04.130 to estate cases since the enactment of RCW 26.09.040. See: *In re Estate of Alsup*, 327 P.3d 1266, 181 Wn.App. 856 (2014); and *Lint*, 957 P.2d 755, 135 Wn.2d 518 (1998).

It is clear that due to the legislature specifically setting forth the application of RCW 26.09.040 to situations where both spouses are alive and the marriage is challenged based upon fraud as to the “essentials of marriage” that the legislature intended RCW 26.09.040 to be the exclusive statute applied. The trial court erred by applying RCW 26.04.130 to the facts herein.

II. THE TRIAL COURT ERRED BY FINDING THAT THE APPELLANT COMMITTED FRAUD AS TO THE "ESSENTIALS OF MARRIAGE."

Washington law historically disfavors invalidating marriages based upon fraud except in the most extreme situations. *Harding v. Harding*, 118 P.2d 789, 11 Wn.2d 138 (1941). Similar to the present case, the *Harding* court addressed a claim that the marriage was for business purposes rather than traditional love and affection. The facts in the *Harding* case lead the court to conclude, "It is true appellant says this was more or less of a business arrangement, and she admits they never had sexual intercourse after marriage. It is also true that respondent testified that he attempted five or six times to have such relation with appellant, but that she would not permit it." *Id* at 11. Even with the acceptance of these facts the *Harding* court declined to find fraud as to invalidate the marriage.

In the case at hand, the alleged actions by the Appellant do not rise to the level needed to establish fraud to invalidate the marriage. The trial Court's findings to support fraud rest on the concept of the parties, "having children, raising a family, and being financially successful." CP 74. The Appellant is not aware of any case law to support a finding of fraud when a couple has similar expectations at

the onset of a marriage however the expectations do not materialize during the course of the marriage.

The adoption of RCW 26.09.040 in 1973 limits the scope of fraud to actions involving the “essentials of marriage.” The Appellant is not aware of any Washington case law defining “essentials of marriage.” See, *21 Washington Practice: Family Law: Determining the Validity or Invalidity of Marriage or Domestic Partnerships* § 48:14 at 157-59.

In order to prove fraud, California requires the moving party to show that the spouse “‘made false statements upon matters which the state deems vital to the marriage relationship,’ or that ‘at the time the marriage was contracted did not intend to perform marital duties, but on the contrary assumed the relation with the sole intent of obtaining fraudulently the property of the other, or with the intent of gaining thereby some advantage which inheres in the matrimonial state.’” *Bragg v. Bragg*, 219 Cal. 715, 720, 28 P.2d 1046 (1934).

California further refined the *Bragg* ruling by limiting fraud as to the “essence of the marriage” to cases where the fraud related in some way to the sexual, procreative, or child-rearing aspects of marriage. *In re Marriage of Meagher & Maleki*, 131 Cal.App. 4th 1, 7-8,

31 Cal.Rptr. 3d 663 (2005). “In the absence of fraud involving the party’s intentions or abilities with respect to the sexual or procreative aspect of marriage, the long-standing rule is that neither party ‘may question the validity of the marriage upon the ground of reliance upon the express or implied representations of the other with respect to such matters as character, habits, chastity, business or social standing, financial worth or prospects, or matters of similar nature.’ ” *Id.* at 8 (quoting *Schaub v. Schaub*, 71 Cal. App.2d 467, 476, 162 P.2d 966 (1945)). Washington should adopt California’s definition of requiring fraud as to the essentials of marriage to be limited to fraud related in some way to the sexual, procreative, or child-rearing aspects of the marriage.

Applying the California definition of fraud as to the essence of the marriage to the current case requires this court to reverse the trial court. Viewed in a light most favorable to the Respondent, the financial expectations and decisions made by the parties in this case do not support a finding of fraud as to the “essentials of marriage.” By allowing a party to obtain a decree of invalidity based upon failed expectations of marriage would amount to the entire field of dissolution being consumed by decrees of invalidity.

The evidentiary record does not support the trial court's finding that the Appellant did not intend to ever have children with the Respondent. Despite significant testimony from both parties regarding financial matters, the issue of starting a family has extremely limited testimony. In addition to the limited testimony, no evidence was admitted by the Respondent to support his assertion that the Appellant did not want to start a family and have children. The Respondent does not deny that the marriage was consummated, that the parties had unprotected sex, and that the parties had sexual relations throughout the marriage. 07/28/15 VRP 73-75. The Appellant provided the court with evidence showing that she wanted counseling and other marital help as early as 2012. CP 104. The evidence presented by the Respondent does not rise to the level of clear, cogent, and convincing as to challenge the marriage when the parties cohabitated and held themselves out as husband and wife. 21 Washington Practice: Family Law: *Determining the Validity or Invalidity of Marriage or Domestic Partnerships* § 48:43 at 185.

The Appellant provided the court with testimony indicating that she desired to have a family and was often the initiator in the process. 07/28/15 VRP 142. The Appellant further testified to the

court that she was not actively taking any contraceptive and that her medical records would support that claim. 07/28/15 VRP 143. The medical records also indicated that the Respondent was the party actually using birth control. 09/14/16 Sealed Source at 3. Lastly, the Appellant briefed this contention in her Motion for Reconsideration and Sealed Source filings indicating that she was actively trying to get pregnant. CP 86, Sealed Personal Health Care Records 09/14/15. The trial court's finding that the Appellant did not want to have children is not supported by the evidence and does not overcome the presumption and strong public policy in favor of a valid marriage.

III. THE TRIAL COURT ERRED BY FINDING FRAUD ABSENT A FINDING OF THE NINE ELEMENTS OF FRAUD

Washington law requires that for fraud to be found that the party alleging the fraud must prove the nine elements of fraud by clear, cogent, and convincing evidence. See *Williams v. Joslin*, 65 Wash.2d 696, 697, 399 P.2d 308 (1965); *Sigman v. Stevens-Norton, Inc.*, 70 Wn.2d 915, 920, 425 P.2d 891 (1967).

The nine elements of fraud that need to be proved are: (1) representation of an existing fact, (2) materiality of the fact, (3) falsity of the fact, (4) the speaker's knowledge of the falsity of the fact, (5) the speaker's intent that the fact should be acted on by the person to

whom the fact was represented, (6) ignorance of the fact's falsity on the part of the person to whom it is represented, (7) reliance on the truth of the factual representation, (8) the right of the person to rely on the factual representation, and (9) the person's consequent damage from the false factual representation. *Angelo v. Angelo*, 175 P.3d 1096, 142 Wn.App. 622 (2008).

The Respondent did not prove the nine elements of fraud by clear, cogent, and convincing evidence at time of trial. As discussed above, the Respondent presented sparse evidence and testimony on the issue of fraud. The trial court did not make any findings as to the presence of the nine elements of fraud. A simple finding of fraud without specific findings as to the nine elements needed to be proved by the Respondent with clear, cogent, and convincing evidence is error and requires remand. *Id.*

IV. THE TRIAL COURT ERRED BY NOT MAKING A FINDING THAT THE PARTIES RATIFIED THE MARRIAGE DESPITE ANY POTENTIAL FRAUD AS TO THE "ESSENTIALS OF MARRIAGE" BY CONTINUING TO COHABITATE AFTER RESPONDENT DISCOVERED THE ALLEGED FRAUD.

RCW 26.09.040 bars a party from seeking to invalidate a marriage based upon fraud if the parties continue to cohabit after the discovery of fraud. RCW 26.09.040(4)(b)(i). The Respondent's

own testimony indicates that he suspected as early as "First Night" (the wedding night) that the Appellant had no desire to start a family. 07/28/15 VRP 73. According to the Respondent's own testimony there were numerous times throughout the marriage that the Appellant did not seem interested in have sexual relations with him or starting a family. 07/28/15 VRP 73-75. Despite these observations, the parties continued to cohabitate for approximately 26 months until May 24, 2014 at which time the Appellant left the family home. CP 74.

Even after the Petitioner vacated the family home, the Respondent still did not immediately raise the issue of invalidity. The Respondent made no claim in his originally Response to Petition that any fraud occurred; but rather, the Respondent simply stated that the marriage is not irretrievably broken and he wished to salvage the relationship. CP 46-47. It was only after the Petitioner clearly did not wish to reunify with the Respondent that the Respondent alleged that fraud occurred. CP 67-72.

The trial court made no findings as to whether or not ratification occurred. CP 73-78. RCW 26.09.040(4)(b)(i) requires that a court wishing to invalidate a marriage based upon fraud as to

the “essentials of marriage” must find not only that the fraud occurred but that:

“...the parties have not ratified their marriage or domestic partnership by voluntarily cohabiting after...discovery of the fraud, shall declare the marriage or domestic partnership invalid as of the date it was purportedly contracted.” RCW 26.09.040(4)(b)(i).

The statute clearly requires a two-part finding by the court that fraud as to the “essentials of marriage” occurred and that the parties did not ratify the fraud through cohabitation. In the present case the Respondent continued to cohabit with the Petitioner well after the Respondent indicated that he was first concerned with the Petitioner’s behavior. Clearly, had fraud occurred, the Respondent’s actions of continuing to cohabit with the Petitioner ratified the marriage and bars the marriage from being invalidated. The trial court erred by not making a specific finding as to ratification of any alleged fraud.

V. ATTORNEY FEES

RAP 18.1(a) provides:

Generally, if applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or

Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

RCW 26.09.140 provides:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

The Appellant requests an award of attorney's fees for this appeal. The Respondent advanced at time of trial a position that is not supported in law or fact. The Respondent also earns more than what the Appellant earns, and therefore she is entitled attorney fees based upon need and ability.

VI. CONCLUSION

The trial court erred by improperly applying RCW 26.04.130 to facts that fall exclusively within the constraints of RCW 26.09.040. It is clear that the legislature intended RCW 26.09.040 to be the exclusive statute where both parties are alive and the alleged fraud is to the “essentials of marriage.”

The trial court further erred by finding that fraud as to the “essentials of marriage” occurred. The Respondent fails to carry the evidentiary burden to prove all nine elements of fraud by clear, cogent, and convincing evidence as overcome the strong public policy in favor of a valid marriage.

The trial court erred by failing to make a finding that cohabitation ratified any potential fraud per RCW 26.09.040. It is clear that the Respondent’s actions of continuing to reside with the Petitioner long after he was first concerned with the Petitioner’s conduct ratified any potential fraud.

The Appellant respectfully requests that this court reverse the trial court’s application of RCW 26.04.130 and finding of fraud as to the “essentials of marriage” and remand this matter for a dissolution

proceeding to determine the distribution of assets and liabilities as well as award the Appellant her reasonable attorney fees.

DATED this 22nd day of April 2016.

RESPECTFULLY SUBMITTED,



Andrew Helland, WSBA #43181
Attorney for Aparna Avala, Appellant

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DIVISION II

2016 APR 22 PM 1:04

Declaration of Transmittal

STATE OF WASHINGTON

Under penalty of perjury under the laws of the State of

DEPUTY

Washington I affirm the following to be true:

On this date I transmitted the original document to the
Washington State Court of Appeals, Division II, by personal service
and delivered a copy of this document via ABC Messenger Service to:

Roger Schweinler
902 S. 10th Street
Tacoma, WA 98405

Signed at Tacoma, Washington on this 22nd day of April 2016.



Andrew Helland