

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

NO. 291103

IN RE:

CARLOS VIGIL,

Petitioner

vs.

CAROL ANN VIGIL,

Appellant

RESPONSIVE BRIEF OF PETITIONER

**Jason R. Nelson
2222 North Monroe
Spokane, WA 99205
Phone: (509) 328-9499
Fax: (509) 327-0771**

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

NO. 291103

IN RE:

CARLOS VIGIL,

Petitioner

vs.

CAROL ANN VIGIL,

Appellant

RESPONSIVE BRIEF OF PETITIONER

**Jason R. Nelson
2222 North Monroe
Spokane, WA 99205
Phone: (509) 328-9499
Fax: (509) 327-0771**

Table of Contents

I.	Statement of the Case	6-10
II.	Argument.	11-26
III.	Conclusion.	26-27

Table of Cases

Washington Cases

Bickford v. Eschbach, 167 Wash 357, 9 P.2d 376 (1932)

Pages: 19, 21

Bernier v. Bernier, 44 Wn.2d 447, 267 P.2d 1066 (1954)

Page: 19

Byrne v. Ackerland, 108 Wn.2d 445, 739 P.2d 1138 (1987)

Page: 22

Ex Parte CRESS, 13 Wn.2d 7, 123 P.2d 767 (1942)

Pages: 19, 21

Crafts v. Pitts, 161 Wn.2d 16 (2007), 162 P.3d 382 (2007)

Page: 13

Deveny v. Hadaller, 139 Wn.App 605, 161 P.3d 1059 (2007)

Page: 14

Marriage of Little, 96 Wn.2d 183, 634 P.2d 498 (1981)

Pages: 8, 18, 19, 20, 21, 22, 24

Shaffer v. Shaffer, 43 Wn.2d 629, 262 P.2d 763 (1953)

Page: 19

Federal Cases

In re Baldassaro, 338 B.R. 178 (Bkrcty. D.N.H. 2006)

Pages: 12, 13

In re Daniel, 205 B.R. 346 (Bkrcty.N.D.Ga. 1997)

Page: 15

Matter of Elrod, 91 B.R. 187 (Brtcy M.D. Ga. 1988)

Page: 11

In re Friedberg, 08-51245 (AHWS) (CTBC May 8, 2009)

Page: 13

In re Jones, 05-02277 (WVNBC Aug. 11, 2009)

Pages: 11, 12, 13

New Hampshire v. Maine, 532 U.S. 742, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001)

Page: 15

In re Taub, 10-49215 (NYEBC October 8, 2010)

Page: 12

In re White, 851 F.2d 170 (6th Cir. 1988)

Page: 13, 23

Statutes

RCW 26.09.030

Page: 24

RCW 26.09.080

Pages: 20, 21

RCW 26.09.150

Page: 25, 26

11 U.S.C. section 362

Page: 12

I. Statement of the Case

A Summons and Petition for Dissolution of Marriage was filed by Mr. Vigil in Spokane County, Washington on January 21, 2009. [CP 1-2]. Ms. Vigil was served on January 30, 2009 [CP 6] and an attorney appeared on her behalf on February 4, 2009 [CP 7]. Both parties sought temporary relief from the Superior Court. [CP 3, 3.1, 9] and a Temporary Order was entered on April 3, 2009. [CP 23]

A status conference hearing was held on May 21, 2009 and dates for the pre-trial conference and trial were set by the court. [CP 24]. At the pre-trial conference on October 29, 2009, the trial date was continued to March 8, 2010. [CP 32]. On March 1, 2010, Ms. Vigil filed a motion requesting a continuance of the trial date. [CP 33]. On March 2, 2010, Mr. Vigil filed his objection to the motion and advised the court that he had been diagnosed with a terminal illness. [CP 35, page 127]. On March 3, 2010, the trial court heard oral argument on Ms. Vigil's motion to continue the trial. Counsel for Mr. Vigil reported to the court that Mr. Vigil was diagnosed with advanced pancreatic cancer that had spread beyond the pancreas. [RP 9, lines 14-17] Counsel further reported that Mr.

Vigil's life expectancy was a matter of months. [RP 9, lines 21-22]

The court continued the trial to May 4, 2010 and issued a new case scheduling order. [CP 38] At the same hearing, the trial court denied the oral motion of Mr. Vigil to bifurcate the issue of the status of the parties marriage from the remaining issues but did invite briefing on the issue and allowed the renewal of a motion. The trial court did not order the motion to be renewed nor did the trial court order briefing on the issue. [RP31, lines 11-22] On May 4, 2010, the trial was continued to May 24, 2010 and a new case scheduling order issued. [CP 50]

Although Ms. Vigil had failed to file a formal Response to the Petition for Dissolution of Marriage, at no time did she object to the setting of a trial in this matter based on her failure to file a response.

At the time of trial on May 24, 2010, Ms. Vigil's attorney orally represented to the court that Ms. Vigil had filed a bankruptcy action on May 21, 2010. [RP 33, lines 17-24] Counsel for Ms. Vigil reported to the trial court that Ms. Vigil was forced to file bankruptcy in order to avoid her power being shut off. [RP 36, lines 17-19] Ms. Vigil later testified that she also owed money to her former attorney and that there were unpaid

federal income taxes of an unknown amount. [RP 50, lines 13-19]

Mr. Vigil's attorney advised the trial court that Mr. Vigil was ready to proceed to trial on the issue of dissolution of the parties marriage and represented that the dissolution of the parties marriage was not subject to the automatic stay in the bankruptcy action. [RP 33, lines 7-24] Counsel for Ms. Vigil argued that the automatic stay filed in the bankruptcy court needed to be lifted before the dissolution action could proceed on any issue. [RP 38, lines 9-19] The trial court found that the automatic stay did not apply as to the issue of the dissolution of the parties marriage. [RP 40, lines 14-25; RP 41, lines 1-7]

Ms. Vigil then argued that the trial court did not have the authority to bifurcate the issue of the parties marriage from the ancillary issues, pursuant to existing case-law. [RP 34, lines 2-12]. The court took a recess to review Marriage of Little, 96 Wn.2d 183, 634 P.2d 498 (1981) and then heard argument from counsel. [RP 34]. Upon hearing argument from counsel the trial court ruled that it had the authority to proceed on the issue of the dissolution of the parties marriage only. [RP 39-42]

At trial, Mr. Vigil testified as to his name, address, date of birth, date of marriage, his marital status and as to where the parties married. [RP 44, lines 1-25] Mr. Vigil further testified as to the date the parties began residing in Washington, as to the issue of conception of some of the children of the parties within the State of Washington and as to the residence status of Ms. Vigil and himself. [RP 45, lines 1-25]

Mr. Vigil testified that he understood that he was in court that day to make his divorce final. [RP 47, line 8] He also testified that his marriage to Ms. Vigil was irretrievably broken and requested a dissolution of that marriage. [RP 45, lines 1-25]

When asked what medications he was taking at the time of trial, Mr. Vigil testified that he could not name them all but they included vitamins and medications related to his treatments and procedures. Mr. Vigil further testified that he was not taking any pain medications. [RP 12-25]

Ms. Vigil testified that she did not believe that the marriage was irretrievably broken. [RP 49, lines 2-4] She testified that she had filed a bankruptcy action. [RP 50, lines 10-19] Ms. Vigil further testified that she

objected to bifurcation. [RP 50, lines 21-24]. Ms. Vigil did not contest Mr. Vigil's testimony regarding the date of the parties marriage or the date of separation, nor did she contest Mr. Vigil's testimony as to the jurisdictional elements.

At the conclusion of the trial, the court found that a decree of dissolution of the parties marriage should be granted. At the request of Ms. Vigil's attorney, the trial court recognized the bankruptcy stay as to any transfers of property of the estate, except to the extent that both parties were free to proceed with estate planning. [RP 54, lines 3-5] The trial court also found that there had not been a per se challenge to Mr. Vigil's competency. [RP 57, lines 14-15; RP 58, liens 1-2] The Findings of Fact/Conclusions of Law and Decree of Dissolution were entered on May 24, 2010. [CP 52-52]. This appeal was filed on June 3, 2010. Mr. Vigil died on July 2, 2010.

II. Argument

1. **The trial court did not abuse its discretion by denying a further continuance of trial in light of the bankruptcy filing.**

Mr. Vigil was not required to seek relief from the automatic stay issued by the bankruptcy court in order to proceed with the entry of an order dissolving his marriage from Ms. Vigil. Before the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) the federal courts were divided over the issue of whether or not a debtor had to seek relief from the automatic stay in order to obtain a divorce. In re Jones, 05-02277 (WVNBC August 11, 2009), citing Matter of Elrod 91 B.R. 187 (Bkrcty.M.D.GA. 1988). However, the BAPCPA of 2005 specifically excluded proceedings for the dissolution of marriage from the automatic stay. In re Jones, footnote 1. 11 U.S.C. sec 362(b)(2)(A)(iv) specifically provides that the commencement or continuation of a civil

action or proceeding for the dissolution of marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate, is not stayed by the filing of a bankruptcy action. The Congressional intent as manifested by the statute was to bifurcate the debtor's marital status from the debtor's economic status. In Re Jones, 05-02277 (WVNBC August 11, 2009).

Ms. Vigil's brief cites In re Taub, 10-49215-ess (NYEBC October 8, 2010), a post-2005 BAPCPA bankruptcy action at great length. However, Ms. Vigil's brief failed to include the specific conclusion of the court in Taub that "The automatic stay does not prevent the debtor and Mrs. Taub from seeking a dissolution of marriage." That conclusion was based on the specific wording in 11 U.S.C. sec 362(b)(2)(A)(iv). The remainder of the opinion addressed whether Mr. Taub was entitled to a lifting of the stay in order to address the property of the estate.

The same conclusion was reached in In re Baldassaro, 338 B.R. 178 (Bkrcty. D.N.H. 2006) which concluded "the filing of a bankruptcy action does not operate as a stay against the commencement or continuation of a civil action for the dissolution of a debtor's marriage,

except to the extent that such a proceeding seeks to determine the division of property that is the property of the estate.” In re Baldassaro, at 184. The same conclusion was also reached in In re Friedberg, 08-51245 (AHWS) (CTBC May 8, 2009), in which the court acknowledged the concession from all parties that the automatic stay did not prevent the debtor from seeking a dissolution of the parties marriage in state court.

The remaining cases cited by Ms. Vigil in support of her contention that the automatic stay applies to proceedings regarding the dissolution of the parties marriage all pre-date the 2005 BAPCPA. Further, the cases cited represented, at that time, the opinion of only some of the federal courts, as there was a split amongst the courts on that very issue. Regardless, the 2005 BAPCPA resolved that dispute. In Re Jones, 05-02277 (WVNBC August 11, 2009). The statutory language in the bankruptcy code is clear on this issue and the issue is governed by federal law. Crafts v. Pitts, 161 Wn.2d 16, 27-28, 162 P.3d 382 (2007).

This approach also took into account the concern by some courts that the bankruptcy code as previously worded could be used as a weapon in a marital dispute. In re White, 851 F.2d 170, 174 (6th Cir. 1988). As

previously worded, the Code allowed a party to a dissolution action to file a bankruptcy proceeding and thereby force the parties to remain married until the stay was lifted in the bankruptcy court. The 2005 BAPCPA prevents such abuses of process.

In the present case, Ms. Vigil filed a bankruptcy action on the Friday before the Monday trial setting. [RP 33, lines 17-18] She had full knowledge that Mr. Vigil's health was precarious at that time and that his condition was terminal. [CP 35, page 127] Her sole purpose in filing the bankruptcy action was to attempt to further delay the trial. Although the automatic stay applied as to any attempt to address the property of the estate, the stay did not apply to the proceedings to dissolve the parties marriage.

2. **Ms. Vigil should be judicially estopped from asserting on appeal that the trial court should have proceeded to divide property of the estate.**

A party is precluded from attempting to gain an advantage by asserting one position before a court and then later taking a clearly inconsistent opinion. Deveny v. Hadaller, 139 Wn.App 605, 620, 161 P.3d 1059 (2007). Absent a reasonable explanation from the party

explaining the differing positions taken, judicial estoppel applies. In re Daniel, 205 B.R. 346, 349 (Bkrcty.N.D.Ga. 1997). Three factors are considered when determining whether judicial estoppel applies: 1) Does the party's later position conflict with the earlier position taken by that party; 2) Whether the court was persuaded by the earlier argument to accept that position such that the acceptance of the later position in a subsequent proceeding would create a perception that the party misled the earlier or later court; and 3) If not estopped, would the party gain an unfair advantage or would an unfair detriment be imposed on the opposing party. New Hampshire v. Maine, 532 U.S. 742, 750-51, 121 S. Ct. 1808, 149 L.Ed.2d 968 (2001).

In the present matter, on the day of trial, Ms. Vigil took the position that the trial court could not proceed with any portion of the dissolution action, given the filing of the bankruptcy action. [RP38, lines 9-19] Through counsel, she repeatedly asserted that the court was subject to the automatic stay resulting from the bankruptcy filing. [RP 38] In her appellate brief, Ms. Vigil now asserts that the trial court had the authority to proceed with the dissolution proceeding and divide at least some portion

of the marital estate and that the court should have done so. The two positions taken are in direct conflict.

After hearing the arguments of counsel, the trial court proceeded to trial on the issue of the dissolution of the parties marriage alone, persuaded by Ms. Vigil's attorney's argument that the automatic stay applied to any division of the property of the estate but not persuaded that it applied to the dissolution of the parties marriage. If Ms. Vigil is now allowed to argue that the trial court should have proceeded to divide the property of the estate, despite her position taken at trial, a definite perception would be created that on that issue either Ms. Vigil attempted to mislead the trial court or that she is attempting to mislead the appellate court.

If not estopped, Ms. Vigil would gain an unfair advantage and an unfair detriment would be imposed on Mr. Vigil. Ms. Vigil now asserts that the trial court erred by not proceeding to divide at least some of the marital estate at the time of trial, despite the automatic stay resulting from the bankruptcy filing. That error is cited by Ms. Vigil as a basis for the appellate court to overturn the decision of the trial court. If in fact it was error, it was Ms. Vigil's own argument that led the trial court to it's

conclusion. If the appellate court were to consider overturning the trial court's decision on that basis, Ms. Vigil will have gained an unfair advantage by having misled the trial court. Such an advantage would be to the unfair detriment of Mr. Vigil.

3. **Mr. Vigil did not waive his rights to request the matter to proceed.**

Ms. Vigil argues that Mr. Vigil failed to file a written motion and brief on the issue of bifurcation "as directed" at the March 2010 hearing. As can be seen from Ms. Vigil's own Statement of the Case, at page 14, the trial court "invited briefing" and directed that Mr. Vigil "may" renew a motion on bifurcation and bring the matter back before the court. [RP31] The trial court did not require Mr. Vigil to pursue a motion to bifurcate at that time, nor did the trial court require a brief on that issue. The trial court simply denied the oral motion to bifurcate and allowed Mr. Vigil to pursue that motion, with briefing, should he so choose.

As the matter was subsequently set for trial on a date at which Mr. Vigil was physically able to appear, Mr. Vigil chose to proceed to trial on all issues on the scheduled trial date. It was on the trial date itself that the

court was informed that Ms. Vigil had filed a bankruptcy action. At that time, Mr. Vigil informed the trial court that he was ready to proceed to trial on the issue of dissolution of the parties marriage, as that issue was not subject to the bankruptcy stay. Mr. Vigil was not required to file a motion in order to proceed to trial on the remaining issue available to be tried by the court. Mr. Vigil did not waive any of his legal rights.

4. **The trial court did not abuse its discretion in proceeding to resolve those issues over which it had authority on the day of trial.**

In addressing the issue of bifurcation, the Supreme Court of Washington ruled that it could not find the intent in the dissolution statute to allow bifurcation of the decree of dissolution from ancillary issues, over the objection of one of the parties. Marriage of Little, 96 Wn.2d 183, 189, 634 P.2d 498 (1981). The Court further held that “Divorce is a statutory proceeding and the jurisdiction and authority of the courts are prescribed by the applicable statute, which is to be broadly construed.” Marriage of Little, at 197. As to the jurisdictional elements, the Supreme Court referenced “three jurisdictional elements in every valid judgment, namely

jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment.” Marriage of Little, at 197, quoting A. Freeman, Judgments Sec 226 (5th ed. Rev. 1925).

The Supreme Court held that a party to a marriage dissolution action has the right to have his or her interests in property definitely and finally determined in the decree which dissolves the marriage. Marriage of Little, at 194, quoting Shaffer v. Shaffer, 43, Wn.2d 629, 262 P.2d 763 (1953) and Bernier v. Bernier, 44 Wn.2d 447, 267 P.2d 1066 (1954). In addressing the issue of the timing of decisions, the Supreme Court held that the Superior Court may render a judgment at any time except as the law may forbid the court. Marriage of Little, at 196, quoting Ex Parte CRESS, 13 Wn.2d 7, at 10-11, 123 P.2d 767 (1942) and also quoting Bickford v. Eschbach, 167 Wash 357, 9 P.2nd 376 (1932).

The Court recognized the legislative intent to speed up the process of dissolving defunct marriages. Marriage of Little, at 188. The Court further recognized that in circumstances where a trial court granted dissolutions of marriage but lacked personal jurisdiction over an absent spouse or lacked jurisdiction to dispose of property, RCW 26.09.080

allows the court to address those issues post-dissolution. Marriage of Little, at 193. The Supreme Court further found “Implicit in this language is an understanding that, if the court has jurisdiction over the parties and the property, it will dispose of the property when it dissolves the marriage.” Marriage of Little, at 193.

In the present case, the matter was set for trial on May 24, 2010. [CP 50] The parties appeared at the scheduled pre-trial conference and the matter remained on the trial docket. On the day of trial, Ms. Vigil made an oral representation to the court that she had filed a bankruptcy action the preceding Friday. [RP 33, lines 17-24] She then argued that the trial court had no authority to act as a result of the automatic stay issued by the bankruptcy court. [RP 38, lines 9-19] The trial court heard argument regarding the automatic stay and reviewed the applicable code provision. The trial court concluded that the automatic stay was applicable to the division of the property of the estate but was not applicable as to the dissolution of the parties marriage. [RP 40, lines 15-25; RP 41, lines 1-14]

At that time, based on Ms. Vigil’s late filing of the bankruptcy action, the trial court only had the jurisdictional basis to address one issue,

that being the status of the parties marriage. The stay issued by the federal bankruptcy court prohibited the trial court from taking any action except to dissolve the parties marriage. Therefore, the trial court rendered a judgment at the time of trial on all issues except those upon which the trial court was forbidden to act. The actions of the trial court were consistent with the Supreme Court's holding in Bickford v. Eschbach, Ex Parte CRESS and Marriage of Little.

In Marriage of Little, the Supreme Court held that it was implicit in RCW 26.09.080 that if the trial court has jurisdiction over the parties and property, it will dispose of the parties and property at the time of entry of the decree. Marriage of Little, at 193. However, the Supreme Court also acknowledged that there are occasions when the trial court acts regarding the dissolution of marriage at one point in time and resolves issues such as property distribution when the court obtains jurisdiction. Marriage of Little, at 193. That is exactly what took place in the present case. One definition of jurisdiction is the authority of the court to decide claims before it. Webster's New World Law Dictionary, Wiley Publishing, 2010. It was argued by Ms. Vigil at trial that the trial court did not have the legal

authority to address the division of property and debt. [RP 38, lines 9-19]
Given the automatic stay divested the court of jurisdiction over any issue except the status of marriage, the trial court did not abuse its discretion in rendering a judgment on the one issue over which it had authority at the time of trial.

5. **Ms. Vigil waived her right to object to the trial court proceeding with the dissolution of the parties marriage.**

Bifurcation is not prohibited by Marriage of Little in all cases. The Supreme Court only found the lack of a statutory basis to allow bifurcation over the objection of one of the parties. Marriage of Little, at 189. The dissent in Marriage of Little also defined the majority's holding as prohibiting bifurcation "over the objection of one of the parties". Marriage of Little, at 199. In Byrne v. Ackerlund, 108 Wn.2d 445, 739 P.2d 1138 (1987), the Supreme Court distinguished the situation of the court imposing bifurcation on the parties from the parties agreeing and entering into a mutually beneficial arrangement. Byrne v. Ackerlund, at 451.

In the present case, bifurcation was not imposed by the actions of the trial court but was instead the direct result of the actions of Ms. Vigil.

The trial court and Mr. Vigil were prepared to proceed to trial on all issues on the date set by the court after multiple continuance requests. On the Friday before trial, Ms. Vigil filed a petition in bankruptcy court and attempted to gain a further continuance of the trial with the filing of that action.

Ms. Vigil attempted to use the bankruptcy courts to gain advantage over her terminally ill husband by delaying the trial until after his death. The ability of one party to use the bankruptcy courts in such a manner was an express concern of the Sixth Circuit in In re White, 851 F.2d 170, 174 (6th Cir. 1988).

It was Ms. Vigil's actions that resulted in the bifurcation of the entry of the decree dissolving the parties marriage from the remaining issues in the dissolution action. Ms. Vigil knew, or should have known, that the automatic stay did not apply to the dissolution of the parties marriage itself when she filed that action. She made a voluntary choice to file her bankruptcy petition to gain tactical advantage. In doing so, she waived her right to object to the outcome.

6. **Failure to proceed would have denied Mr. Vigil any relief.**

In Marriage of Little, the Supreme Court acknowledged the legislative intent to speed up the process of resolving dissolution actions in defunct marriages. Marriage of Little, at 188. Further, pursuant to RCW 26.09.030, Mr. Vigil was entitled to a Decree of Dissolution of the parties marriage. Prior to trial, Ms. Vigil did not file a response to the petition alleging that the marriage was not irretrievably broken. RCW 26.09.030(a) provides that if the “other party . . . does not deny that the marriage . . . is irretrievably broken, the court shall enter a decree of dissolution.”

Ms. Vigil did allege at trial that the marriage was not irretrievably broken. She did not, however, request a transfer to family court pursuant to RCW 26.09.030(c)(ii). Absent a request for a transfer to family court, unless the trial court determines that the transfer to family court should take place on its own motion, the trial court’s only option is to make a finding that the marriage is irretrievably broken and enter a decree dissolving the marriage. RCW 26.09.030(c)(i).

Pursuant to RCW 26.09.030(c)(i), there being no request for a

transfer of this matter to family court and no order requiring such a transfer, Mr. Vigil was entitled to the entry of a decree dissolving his marriage at the time of trial. Further, the trial court had the authority to act on that issue. The matter had been delayed at Ms. Vigil's request and Mr. Vigil's health was continuing to rapidly deteriorate. Had the matter been continued until after the issues in bankruptcy were resolved, or the stay lifted, Mr. Vigil would not have lived until the new trial date and entry of a decree of dissolution. Mr. Vigil had the right to the entry of a decree of dissolution, at the time of trial, while he was still alive.

7. **On appeal, Ms. Vigil failed to challenge the trial court's finding that the marriage was irretrievably broken.**

RCW 26.09.150 states as follows: "An appeal which does not challenge the finding that the marriage . . . is irretrievably broken . . . does not delay the finality of the dissolution . . ." In her brief, Ms. Vigil specifically listed each and every provision in the Decree of Dissolution and Findings of Fact/Conclusions of Law that she challenged on appeal. She did not challenge the finding of the trial court at provision 2.6 in the Findings of Fact/Conclusions of Law that the marriage was irretrievably broken. Ms. Vigil did allege error by the trial court as to numerous parts

of the trial court's decision but did not specifically challenge the trial court's finding on this issue. As such, the outcome of Ms. Vigil's appeal should not affect the finality of the dissolution of the parties marriage.

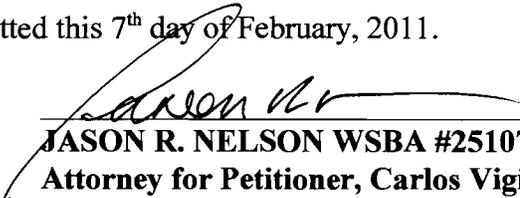
Such a result would be consistent with Marriage of Little, whereby the Supreme Court held that its reversal of the lower court's decision to bifurcate would not affect the validity of decrees previously entered, as to the issue of the parties marital status. Marriage of Little, at 197.

III. Conclusion

The trial court did not abuse its discretion by proceeding to trial on the issues over which it had authority at the time of trial and the action taken by the trial court was not stayed by the bankruptcy action. Ms. Vigil should be judicially estopped from asserting that the trial court had the authority to divide property at trial, after arguing a contrary position to the trial court. Mr. Vigil did not waive his rights to ask the trial court to proceed and had the trial court not proceeded, Mr. Vigil would have been denied any relief prior to his death, relief that he was entitled to by statute. Finally, Ms. Vigil waived her right to object to the trial court's actions and failed to challenge the finding that the marriage was irretrievably broken

on appeal. Mr. Vigil respectfully requests that the decision of the trial court be affirmed and the appeal denied. In addition, Mr. Vigil requests reasonable attorneys fees and expenses pursuant to RAP 18.1.

Respectfully submitted this 7th day of February, 2011.



JASON R. NELSON WSBA #25107
Attorney for Petitioner, Carlos Vigil

DECLARATION OF DELIVERY

I, Jason R. Nelson, under penalty of perjury pursuant to the laws of the State of Washington declare that on this 7th day of February, 2011, I personally delivered a copy of this document to the law office of attorney R. Bryan Geissler, 205 North University Road, Suite 3, Spokane, Wa 99206.

Dated this 7th day of February, 2011.



JASON R. NELSON WSBA NO. 25107
Attorney for Petitioner