

No. 327001-III, consolidated with No. 331784-III

**FILED**

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

SEP 14 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

SANDRA JO GRAVELLE,  
Petitioner/Respondent,  
  
and  
  
THOMAS LEE GRAVELLE,  
Respondent/Appellant.

APPEAL FROM THE SPOKANE COUNTY SUPERIOR COURT  
Honorable Maryann C. Moreno, Judge

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REPLY BRIEF OF APPELLANT

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Hailey L. Landrus, WSBA #39432  
Stamper Rubens, P.S.  
720 W. Boone Ave., Ste. 200  
Spokane, WA 99201  
(509) 326-4800  
Attorney for Appellant

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**A. REPLY TO MS. GRAVELLE'S STATEMENT OF THE CASE**

Ms. Gravelle's counsel argued, but no evidence in the record shows, that the Gravelle's moved approximately 10 times in 20 years or that Ms. Gravelle was prevented from earning her own pension. *See* CP 117 (setting forth argument by Ms. Gravelle's counsel)<sup>1</sup>. Ms. Gravelle's attorney argued, but no evidence shows, that Ms. Gravelle stayed home while their three children were young and later worked clerical jobs. *See* Resp't's Br. 1 (citing RP 6).<sup>2</sup> No evidence in the record shows Mr. Gravelle earned substantially more than his wife at the time of divorce. *See* Resp't's Br. 2 (citing RP 13).<sup>3</sup>

No evidence in the record supports the statement that, as a retiring member of the military, Mr. Gravelle received numerous benefits. *See* Resp't's Br. 1 (listing, as fact, federal statutes regarding military benefits). The record does not show Mr. Gravelle worked for the Spokane Police Department or the Department of the Interior. *See* CP 56 (Declaration of Thomas L. Gravelle declaring that he was forced to retire in 2008 from the

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<sup>1</sup> Statements by Attorneys are not evidence and should be disregarded when not based on the evidence. 23(b) Am. Jur. Prud. Pl. & Pr. Forms Trial §259-61.

<sup>2</sup> Statements by Attorneys are not evidence and should be disregarded when not based on the evidence. 23(b) Am. Jur. Prud. Pl. & Pr. Forms Trial §259-61.

<sup>3</sup> Statements by Attorneys are not evidence and should be disregarded when not based on the evidence. 23(b) Am. Jur. Prud. Pl. & Pr. Forms Trial §259-61.

Airway Heights Police Department). Also, no evidence shows what Mr. Gravelle's post-military employment paid or what type, if any, pension plan or retirement savings account he had. *See* CP at 10 (listing the parties' liabilities, vehicles, and Mr. Gravelle's military retirement in the separation agreement attached to the petition for dissolution of marriage).

The dissolution decree's maintenance provisions do not state that maintenance is non-modifiable. Clerk's Papers (CP) 11, 29, 32.

Ms. Gravelle's attorney argued, but no evidence establishes, that Mr. Gravelle liquidated some or all of the pension assets awarded to him. *See* Resp't's Br. 3 (citing CP 165, 201)(setting forth Argument of Ms. Gravelle's counsel).<sup>4</sup> Ms. Gravelle's claims that Mr. Gravelle acknowledged liquidating \$28,000 of his retirement from his job with the Airway Heights Police Department and that he did not explain where his other retirement assets had gone. *See* Resp't's Br. 8 (citing RP 6, ll. 6-16). There is no evidence that Mr. Gravelle liquidated \$28,000 of his retirement from his job with Airway Heights Police Department or that his retirement assets were gone. *See* Report of Proceedings (July 17, 2014) (2RP) 6 (citing argument of Mr. Gravelle's counsel).<sup>5</sup>

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<sup>4</sup> Statements by Attorneys are not evidence and should be disregarded when not based on the evidence. 23(b) Am. Jur. Prud. Pl. & Pr. Forms Trial §259-61.

<sup>5</sup> Statements by Attorneys are not evidence and should be disregarded when not based on the evidence. 23(b) Am. Jur. Prud. Pl. & Pr. Forms Trial §259-61.

Contrary to Ms. Gravelle's statement that Mr. Gravelle filed no evidence supporting his assertion that he is physically and mentally unable to work, Mr. Gravelle made such assertions of fact under penalty of perjury in his petition to stop maintenance/alimony and in the Declaration of Thomas L. Gravelle. CP 54-56. Further, his financial declaration, also signed under penalty of perjury, states that he is unemployed and disabled. CP 57-62.

Contrary to Ms. Gravelle's claim that Mr. Gravelle did not mention or suggest that his VA disability pay is divided, the Declaration of Thomas L. Gravelle states that Mr. Gravelle "pay[s] her [Ms. Gravelle] . . . half of my VA disability as a maintenance agreement[.]" CP at 55. This declaration was filed in support of his petition to stop maintenance/alimony. CP 56.

Ms. Gravelle incorrectly states that Mr. Gravelle did not claim that his VA disability pay was divided during his argument supporting his motion to revise the Commissioner's ruling on July 17, 2014. *See* Resp't's Br. 7. In fact, Mr. Gravelle plainly argued, through counsel, that his military disability was divided under the Decree's maintenance provisions:

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Now, under the maintenance provision, there was essentially what Commissioner Anderson admitted was a division of Mr. Gravelle's military disability. He was receiving \$844.00 per month in disability. He was ordered to pay \$422 per month as maintenance.

2RP at 4.

Ms. Gravelle mischaracterizes the trial court's oral remarks about Commissioner Anderson's decision on Mr. Gravelle's motion to modify maintenance. She states, "Judge Moreno believed that Commissioner Anderson had focused on modifiability of maintenance rather than impermissible property division of VA disability." Resp't's Br. at 10. In fact, Judge Moreno stated, "she [Commissioner Anderson] spent a lot of time going through different sort of analysis with regard to whether or not this was a modifiable type of maintenance. In her conclusion, -- and I -- and I intend to think it's -- it's being interpreted a little bit differently how it was intended. Her discussion focused around the fact that this was intended to -- this \$422 was intended to make equal and equitable distribution of property. And -- and I get that. And then by the time we got through revision, again, I'm focusing on whether or not this was modifiable; and I accepted some of her conclusions that this was a property distribution simply termed as maintenance." CP at 266.

Ms. Gravelle misstates the record when she says that, on November 21, 2014, Judge Moreno reversed her ruling that the \$422 maintenance payment was a division of Mr. Gravelle's VA disability pay. *See* Resp't's Br. 7 (citing CP 267). The Commissioner's ruling on Mr. Gravelle's motion to modify maintenance was not before the Court on November 21, 2014. CP 263-290. The matter before the trial court on November 21, 2014, was Mr. Gravelle's CR 60(b)(5) motion for relief. CP 263.

**B. REPLY TO MS. GRAVELLE'S SUMMARY OF ARGUMENT**

The parties cannot by agreement confer power on a dissolution court to divide VA disability pay. *Washington Local Law No. 104 of Intern. Brot. of Boilermakers, Iron Ship Builders & Helpers of America v. Intern. Broth. of Boilermakers, Iron Ship Builders & Helpers of America*, 28 Wn.2d 536, 544, 183 P.2d 504 (1947); *Miles v. Shinto Min. Co.*, 21 Wn.2d 902, 903, 153 P.2d 856 (1944). But, here, the parties agreed to divide Mr. Gravelle's VA disability pay, and the Court entered a decree dividing it contrary to well-settled law.

Assuming facts not in evidence, Ms. Gravelle attempts to argue that Mr. Gravelle's VA disability pay was not divided. Undisputed

evidence produced by both parties and the unchallenged finding of the trial court shows Mr. Gravelle's VA disability pay was divided equally between the parties. Dividing VA disability pay is inequitable as a matter of law. *Perkins v. Perkins*, 107 Wn. App. 313, 322-323, 26 P.3d 989 (2001).

Ms. Gravelle also attempts to argue that the parties considered several factors, including Mr. Gravelle's VA disability pay, when determining the amount of maintenance that Mr. Gravelle would pay Ms. Gravelle. However, the record is void of any evidence that the parties merely considered Mr. Gravelle's VA disability pay or any maintenance factor when determining maintenance. No hearing transcript shows the dissolution court orally considered VA disability pay when approving maintenance upon entry of the Decree of Dissolution, and none of the final dissolution documents states the trial court merely considered Mr. Gravelle's VA disability pay.

Ms. Gravelle's claim that Mr. Gravelle's VA disability pay was not divided because neither the findings, decree, nor settlements mention VA disability pay has already been addressed by the Washington State Court of Appeals in *Perkins*, 107 Wn. App. at 324. The *Perkins* Court explained, "It makes no difference whether the division and distribution [of a veteran's disability pension] are implemented by awarding part of the

future income stream that is the pension itself; by finding present value and making it an offsetting award of other assets; or by awarding ‘maintenance.’” *Id.* “*Mansell* cannot be circumvented simply by chanting ‘maintenance.’” *Id.*

Despite Ms. Gravelle’s argument that public policy favors finality, it is clear that public policy disfavors orders entered without authority. Case law is clear that motions to vacate void orders may be brought at any time.

Ms. Gravelle’s request for attorney’s fees on appeal should be denied.

### **C. REPLY TO RESPONDENT’S ARGUMENT**

#### **1. The Findings of Fact and Conclusions of Law in the Order Denying Motion to Vacate - CR 60(b)(5) are Superfluous, Unsupported, and Contrary to the Law.**

Ms. Gravelle contends that Findings of Fact 2.6, 2.9 and 2.10 of the trial court’s Order Denying Motion to Vacate Decree – CR 60(b)(5) are supported by “the pleadings as agreed and signed by the parties five years ago.” Resp’t’s Br. at 14. Ms. Gravelle fails to identify the specific pleadings or parts thereof to which she refers and fails to explain why those pleadings support the challenged findings of fact. Ms. Gravelle also

fails to respond to Mr. Gravelle's argument that the trial court's findings on Mr. Gravelle's CR 60(b)(5) motion are superfluous.

Regarding Finding of Fact 2.6, Mr. Gravelle argues no evidence supports the finding that Commissioner Anderson analyzed whether maintenance was modifiable but did not discuss much whether it was property or maintenance. Ms. Gravelle fails to show how the petition for dissolution of marriage, the separation agreements, the findings of fact and conclusions of law, or the decree reveal anything about Commissioner Anderson's analysis and discussion of Mr. Gravelle's motion to modify or terminate maintenance. They do not. The only evidence of the challenged portion of Findings of Fact 2.6 is Commissioner Anderson's oral ruling and order denying Mr. Gravelle's motion to modify maintenance. That evidence does not support the Court's findings as challenged and analyzed in Mr. Gravelle's opening brief.

Moreover, Ms. Gravelle's blanket statement that Finding of Fact 2.9 is supported by the pleadings signed by the parties five years ago fails to address or acknowledge the documents presented to the Court in support of Mr. Gravelle's motion to revise the Commissioner's ruling and motion to vacate. She also fails to respond to Mr. Gravelle's argument

that the Decree's "Maintenance" provisions divide and impliedly refer to Mr. Gravelle's VA disability pay.

Finally, Ms. Gravelle fails to show how the pleadings signed by the parties five years ago support the trial court's finding that it did not know in November 2014 whether the Decree's "Maintenance" provisions divided Mr. Gravelle's VA disability pay. Without question, there is an insufficient quantum of evidence in the record to persuade a fair minded person of the truth of this finding. Undisputed evidence in the record before the trial court establishes, Ms. Gravelle admitted, and the same trial court previously and specifically found in its order denying revision that the parties divided Mr. Gravelle's VA disability pay. No one has challenged this previous finding, which is a verity on appeal. The finding that the trial court did not know whether the Decree's "Maintenance" provisions divided Mr. Gravelle's VA disability pay has not sufficient basis in fact on which to stand. This Court should conclude that the finding is either superfluous or should be set aside.

**2. Different Standards of Review Apply to Orders Regarding the Modification of Maintenance and Orders Regarding Motions to Vacate Under CR 60(b)(5).**

Ms. Gravelle argues but fails to cite any authority that a motion to vacate an order as void under CR 60(b)(5) is reviewed on appeal for abuse

of discretion. While a decision on a motion to modify maintenance is reviewed for abuse of discretion, *In re Marriage of Knutson*, 114 Wn. App. 866, 871-72, 60 P.3d 681 (2003), orders on motions to vacate a void judgment under CR 60(b)(5) are reviewed de novo. *Ahten v. Barnes*, 158 Wn. App. 343, 350, 242 P.3d 35 (2010); *In re Marriage of Wilson*, 117 Wn. App. 40, 45, 68 P.3d 1121 (2003).

### **3. Mr. Gravelle's VA Disability Pay was Not Considered But Divided Under the Guise of Maintenance.**

Ms. Gravelle claims Mr. Gravelle's arguments are predicated on the presumption that his VA disability pay was divided. It is beyond presumption that Mr. Gravelle's VA disability pay was divided. While litigating Mr. Gravelle's motion to modify maintenance, both parties offered evidence under oath that Mr. Gravelle's VA disability pay had been divided equally between them. Thus, whether or not Mr. Gravelle's VA disability pay had been divided was not a disputed issue before the trial court on Mr. Gravelle's motion to modify maintenance.

The only question was whether his VA disability pay was divided as maintenance or as property. The trial court found Mr. Gravelle's VA disability pay was a division of property called maintenance. CP 130. The

prohibition against dividing VA disability pay “cannot be circumvented simply by chanting ‘maintenance.’” *Perkins*, 107 Wn. App. at 324.

Ms. Gravelle incorrectly claims the order denying revision was reversed on November 21, 2014, when the trial court denied Mr. Gravelle’s motion to vacate the decree as void. First, the order denying revision was not before the trial court in November 2014. It had already been appealed to the Court of Appeals.

Under RAP 7.2, after review of an appealed order is accepted by the appellate court, the trial court has authority to act in the case only to the extent provided in RAP 7.2. While the trial court has authority to hear and determine post-judgment motions authorized by the civil rules, the permission of the appellate court must be obtained before formal entry of a trial court decision that changes the decision then being reviewed by the appellate court. RAP 7.2(e).

Here, the trial court’s decision to deny Mr. Gravelle’s motion to vacate the decree as void did not change the order denying revision that was already before the Court of Appeals. Nothing in the trial court’s order denying Mr. Gravelle’s motion to vacate indicates that the trial court was clarifying or reversing its order denying revision. Nor could it - the motion to modify maintenance was not before the trial court and is not the

type of post-judgment motion the trial court is authorized to hear and decide under RAP 7.2.

Second, the findings entered by the trial court in support of its order denying Mr. Gravelle's motion to vacate are superfluous because orders under CR 60(b)(5) are reviewed de novo. Mr. Gravelle has challenged the trial court's findings in the order denying the motion to vacate to preserve the errors in the event this Court determines that the findings are not superfluous.

Ms. Gravelle's claim that the trial court could not consider parole evidence that is inconsistent with the plain language of the party's settlement agreement is not well taken. First, the trial court was not asked to interpret the parties' settlement agreement because it was undisputed that the "Maintenance" provisions divided Mr. Gravelle's VA disability pay. Second, it is well-settled that extrinsic evidence is allowed to prove omitted terms or to determine the intent of the parties to a contract. *Berg v. Hudesman*, 115 Wn.2d 657, 662, 801 P.2d 222 (1990).

The undisputed evidence in the record (i.e., declarations filed by the parties) shows that the Decree's "Maintenance" provisions divided Mr. Gravelle's VA disability pay equally between the parties. This evidence is consistent with the plain language of the settlement agreements'

“Maintenance” provisions. And it proves that the agreements omitted indicating that the “Maintenance” provisions were dividing Mr. Gravelle’s VA disability pay.

Ms. Gravelle continues to argue with no support in the record that the Decree merely considered Mr. Gravelle’s VA disability pay when determining maintenance. This argument is completely undermined by the plain language of the Decree, which does not mention Mr. Gravelle’s VA disability pay or any of the other factors that the Court is required to consider either in writing or on the record when determining a maintenance award. *See In re Marriage of Sheffer*, 60 Wn. App. 51, 57-58, 802 P.2d 817 (1990) (remanding maintenance award where record did not show trial court adequately considered maintenance factors when considering award).

Regardless, the question before the trial court on Mr. Gravelle’s motion to vacate was not one of contract interpretation; it was one of jurisdiction; that is, whether the dissolution court lacked the power to divide Mr. Gravelle’s VA disability pay pursuant to the Decree’s “Maintenance” provisions. *See Bresolin v. Morris*, 86 Wn.2d 241, 245, 543 P.2d 325 (1975) (stating, “A judgment is void only where the court lacks jurisdiction of the parties or the subject matter *or lacks the inherent*

*power to enter the particular order involved*") (emphasis added). And a claim for lack of jurisdiction under CR 60(b)(5) may be brought to the court's attention by facts outside the record. *Dane v. Daniel*, 28 Wn. 155, 165, 68 P. 446 (1902); *Hatten v. Payton*, 28 Wn. 278, 310-311, 68 P. 757 (1902). Consequently, the trial court here was asked to consider the declarations filed by the parties in support of and in response to Mr. Gravelle's motion to modify maintenance when determining whether the trial court had authority to order the division of Mr. Gravelle's VA disability pay under the guise of Maintenance. This Court may consider not only those declarations and court filings but also federal current receipt law when reviewing the trial court's order denying Mr. Gravelle's CR 60(b)(5) motion to vacate. *Id.*

**4. The Trial Court Erroneously Failed to Analyze Each Substantial Change of Circumstance Asserted by Mr. Gravelle in Support of His Motion to Modify Maintenance.**

Ms. Gravelle incorrectly claims that a trial court has no duty to address each assertion of substantial change of circumstances when deciding a motion to modify maintenance. Ms. Gravelle cites RCW 26.09.070 to support her claim; however, this statutory section does not address modifying maintenance after a decree awarding maintenance has been entered. RCW 26.09.070 addresses the binding force of a separation

contract upon a court when a petition for dissolution of marriage is filed. *See* RCW 26.09.070(3) (“If either . . . of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage . . . , the contract . . . shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties on their own motion or on request of the court, that the separation contract was unfair at the time of its execution”). Even if RCW 26.09.070 applies, it is clear that the division of Mr. Gravelle’s VA disability pay was unfair and inequitable at the time the parties entered into the separation agreement. It has been well settled in Washington since 1992 that a spouse’s VA disability pay cannot be divided. *In re Marriage of Kraft*, 119 Wn.2d 483, 443-44, 447-48, 832 P.2d 871 (1992).

Ms. Gravelle also mischaracterizes the terms of the settlement agreement to argue that the parties expressly agreed to make maintenance non-modifiable. Neither the findings of fact and conclusions of law nor the dissolution decree and its incorporated settlement agreements mention the word “non-modifiable.” Regardless, as Ms. Gravelle points out, even non-modifiable maintenance may be modified if it was unfair at the time of execution. Respondent’s Br. 19 (quoting *In Re Marriage of Hulscher*,

143 Wn. App. 708, 714-15, 180 P.3d 199 (2008)). The Decree's "Maintenance" provisions here were unfair at the time of execution because they unlawfully divided Mr. Gravelle's VA disability pay. Moreover, contrary to Ms. Gravelle's claim, the trial court did not deny Mr. Gravelle's motion to modify maintenance on the ground that maintenance was not modifiable.

The trial court had a duty to consider each of Mr. Gravelle's assertions of substantial change of circumstances. Ms. Gravelle's claim that Mr. Gravelle's inability to work was speculative is undermined by Mr. Gravelle's declaration supporting his motion to modify maintenance. His declaration was neither refuted nor challenged by Ms. Gravelle at the trial court level, and, because this Court does not weigh evidence, it is futile to now challenge Mr. Gravelle's declaration as speculative.

**5. RCW 26.09.090 Requires the Court to Consider Several Factors in Determining Whether to Award Maintenance.**

Ms. Gravelle, without citing any applicable authority, erroneously claims that the absence of findings in support of a maintenance award is not fatal to the award. She cites *In re the Marriage of Hulscher* for support. 143 Wn. App. 708. However, neither proper application of RCW 26.09.090 nor RCW 26.09.090's factors was at issue in *Hulscher*. Instead,

the issue in *Hulscher* was whether the Court erred by modifying a non-modifiable, agreed-upon, life-time spousal maintenance award under RCW 26.09.170. Thus, Ms. Gravelle has failed to rebut the authority presented by Mr. Gravelle, which unequivocally establishes that the Court is required to consider each factor in RCW 26.09.090 either on the record or in writing when awarding maintenance. The trial court's failure to do so here was error.

**6. Mr. Gravelle's CR 60(b)(5) Motion to Vacate the Decree's Maintenance Provisions Was Timely.**

Ms. Gravelle cites *Plouffe v. Rook*, 135 Wn. App. 628, 147 P.3d 596 (2006), to claim that a motion to vacate a void judgment under CR 60(b)(5) must be brought within a reasonable time. Respondent's Br. at 22.

The *Plouffe* decision did not hold that motions to vacate void judgments under CR 60(b)(5) must be brought within a reasonable time. *Id.* The issue before the *Plouffe* Court was whether the appellant's CR 41(b)(2)(B) motion to reinstate a lawsuit dismissed for want of prosecution was properly denied under CR 60(b). *Id.* at 630, 632-35. The Court concluded that the trial court erred in relying on CR 60(b) to deny the appellant's motion to reinstate under CR 41(b)(2)(B). *Id.* at 635.

The *Plouffe* decision does not cite *Alison v. Boonedock Sundeckers & Green Thumbs, Inc.*, 36 Wn. App. 280, 673 P.2d 634 (1983), as Ms. Gravelle contends. However, in *Alison*, Division I of the Court of Appeals stated that a judgment may be challenged by a CR 60(b)(5) motion within a reasonable time after entry of the judgment. 36 Wn. App. at 282. The *Alison* Court cites *Columbia Valley Credit Exchange, Inc. v. Lampson*, 12 Wn. App. 952, 956, 533 P.2d 152 (1975), for support. *Id.* *Columbia Valley Credit Exchange*, held, consistent with *In re the Marriage of Leslie*, 112 Wn.2d 612, 618-20, 772 P.2d 1013 (1989), that the vacation of a void judgment is not subject to a one year limitation. 12 Wn. App. at 956. It then noted, “[T]here is no time limit as a judgment entered without jurisdiction is void.” *Id.* at 956 (quoting Philip A. Trautman, *Vacation Correction of Judgments in Washington*, 35 Wash. L.Rev. 505, 530 (1960)).

This case is analogous to this Court’s recent decision in *Persinger v. Persinger*, 32832-5-III, 2015 WL4070709 (Wash. Ct. App. June 30, 2015). In *Persinger*, the parties entered into an agreed division of their assets and debts, and the Court accepted their agreement, entering a decree of dissolution that divided the husband’s L&I settlement equally between the parties. *Id.* at \*1. Over one year after the decree was entered, the ex-

husband filed a CR 60(b)(5) motion to vacate the decree arguing that the division of his L&I benefits was void. *Id.* This Court stated, “CR 60(b)(5) mandates the Court vacating a void judgment upon motion of a party, irrespective of the lapse of time.” *Id.* (citing *Leslie*, 112 Wn.2d at 618-19). The *Persinger* Court ultimately held that the trial court erred by denying the ex-husband’s motion to vacate the division of his L&I settlement because the transfer was void. *Id.* at 1, 3. Thus, motions to vacate void decrees, even decrees entered by agreement, may be brought at any time. *Id.*

**7. RCW 26.09.170 Does Not Prevent the Court from Ordering Reimbursement for Conferring Benefits Upon Another In Compliance with a Void Judgment.**

If the Court reverses the trial court’s order on revision and modifies maintenance by terminating or reducing it, then Mr. Gravelle is entitled to recover the benefits he has conferred upon Ms. Gravelle from the date of his motion to modify maintenance forward. Contrary to Ms. Gravelle’s claim, the actual recovery amount would not consider alleged under-payment of retirement or alleged improper withholding taxes, because Ms. Gravelle never raised those issues in the trial court and has cited no authority to support her claim.

But, if this Court should reverse the trial court's order denying Mr. Gravelle's motion to vacate under CR 60(b)(5), then RCW 26.09.170 does not apply because the Court is not modifying maintenance. It is vacating a void decision. Thus, the rule handed down by the United States Supreme Court that what has been paid under compulsion of a judgment, the Court will restore when that judgment has been set aside and requires restitution should be enforced here because VA disability pay is meant to reach the military retiree alone. *Kraft*, 119 Wn.2d at 443. Since it was unjust to divide Mr. Gravelle's VA disability pay, it is just that he be granted restitution for all amounts he has paid Ms. Gravelle in compliance with the void "Maintenance" provisions.

**8. The Court Should Deny Ms. Gravelle's Request for Fees and Costs on Appeal.**

Ms. Gravelle requests attorney fees and costs on appeal, citing only RAP 14.1. Her request should be denied.

Costs alone, not reasonable attorney fees, are available under RAP 14.1 and 14.2. *Clipse v. Commercial Driver Servs., Inc.*, 45407-6-II, 2015 WL 5023388, at \*10 (Wash. Ct. App. August 25, 2015). But Ms. Gravelle did not request costs under RAP 14.2.

Moreover, Ms. Gravelle fails to include a separate section for attorney fees in her brief as required by RAP 18.1(b). RAP 18.1(b) permits the Court to grant attorney fees to a party entitled to them under applicable law. Ms. Gravelle cites no statutory section or case entitling her to attorney fees on appeal. She is not entitled to attorney fees for failure to cite authority. *Clipse*, 45407-6-II, 2015 WL 5023388, at \*10. Accordingly, the Court should deny Ms. Gravelle's request for fees and costs.

**D. CONCLUSION**

Based on the foregoing reply brief and Mr. Gravelle's opening brief, Mr. Gravelle respectfully asks this Court to reverse the trial court's orders, order the vacation of the divorce decree's maintenance provisions and reimbursement of the VA disability payments Mr. Gravelle has made to Ms. Gravelle, and deny Ms. Gravelle's request for attorney fees and costs.

Respectfully submitted on September 14, 2015.

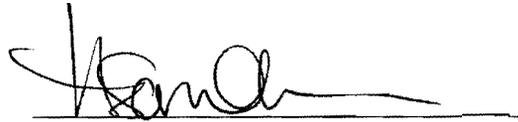


Hailey L. Landrus, WSBA #39432  
Attorney for Appellant

PROOF OF SERVICE (RAP 18.5(b))

I, Hailey L. Landrus, do hereby certify under penalty of perjury that on September 14, 2015, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of brief of appellant:

Lisa Brewer  
Law Office of Lisa Brewer  
1201 N. Ash Street, Ste. 101  
Spokane, WA 99201-2800

A handwritten signature in black ink, appearing to read 'Hailey L. Landrus', written over a horizontal line.

Hailey L. Landrus, WSBA #39432  
Stamper Rubens, P.S.  
720 W. Boone, Ste. 200  
Spokane, WA 99201  
(509) 326-4800  
FAX: (509) 326-4819  
[hlandrus@stamperlaw.com](mailto:hlandrus@stamperlaw.com)