

NO. 86130-7

SUPREME COURT OF THE STATE OF WASHINGTON

VANESSA CONDON, PETITIONER

Vs.

FELY CONDON, RESPONDENT.

RESPONDENT'S OPPOSITION AND ANSWER TO MOTION FOR
DISCRETIONARY REVIEW

Gregory J. Wall
WSBA 8604
Wall Liebert & Lund P.S.
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Port Orchard, WA 98366
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Attorney for Respondent Fely Condon

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STATE OF WASHINGTON
C

I.
NATURE OF THE CASE

This case involves a personal injury claim arising out of an automobile accident in 1996. Vanessa Condon, a minor, was a passenger in a car driven by her mother, Fely Condon. The case was eventually filed in 2005, days before the running of the statute of limitations. Defendant noted the case for trial. On the eve of trial, March 30, 2011, the case was resolved. A CR2A telephone conference was held, with Vanessa Condon and her counsel appearing by telephone and defense counsel present in court, before the Honorable Theodore Spearman, Kitsap County Superior Court Judge. It was agreed that the case would settle and the claims of Ms. Condon would be dismissed. Neither Ms. Condon nor her counsel stated that they would not sign a release in return for settlement funds. When presented with a standard receipt and release, to be signed in exchange for the settlement check, Ms. Condon's counsel refused to sign a release. Defendant refused to tender the settlement funds without a release.

In order to break the deadlock, Defendant brought a motion to enforce the judgment. The Court, after hearing argument, ruled that the signing of a release was the customary way of settling claims and granted Defendant's Motion. At oral argument on the motion, Appellant's counsel

represented to the Court that he never allowed his clients to sign a receipt and release once litigation had commenced. Attached hereto as Exhibit 1, is a copy of a declaration submitted to the Court by Defendant's counsel. It is a release signed by one of Mr. Woodley's client's as part of a settlement of a litigated case. The Trial Court stated that the release was deemed signed by his order. The check was given to Appellant's counsel, who cashed it.

Subsequent to the hearing to enforce the settlement, Defendant's counsel filed a complaint with the Washington State Bar Association. This grievance is based on Mr. Woodley's conduct in this case. Specifically, the payment of his clients bills for medical treatment, in violation of RPC 1.8(e), and contacting represented parties, in violation of RPC 4.2. Mr. Woodley has attempted to defer the investigation by keeping this case alive. This is an improper motive for a Motion for Discretionary Review.

ISSUES PRESENTED

1. Do the facts of this case form a basis for direct review by the Supreme Court, pursuant to RAP 4.2?
2. Has Appellant waived the right to review by accepting the benefits of the settlement?
3. Was the Trial Court correct in ordering Appellant to sign a release?
4. Should Appellant be subject to sanctions for citing unpublished authority?

ARGUMENT

1. **Criteria for Direct Review.**

This case fits none of the criteria stated in RAP 4.2. Appellant has not cited any specific portion of the rule. RAP 4.2(a)(3) does not apply, because Appellant cites no conflicting decisions from the divisions of the Court of Appeals. The only part of this rule that could possibly apply would be RAP 4.2(a)(4), which states:

(a) Type of Cases Reviewed Directly.

A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

(4) Public Issues.

A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

It is difficult to see how this case raises a “fundamental and urgent issue of broad public import.” It is a ruling by a trial court requiring Appellant to sign a receipt and release in return for a settlement check. This happens in virtually every personal injury case that is resolved. While the terms of releases are sometimes a source of conflict, there is basically no authority regarding the signing of releases. This is because it is the custom in virtually every case. Appellant’s counsel not only misrepresented to the Court that he never has clients sign releases, he also failed to state he would not sign a release in the CR2A hearing. Whether this was an attempt to be devious is unknown. Had Appellant’s counsel stated that he would not sign a release, there would have been no settlement. In any case, it does not present a fundamental and urgent issue that requires resolution by the Supreme Court.

2. Appellant has waived the right to an appeal by accepting the benefits of the settlement.

The Appellant has accepted and cashed the settlement check in this matter. The general rule is that acceptance of the benefits of a trial court decision is a waiver of the right to appeal. *Buckley by Belcher v. Snapper Power Equipment Co.*, 61 Wn. App. 932, 813 P.2d 125 (1991). RAP 2.5 (b) provides four possible exceptions to this rule, none of which apply to this case. These are primarily designed for use in family law cases. The

money accepted by Appellant was a settlement, not the result of a jury award. Appellant was not going to receive this money unless a receipt and release was signed. Appellant has not posted security, as required by RAP

2.5 (b). The rule states:

(1) *Generally*. A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision **only** (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2) or (iii) if, regardless of the result of the review based solely on the issues raised by the party accepting benefits, the party will be entitled to at least the benefits of the trial court decision or (iv) if the decision is one which divides property in connection with a dissolution of marriage, a legal separation, a declaration of invalidity of marriage, or the dissolution of a meretricious relationship. [Emphasis supplied]

This case meets none of these exceptions. By taking the settlement funds, Appellant waived the right to appeal.

3. The Trial Court's decision was correct.

Appellant has cited no authority that demonstrates the trial court's decision was incorrect. As discussed above, settlements normally involve a release. Despite the misrepresentation by Appellant's counsel to the Trial Court, releases have been in his other cases. Signing of a release in exchange for settlement funds is all but universal. If Appellant wanted to make the absence of a release a part of the settlement agreement, she had an obligation to make that clear in the CR2A hearing. By failing to do so,

Appellant was obligated to comply with the customary conclusion of a settlement.

4. Appellant should be sanctioned for citing unpublished authority.

Appellant cited two cases in its brief. Neither are on point. *Thurston v Godsil*, 117 Wn. App. 1070 (2003) is an unpublished case. General Rule 14(a) prohibits the citing of unpublished opinions.

GR 14.1. Citation to Unpublished Opinions

(a) Washington Court of Appeals.

A party may not cite as an authority an unpublished opinion of the Court of Appeals. Unpublished opinions of the Court of Appeals are those opinions not published in the Washington Appellate Reports.

Unpublished opinions have no precedential value and are not to be cited or relied upon. *Skamania County v. Woodell*, 104 Wn. App. 525, 536 n.11, 16 P.3d 701, *review denied* 144 Wn.2d 1021 (2001). The Court in *Skamania County, Supra* sanctioned the party making the improper citation. Such a sanction is appropriate in this case.

CONCLUSION

This case meets none of the criteria for discretionary review pursuant to RAP 4.2. It appears that the appeal was filed primarily to delay final resolution of the case. Appellant has also waived the right to appeal the Trial Court's decision by accepting the benefits of the settlement. The Trial Court, in recognizing that Appellant implicitly agreed to sign a release was correct. The Court should not consider the unpublished authority cited by Appellant and should sanction Appellant for the improper citation. The Petition for Discretionary Review should be denied.

Respectfully submitted,

WALL LIEBERT & LUND P.S.

A handwritten signature in black ink, appearing to read 'G. Wall', written over a horizontal line.

Gregory J. Wall
WSBA 8604
Attorney for Respondent
1521 SE Piperberry Way
Suite 102
Port Orchard, WA 98366

EXHIBIT 1

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KITSAP COUNTY
SUPERIOR COURT

JUDGE THEODORE SPEARMAN

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KITSAP COUNTY CLERK
MAY 11 2011

DAVID W. PETERSON

SUPERIOR COURT OF WASHINGTON
FOR KITSAP COUNTY

VANESSA CONDON,
Plaintiff,

v.

FELY CONDON,
Defendant.

NO. 05-2-02872-8

SUPPLEMENTAL DECLARATION OF
GREGORY J. WALL IN SUPPORT OF
ENTRY ORDER ENFORCING
SETTLEMENT

I, Gregory J. Wall declares as follows:

1. I represent Defendant, Fely Condon in this case.
2. At the oral argument of this matter, Plaintiff's attorney indicated that he never had his clients sign releases if the case was in litigation. In going through my files I came across a Release and Settlement Agreement signed by two of his clients in the case with the King County Cause Nos. 03-2-08180-9 KNT and 05-2-12441-5 KNT. These releases were signed by Mr. Woodley's clients on June 28, 2005.

I declare, under penalty of perjury, that the above statements are true and accurate to the best of my belief.

Dated this 11 day of May, 2011.

WALL LIEBERT & LUND P.S.


GREGORY J. WALL, WSBA #8604
Attorney for Defendant Fely Condon

RELEASE AND SETTLEMENT AGREEMENT

The undersigned, Tara Hanooh and David Hanooh, her husband, of full and lawful age, and fully authorized to enter into the agreements herein, hereby acknowledge receipt from defendants Dhia Alkwaye, Nada Mohammed, Ansam H. Alwan, Arif Al-Abodi, and Western Ports Transportation, Inc., and Twin City Insurance Company and The Hartford Group of Insurance Companies (hereinafter collectively referred to as "Western Potts"), of the sum of One Hundred Ten Thousand Dollars (\$110,000.00). The undersigned acknowledge said sum to be in full accord, satisfaction and settlement of a civil action for damages arising out of an incident on or about September 12, 2002, occurring in King County, Washington, for which damages the undersigned claimed defendant to be liable in King County Superior Court Cause Nos. 03-3-08180-9ENT and 05-2-12441-5KNT, which liability is expressly denied. In consideration of the sum paid, the undersigned hereby release and forever discharge Western, their agents, predecessors, heirs, successors, administrators, attorneys, assigns and insurers from any and all actions, causes of action, liabilities, claims and demands upon or by reason of any damage, loss and suffering, known and unknown, which has been or may hereafter be sustained by the undersigned in consequence of said incident and damage or injury. The proceeds are allocated such that eighty percent (80%) of the funds are in settlement of all known claims and twenty percent (20%) is allocated to all unknown or future claims.

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sept. 11th

The amount paid as herein recited is the sole consideration for this settlement, and it is expressly understood and agreed that in executing this Release the undersigned do not rely upon any statements of any other persons as to the future as a result of said damages, and it is fully understood that the consideration recited in this Release is in full settlement of all damages, known or unknown, suspected or unsuspected.

INDEMNIFICATION AND HOLD HARMLESS

The undersigned also warrant, represent and promise that they will hold Western and its agents, predecessors, successors, assigns, attorneys or insurers, and all other persons, firms, corporations, associations or partnerships, harmless from any liens, by any person, entity, or insurer by reason of any damage, loss and suffering, known and unknown, which has been or may hereafter be sustained by the undersigned in consequence of said incident and damage or injury, including, but not limited to, any lien or claim of Nordstrom, or any insurance carrier. The undersigned further agrees that if Western, or its agents, predecessors, successors, assigns, attorneys or insurers are sued or any claim is made against them by anyone or any entity for claims arising out of the incident of on or about September 12, 2002, involved herein, by reason of any damage, loss and suffering, known and unknown, which has been or may hereafter be sustained by the undersigned in consequence of said incident and damage or injury, that the undersigned will defend, indemnify and hold Western completely harmless against the same.

September 11th
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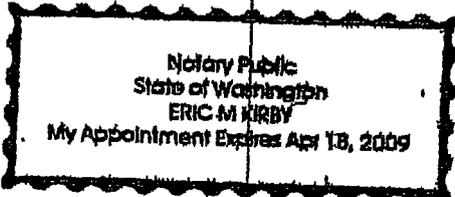
DATED this 28 day of June, 2005.


TARA HANOCH

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Tara Hanoch, the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: 6/29/05



Eric M Kirby
Print Name: ERIC M Kirby
NOTARY PUBLIC for the State of
Washington, residing at 1919 N 45th St
My appointment expires: 4/18/09

DATED this 28 day of June, 2005.


DAVID HANOCH

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that David Hanoch is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: 6/29/05



Eric M Kirby
Print Name: Eric M Kirby
NOTARY PUBLIC for the State of
Washington, residing at 1919 N 45th St
My appointment expires: 4/18/09

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SUPERIOR COURT

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DAVID W. PETERSON

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

VANESSA CONDON,

NO. 05-2-02872-8

Plaintiff,

v.

CERTIFICATE OF SERVICE

FELY CONDON,

Defendant.

The undersigned certifies that on the 11th day of May 2011, she caused a copy of the following documents:

1. Supplemental Declaration of Gregory J. Wall;
2. Certificate of Service

to be served on the parties listed below by the method(s) indicated:

Party/Counsel	Additional Information	Method of Service
Gordon Woodley Attorney at Law Woodley Law Offices 14929 SE Allen Road Bellevue, WA 98006	Counsel for Plaintiff WSBA #7783 Ph: 425-747-0202 Fax: 425-747-3073	<input checked="" type="checkbox"/> regular first-class U.S. Mail <input type="checkbox"/> personal delivery <input type="checkbox"/> fed-ex/overnight delivery <input checked="" type="checkbox"/> facsimile 425-747-3073

I certify under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct.

Dated at Port Orchard, Washington.

Sandra Rivas

SANDRA RIVAS
Legal Assistant

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SUPREME COURT OF THE STATE OF WASHINGTON

VANESSA CONDON,
Plaintiff,

v.

FELY CONDON,
Defendant.

NO. 86130-7
KITSAP CO. SUP. CT. NO. 05-2-02872-8

CERTIFICATE OF SERVICE

The undersigned certifies that on the ____ day of _____ 2011, she caused a copy of the following documents:

1. Respondent's Opposition and Answer to Motion For Discretionary Review;
2. Certificate of Service

to be served on the parties listed below by the method(s) indicated:

Party/Counsel	Additional Information	Method of Service
Gordon Woodley Attorney at Law Woodley Law Offices 14929 SE Allen Road Bellevue, WA 98006	Counsel for Plaintiff WSBA #7783 Ph: 425-747-0202 Fax: 425-747-3073	<input checked="" type="checkbox"/> regular first-class U.S. Mail <input type="checkbox"/> personal delivery <input type="checkbox"/> fed-ex/overnight delivery <input type="checkbox"/> facsimile

I certify under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct.

Dated at Port Orchard, Washington.

SANDRA RIVAS
Legal Assistant