

No. 86130-7

SUPREME COURT OF THE STATE OF WASHINGTON

VANESSA CONDON, Petitioner,
v.
FELY CONDON, Respondent.

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF

Gordon Arthur Woodley

Attorney for Petitioner

Woodley Law

14929 SE Allen Road

Bellevue, WA 98006

(425) 453-2000

WSBA # 7783

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-1

CLERK
2011 OCT -4 AM 8:07
STATE OF WASHINGTON
SUPREME COURT
D. MARCO N. CASERIN

A. BACKGROUND

On September 23, 2011, Commissioner Goff issued a ruling calling for supplemental memoranda on two issues: 1) whether the trial court's decision is appealable as a matter of right under RAP 2.2(a)(1), rather than as a discretionary review; and 2) whether petitioner is or is not precluded from seeking review under RAP 2.5(b). Appendix 17-18.

B. DISCUSSION OF THE ISSUES

1. Is The Trial Court's Decision Appealable As A Matter Of Right Under RAP 2.2(a)(1)? *Yes.*

There is nothing more for the trial court to do. Indeed, the crux of the problem is that, after the case was over, the trial court entered an extraordinary order imposing additional burdens upon a former party six weeks after the case had already been dismissed by court order. Not only was there nothing more to be done after the April 1, 2011 dismissal, there is nothing more for

the trial court to do now. The case at the trial level was over then and is over now.

Since there is nothing more to be determined by the trial court, the decision of the superior court would be a final decision, making it an appealable decision as a matter of right under Title 2 “What Trial Court Decisions May Be Reviewed”. RAP 2.2(a)(1).

Under RAP 5.1[c], a “notice for discretionary review of a decision which is appealable will be given the same effect as a notice of appeal.” Petitioner’s notice for discretionary review should be treated as a notice of appeal in accordance with this rule. RAP 5.1[c].

2. Is The Petitioner Precluded From Seeking Review Under RAP 2.5(b)? *No.*

Respondent urges this court to preclude petitioner from seeking review of the trial court’s extraordinary post-dismissal

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-3

order. Respondent claims that petitioner waived her right to appeal this decision because she accepted the CR 2A stipulated settlement funds. Respondent may even claim that petitioner was not entitled to the March 29, 2011 \$100,000 settlement because respondent would not pay the money until there was a signed hold harmless agreement, an indemnification agreement, and a release and receipt. Respondent's arguments are without merit; the issue is not whether respondent would pay the already agreed-upon settlement monies. The issue is whether petitioner was already entitled to receive \$100,000 as part of the March 29, 2011 CR 2A stipulated settlement that respondent counsel placed on the record before the trial court on March 29, 2011.

The answer is plain and simple. Petitioner was entitled to receive the \$100,000 payment from respondent as part of the stipulated CR 2A settlement agreement. The case would not have been permitted to be dismissed with prejudice if petitioner was not entitled to receive these monies. That was the gravamen of

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-4

the March 29, 2011 CR 2A settlement agreement that was accepted by the court. Petitioner's entitlement to receive \$100,000 in the Kitsap County case was fixed by the CR 2A agreement. The May 13, 2011 extraordinary order did not give petitioner any new rights to compensation for her injuries that she did not already have. Regardless of the May 13, 2011 decision, petitioner was already entitled to the benefits of the March 29, 2011 court-approved CR 2A settlement where she was entitled to receive payment of \$100,000 and the April 1, 2011 stipulated Order of Dismissal with Prejudice which terminated the case.

By way of background, the CR 2A stipulated settlement not only provided that respondent would pay petitioner \$100,000, the CR 2A agreement also provided that respondent would receive credit for the \$100,000 from the Kitsap County case against the \$108,000 UIM arbitration award judgment in King County which petitioner secured against respondent's insurer [Farmers] in the early 2011. See discussion in Appendix 19. The

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-5

2011 King County case, *Farmers Insurance Company of Washington v. Vanessa Condon*, Cause No. 11-2-03245-1, was brought to confirm Vanessa Condon's successful UIM arbitration award and to enter judgment in conformity with the arbitration award. Farmers contested the amount of the judgment entered and moved to revise the Commissioner's ruling and the award of prevailing party attorney fees and costs to petitioner. Farmers' motion was unsuccessful; King County Superior Court Judge Joan DuBuque reviewed and upheld the ruling and petitioner's judgment against Farmers for over \$100,000, together with costs, attorney fees, and interest until the judgment is fully paid. [As agreed in the subsequent CR 2A settlement agreement, the payment of the \$100,000 policy limits settlement in the Kitsap County case acted as a credit against Farmers' judgment obligation in the King County case. Petitioner entered a partial satisfaction of her King County judgment against Farmers when she finally received \$100,000. Appendix 20-21. Farmers has

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-6

not yet fully satisfied petitioner's judgment against it; petitioner is still owed money under this King County judgment.]

So, as of March 29, 2011, the date of the parties' CR 2A agreement, petitioner already had an UIM judgment, in excess of \$100,000, arising from respondent's failure to stop at a stop sign before entering a main arterial highway. Petitioner was legally entitled to \$100,000 and more from respondent and her insurer before petitioner and respondent ever agreed to settle the Kitsap County case for the payment of \$100,000 on March 29, 2011.

As a result of petitioner's King County judgment against Farmers and as a result of respondent's CR 2A agreement to pay petitioner her \$100,000 policy limits in the Kitsap County case, petitioner was entitled to receive \$100,000, without regard to the post-dismissal order entered by the Kitsap County Superior Court judge six weeks after the case had already been dismissed with prejudice. That order which is the subject of this appeal did not give petitioner any additional rights to be paid any additional

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-7

money beyond what she was already entitled to receive by the King County Judgment and the Kitsap County CR 2A settlement agreement.

The subsequent May 13, 2011 extraordinary order was truly separate and apart from the March 29, 2011 CR 2A stipulated settlement agreement and petitioner's right to receive \$100,000 under that agreement and under the judgment she already had against Farmers in the King County case.

Under RAP 2.5(b), petitioner "may accept the benefits of a trial court decision" without jeopardizing her right to appeal the extraordinary post-dismissal order of May 13, 2011. Not only did the May 13, 2011 order not give her any new entitlement to be paid additional monies above and beyond her entitlement to be paid on the \$108,000 UIM judgment and her entitlement to be paid the underlying \$100,000 policy limits on her CR 2A settlement, but petitioner was entitled to be paid the money regardless of the outcome of this review of the Kitsap County

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-8

Superior Court's extraordinary post-dismissal order.

The provisions of RAP 2.5(b) requiring a petitioner to post security are "to ensure that a party seeking review will be able to make restitution if a decision is reversed or modified on appeal". *Scott v. Cascade Structures*, 100 Wn.2d 537, 541, 673 P.2d 179 (1983). If the extraordinary order of May 13, 2011 is "reversed or modified" by the Supreme Court, that will not affect petitioner's entitlement to her CR 2A settlement money. Restitution is not a consideration under the circumstances of this case. Petitioner is not subject to paying restitution if the extraordinary order were to be reversed or modified on appeal. The amount of petitioner's entitlement is not in question; the only question is whether petitioner could be forced to take on additional burdens which were not part of the original March 29, 2011 CR 2A settlement agreement. This case is analogous to the *Scott v. Cascade Structures* case where there was no restitution required and the appealing party was entitled to the benefits of the

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-9

judgment “regardless of the outcome of the appeal.” *Scott, supra* at 541. There, the Supreme Court held that the “appellant has not waived her right to appeal.” *Ibid.*

Under RAP 2.5(b)(1)(iii), the Supreme Court recognizes that a petitioner will not be deprived of her right to appeal where she is entitled to the money, regardless of the outcome of the court’s review. Since petitioner is entitled to the money regardless of whether the superior court’s decision is reversed or modified, RAP 2.5(b)(iii) applies:

A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only ... (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.

Respondent’s arguments urging waiver are without merit. *See Scott v. Cascades Structures*, 100 Wn.2d 537, 541, 573 P.2d 179 (1983). It is petitioner’s entitlement to the money regardless of the outcome on appeal that controls, not whether respondent withholds or pays the \$100,000. Petitioner has not waived her

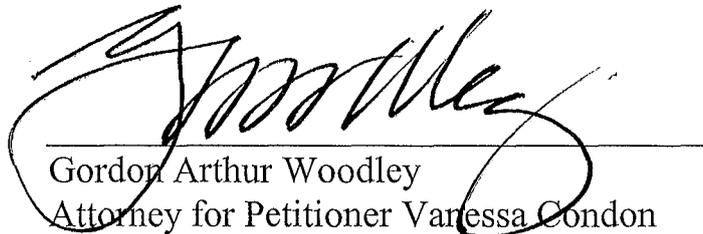
SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-10

right to appeal the new burdens imposed by the extraordinary order. RAP 2.5(b)(iii); *Scott v. Cascades Structures, supra* at 541.

C. CONCLUSION

Since there is nothing more for the trial court to do, its extraordinary order of May 13, 2011 would effectively be a RAP 2.2(a)(1) final decision of the court, thereby paving the way for petitioner's motion for discretionary review to be treated as a notice of appeal under RAP 5.1[c]. And since petitioner was entitled to be paid \$100,000, regardless of the outcome of this appeal, she was entitled to accept the \$100,000 without waiving her right to appeal. RAP 2.5(b)(iii); *Scott v. Cascade Structures*, 100 Wn.2d 537, 541, 673 P.2d 179 (1983).

Respectfully submitted September 30, 2011



Gordon Arthur Woodley
Attorney for Petitioner Vanessa Condon

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-11

APPENDIX

September 23, 2011 Commissioner Goff's Ruling Calling For Supplemental Memoranda	A-17 through A-18
April 11, 2011 Memo Requesting Payment	A-19
May 27, 2011 Partial Satisfaction of Judgment with cover letters to counsel	A-20 through A-23

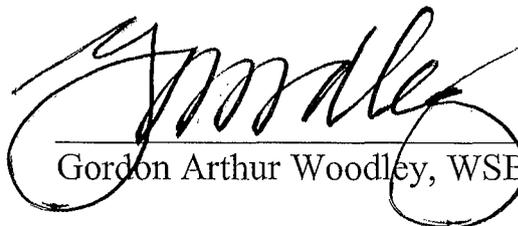
SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-12

PROOF OF SERVICE

I, GORDON ARTHUR WOODLEY, declare under penalty of perjury that the following statements are true and correct:

1. I am the attorney for petitioner in this matter and make this declaration from personal knowledge.
2. On September 30, 2011, I placed Petitioner's Supplemental Memorandum Requested By Commissioner Goff and this Proof of Service for filing and service with the Clerk of the Supreme Court by posting the same in the United States Postal Service and for service upon opposing counsel by mailing and faxing the same to Mr. Wall at 360-876-1216.

Declared this 30th day of September, 2011 at Bellevue, Washington



Gordon Arthur Woodley, WSBA 7783

SUPPLEMENTAL MEMORANDUM
REQUESTED BY COMMISSIONER GOFF-13

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
SUPREME COURT
STATE OF WASHINGTON
2011 SEP 23 P 12:19
RONALD R. CARPENTER
CLERK

VANESSA CONDON,
Petitioner,
v.
FELY CONDON,
Respondent.

NO. 86130-7

RULING CALLING FOR
SUPPLEMENTAL MEMORANDA

Vanessa Condon brought this personal injury action against her mother, Fely Condon, based on a 1996 automobile accident. On the eve of trial the parties agreed to settle the case, with Vanessa Condon to receive \$100,000 in return for dismissal of the lawsuit with prejudice. The superior court signed the resulting order on April 1, 2011. When presented with a receipt and release (including a hold harmless agreement), to be signed in return for the settlement check, Vanessa Condon declined to sign the release on grounds that it went beyond the settlement agreement. Fely Condon then sought and obtained from the superior court an order requiring her to sign the release, and providing that if she does not sign the release "it is hereby deemed signed by the entry of this ORDER." Vanessa Condon now seeks direct discretionary review of this order. RAP 2.3(b); RAP 4.2.

Two matters require clarification before I consider the request for direct discretionary review. First, it is unclear what is left in the trial court to do, and thus the

619/198

A-17

court's decision may be appealable under RAP 2.2(a). If it is, Vanessa Condon is entitled to review as of right, RAP 2.1(a)(1), and her notice for discretionary review will be given the same effect as a notice of appeal, RAP 5.1(c). It would be helpful for the parties to provide written argument on this question. Second, Fely Condon reports that Vanessa Condon accepted and cashed the settlement check, and urges that this acceptance of benefits precludes this request for review. *See* RAP 2.5(b). Vanessa Condon responds that the superior court's order deeming that she signed the release is "separate and apart" from the earlier order dismissing the case. But as Fely Condon points out, the settlement check was given to Vanessa Condon in exchange for the release. It would be helpful for the parties to flesh out their arguments on this point, including a discussion of whether the acceptance of benefits rule should not apply, because, regardless of the result of this review, Vanessa Condon will be entitled to at least the benefit of the trial court decision. *See* RAP 2.5(b)(1)(iii).

The parties are therefore directed to serve and file supplemental memoranda of 15 or fewer pages by October 10, 2011, addressing the two questions discussed above. I will review the matter once these memoranda are filed.


COMMISSIONER

September 23, 2011

A-18

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	1311
DESTINATION ADDRESS	13608761216
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	04/11 17:36
USAGE T	00' 32
PGS.	1
RESULT	OK

WOODLEY

LAW OFFICES

April 11, 2011

MEMO VIA FAX 360-876-1216

To: Greg Wall
From: Gordon Woodley
Re: Farmers' Delay In Paying the
\$100,000 Kitsap County Settlement

Mr. Wall-

What Vanessa Condon agreed to provide was a statement on the record of the terms of the settlement and an authorized stipulated Order of Dismissal. She fully complied and you have entered the stipulated Order of Dismissal. There is no reason to further delay payment of the \$100,000 to Vanessa. She never agreed to also provide a signed release. Farmers and Mrs. Fely Condon have received the benefit of the Order of Dismissal and Farmers's payment is overdue.

Kindly deliver the check and I will promptly file a partial satisfaction of judgment for the \$100,000, as was previously agreed.

A. 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

FARMERS INSURANCE CO. OF
WASHINGTON, a Washington Insurance
Company,

NO. 11-2-03245-1 SEA

PARTIAL SATISFACTION OF
JUDGMENT

Insurer/Moving Party,

vs

VANESSA CONDON,

Insured/Respondent.

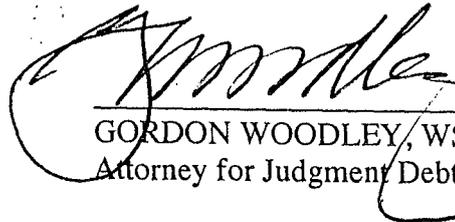
JUDGMENT SUMMARY

Judgment Creditors:	Vanessa Condon
Attorney for Judgment Creditors:	Gordon Woodley, WSBA #7783
Judgment Debtor:	Farmers Insurance Co. of Washington
Attorney for Judgment Debtors:	Gregory J. Wall, WSBA #8604
Principal Judgment Amount:	\$ 100,000.00
Interest to date on Judgment:	\$ 0.00
Taxable Costs:	\$ 1,536.87
Attorney's fees:	\$ 5,000.00
Costs:	\$ 0.00
Interest on Judgment:	12% per annum

A . 20 .

1 KNOW ALL MEN BY THESE PRESENTS, that Vanessa Condon, the judgment
2 creditor in an action in the Superior Court of the State of Washington for the County of King,
3 wherein VANESSA CONDON, Insured/Respondent, and Farmers Insurance Company of
4 Washington, Insurer/Moving Party, hereby acknowledge PARTIAL SATISFACTION of the
5 judgment recovered against said insurer on the (date Judgment entered with court) 11th day of
6 February 2011, in the sum of \$100,000.00, which said judgment is entered in the execution
7 docket of said _____ Court in Volume _____, as page _____ do not need to provide said
8 court and volume and page

9
10 WOODLEY LAW OFFICES

11 
12 GORDON WOODLEY, WSBA #7783
13 Attorney for Judgment Debtors

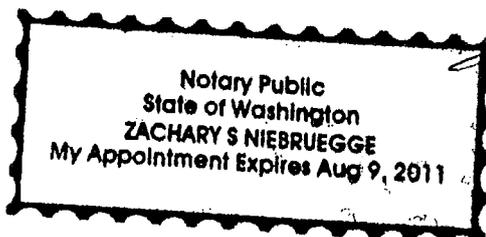
14 STATE OF WASHINGTON }

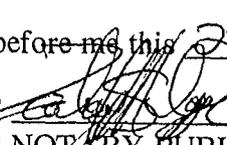
15 } ss.:

16 COUNTY OF KITSAP^{2N} }
17 KING

18 I certify that I know or have satisfactory evidence that Gordon Woodley signed this
19 instrument, on oath stated that he was authorized to execute the instrument and acknowledged
20 it as the partial satisfaction of the judgment recovered against said insurer/moving party.

21 SUBSCRIBED AND SWORN to before me this 27 day of MAY 2011.



23 
24 NOTARY PUBLIC in and for the
25 State of Washington, residing
at BELLEVUE
My Commission expires:
8/9/2011

A.21

WALL LIEBERT & LUND P.S.

ATTORNEYS AT LAW

1521 SE PIPERBERRY WAY, SUITE 102
PORT ORCHARD, WA 98366
WWW.WLLPS.COM

GREGORY J. WALL
J. MICHAEL LIEBERT
CHRISTOPHER C. LUND

PHONE: (360) 876-1214
TOLL FREE: (800) 303-1214
FAX: (360) 876-1216

May 24, 2011

Via Certified, Return Receipt US Mail

Gordon Woodley
Attorney at Law
Woodley Law Offices
14929 SE Allen Road
Bellevue, WA 98006

Re: *Farmers Insurance Co. v Condon*

King Co. Sup. Ct. No. : 11-2-03245-1 SEA
Farmers Claim No. : 32111018
Farmers Policy No. : 79-0131672585
Date of Loss : 8/24/1996
Our File No. : 06-1-317

Dear Mr. Woodley:

I am enclosing a corrected Partial Satisfaction of Judgment in this matter showing payment of \$100,000.00 dollars in our action in King County and a check made payable to Woodley Law Trust Account For The Benefit of Vanessa Condon Calverly. Please execute the stipulation and return to this office for filing. A conformed copy will be provided upon entry.

Very truly yours,

WALL LIEBERT & LUND P.S.


SANDRA RIVAS
Legal Assistant

Enc.

Cc: Clients
Lance Pollock

A. 22

WALL LIEBERT & LUND P.S.

ATTORNEYS AT LAW

1521 SE PIPERBERRY WAY, SUITE 102
PORT ORCHARD, WA 98366
WWW.WLLPS.COM

GREGORY J. WALL
J. MICHAEL LIEBERT
CHRISTOPHER C. LUND

PHONE: (360) 876-1214
TOLL FREE: (800) 303-1214
FAX: (360) 876-1216

May 16, 2011

Gordon Woodley
Attorney at Law
Woodley Law Offices
14929 SE Allen Road
Bellevue, WA 98006

Re: *Farmers Insurance Co. v Condon*

King Co. Sup. Ct. No. : 11-2-03245-1 SEA
Farmers Claim No. : 32111018
Farmers Policy No. : 79-0131672585
Date of Loss : 8/24/1996
Our File No. : 06-1-317

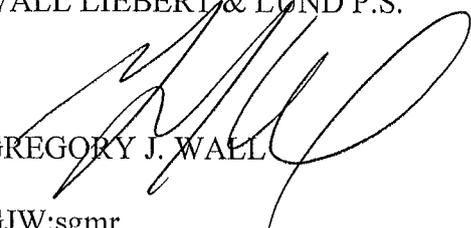
Dear Mr. Woodley:

I am enclosing a Partial Satisfaction of Judgment in this matter showing payment of \$100,000.00 dollars in our action in Kitsap County. Please execute it and return to me. Upon receipt I will send the check for \$100,000.00 to you.

I have referred your attorney's fees bills to Farmers and I should be in touch with you sometime next week.

Very truly yours,

WALL LIEBERT & LUND P.S.


GREGORY J. WALL

GJW:sgmr

Cc: Clients
Lance Pollock

A.23