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STATE OF WASHINGTON
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No. 97463-2

SUPREME COURT
OF THE STATE OF WASHINGTON

GLORIA PETELLE,

Respondent,

v.

MICHELLE ERSFELD-PETELLE,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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I. SUPPLEMENTAL STATEMENT OF ISSUE

Does entering into a separation contract that divides the marital estate but that does not obligate the parties to terminate their marriage nor expressly relinquish the statutory right to inherit if the other spouse dies intestate “impliedly waive” the surviving spouse’s statutory right to intestate succession?

II. SUPPLEMENTAL STATEMENT OF FACTS

Petitioner Michelle Ersfeld-Petelle (“Michelle”) and decedent Michael Petelle (“Michael”) married on May 20, 2011. Michael petitioned to dissolve their marriage on January 27, 2017. (CP 44, 63) On February 14, 2017, Michelle and Michael entered into a “Separation Contract and CR 2A Agreement,” which terminated the community estate as of January 27, 2017 and divided the spouses’ assets and liabilities. (CP 43-53) (Appendix A)

Under the separation contract, both spouses agreed that “[a]ll property which shall hereafter come to either party shall be his or her separate property and neither party shall hereafter have any claim thereto.” (CP 46) The separation contract became “final and binding upon the execution of both parties, whether or not a legal separation or decree of dissolution is obtained” (CP 43-44); its property distribution and obligations were to “remain valid and enforceable against the estate of either party” upon death. (CP 48)

Although the separation contract was a “final settlement of all their marital and property rights and obligations” (CP 43), the parties did not contract to terminate their marriage, or purport to waive any statutory rights either party might have as a surviving spouse. Even if the spouses had intended to terminate their marriage, a decree of dissolution could not have been entered until the 90-day statutory “cooling off” period passed on April 27, 2017. RCW 26.09.030.

On April 2, 2017, less than two months after executing the separation contract, Michael sent an email to his attorney asking her to “postpone the closing date” of the marriage dissolution “an additional six months” while he and Michelle decided whether to reconcile. (CP 14, 17) Michael died intestate on May 1, 2017, “leaving no will and no issue.” (CP 62-63)

RCW 11.04.015 governed distribution of Michael’s estate: as his “surviving spouse” Michelle would have been entitled to receive all of the community property estate, but Michael had no community property because his separation contract with Michelle had converted all of their property into separate property. Michelle was also entitled to three-quarters of Michael’s net separate property estate. Michael’s mother, respondent Gloria Petelle (“Gloria”), was

entitled to the remaining quarter of his separate property assets under the intestate succession statutes.

Gloria filed a TEDRA petition, RCW ch. 11.96A, to terminate Michelle's statutory right to take by intestate succession, arguing Michelle had "waived all her statutory and common law rights as a surviving spouse . . . when she executed the Separation and CR2A Agreement." (CP 18-27) The trial court denied the petition, finding that Michelle did not waive her statutory right to intestate succession under the plain language of the separation contract. (RP 17-19; CP 111-12)

The Court of Appeals reversed. *Estate of Petelle*, 8 Wn. App.2d 714, 440 P.3d 1026, *rev. granted*, 194 Wn.2d 1001 (2019). Deciding an issue of first impression, the Court of Appeals held that the separation contract "impliedly waived" Michelle's statutory rights to inherit as a "surviving spouse" under RCW 11.04.015(1) as a matter of law, because the separation contract recited that it was a "complete and final settlement of all . . . marital and property rights." 8 Wn. App.2d at 720-21, ¶¶ 13-14. The Court of Appeals rejected Gloria's argument that Michelle was not entitled to inherit as a "surviving spouse" because the separation contract "terminated" her marriage to Michael. 8 Wn. App.2d at 717-19, ¶¶ 5-8.

This Court granted Michelle’s petition for review. Gloria did not cross-petition for review of the Court of Appeals’ decision that Michelle was a “surviving spouse” under RCW 11.02.005(17).

III. SUPPLEMENTAL ARGUMENT

A. A separation contract that is a “final settlement” of marital rights and “effective after death” does not waive statutory rights of inheritance if a spouse dies intestate before the marriage is dissolved.

1. The separation contract did not include “clear and explicit language” waiving the statutory right to intestate succession.

The Court of Appeals held that the spouses “impliedly waived” any right to intestate succession by entering into a separation contract in which they “agree[d] to make a complete and final settlement of all their marital and property rights and obligations on the following terms and conditions.” 8 Wn. App.2d at 720-21, 723, ¶¶ 13, 17 (*citing* CP 43). This Court should reverse because none of the “terms and conditions” in the separation contract included a waiver of either spouse’s statutory right as a surviving spouse to inherit in the event the other spouse died intestate before the marriage was dissolved.

“Courts will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is explicitly stated. More succinctly, the waiver must

be clear and unmistakable.” *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wn.2d 450, 462, 938 P.2d 827, 834 (1997) (quoted source omitted). “Absent the most clear and explicit language confirming a voluntary relinquishment of the award as a known right, a waiver will not be found.” *Estate of Boston*, 80 Wn.2d 70, 75, 491 P.2d 1033 (1971) (husband did not waive right to homestead allowance when there is no evidence that he “knew of the right to a homestead award, much less that he intentionally surrendered it”).

That the separation contract here was “effective even upon death of either party,” *Petelle*, 8 Wn. App.2d at 723, ¶ 17, was not “clear and explicit language” waiving the right to intestate succession. To the contrary, the actual language of the clause relied upon by the Court of Appeals provided that “should either party die after execution of this contract, the distribution of property and obligations agreed herein shall be and remain valid and enforceable *against the estate* of either party insofar as applicable law permits.” (CP 48, emphasis added) The parties’ rights remained enforceable “against the estate” of the deceased. For instance, any obligations assigned to the deceased spouse under the separation contract would remain enforceable against his or her estate, and any former

community property distributed to the surviving spouse would be excluded from the deceased spouse's estate.

That the separation contract provides that “[a]ll property which shall hereafter come to either party shall be his or her separate property and neither party shall hereafter have any claim thereto” (CP 46) is also not “clear and explicit language” waiving the right to intestate succession. “Disclaiming an ownership interest [is] not the same as disclaiming future rights as a beneficiary.” *Estate of Lundy v. Lundy*, 187 Wn. App. 948, 959-60, ¶ 25, 352 P.3d 209 (dissolution decree awarding an ERISA retirement account to former husband as his separate property was not a waiver by former wife to her rights to that account as the designated beneficiary), *rev. denied*, 184 Wn.2d 1022 (2015).

Michelle does not dispute that the property awarded to Michael under the separation contract became his separate property upon execution of the contract. She also does not dispute that Michael had full authority to “manage, lease, sell, convey, encumber or devise by will such property without his or her spouse joining in such management, alienation or encumbrance, as fully, and to the same extent or in the same manner as though he or she were unmarried.” RCW 26.16.010. Michael had over two and a half

months between the execution of the property settlement agreement and his death to execute a will devising his estate in whatever manner he chose (including disinheriting Michelle), but he did not do so. Having not made a will, Michael died intestate and RCW 11.04.015 governed distribution of his estate. Absent “clear and explicit language” waiving the right to intestate succession, Michelle as his surviving spouse is entitled to her intestate share of his net separate estate under RCW 11.04.015.¹

- 2. It is not “clearly ascertainable” from the separation contract that the spouses were waiving their statutory succession rights if the other spouse died intestate.**

The Court of Appeals misplaced its reliance on *Estate of Brown*, 28 Wn.2d 436, 183 P.2d 768 (1947) and *Estate of Lindsay*, 91 Wn. App. 944, 957 P.2d 818 (1998), *rev. denied* 137 Wn.2d 1004

¹ This is consistent with the statutory “bright line” rule that dissolution has the consequence of revoking a provision in a will for a surviving former spouse. RCW 11.12.051(1) (“If, after making a will, the testator’s marriage or domestic partnership is dissolved, invalidated, or terminated, all provisions in the will in favor of or granting any interest or power to the testator’s former spouse or former domestic partner are revoked.”); *see, e.g., Estate of Mower*, 193 Wn. App. 706, 711, ¶¶ 4-5, 374 P.3d 180 (2016) (will provisions benefiting former spouse revoked when spouses filed a stipulated dissolution decree 16 days before husband died); *see also* RCW 11.07.010(2)(a) (provision made prior to dissolution “that relates to the payment or transfer at death of the decedent’s interest in a nonprobate asset in favor of . . . the decedent’s former spouse . . . must be interpreted, and the nonprobate asset affected passes, as if the former spouse . . . failed to survive the decedent, having died at the time of entry of the decree of dissolution”).

(1999), which held that surviving spouses were not entitled to awards in lieu of homestead, to hold that the separation contract here waived the right to intestate succession. While Division One held that a “right to intestate succession, like the homestead right, is a statutory marital right due to a surviving spouse,” *Petelle*, 8 Wn. App.2d at 724, ¶ 22, the statutory provisions and concomitant rights are in fact markedly different.

In 1997, the legislature renamed awards in lieu of homestead to awards of family support. Final Bill Report, SSB 5110, 55th Leg., Reg. Sess. (1997); *see also Lindsay*, 91 Wn. App. at 950, n.2 (noting the statute “granting an award in lieu of homestead to a surviving spouse was repealed by Laws of 1997, ch. 252, § 87”). To claim an award of family support under RCW ch. 11.54, the surviving spouse must “petition the court for an award from the property of the decedent.” RCW 11.54.010(1). “The surviving spouse must file a petition in order that the award may vest.” *Patterson v. Bixby*, 58 Wn.2d 454, 460, 364 P.2d 10 (1961). “An award in lieu of homestead [under the former statute] is not available unless a petition is filed therefor.” *Myers v. Myers*, 8 Wn. App. 475, 477, 506 P.2d 1336 (1973). A surviving spouse thus must affirmatively petition for an

award of family support; it does not arise automatically upon the death of their spouse.

The intestate succession statute, on the other hand, vests statutory beneficiaries with an interest in the decedent's property immediately upon death. RCW 11.04.250 (title to real property of an intestate decedent "shall vest immediately in his or her heirs"). When a person dies without making a will, their statutory heirs, including any surviving spouse, immediately "acquire a vested equitable right in and to the property of the deceased." *Estate of Verchot*, 4 Wn.2d 574, 582, 104 P.2d 490 (1940). Instead of affirmatively petitioning for an intestate interest, as a spouse must for an award of family support, the intestate interest vests automatically. To avoid receiving an intestate share, the surviving spouse must file a disclaimer under RCW ch. 11.86.

The separation contracts in *Brown* and *Lindsay* precluded the surviving spouse from filing a claim for an award in lieu of homestead (now known as an award of family support) against the estate of the deceased spouse by waiving any claims against the other spouse's separate property. However, neither those separation contracts, nor the parties' here, compelled the surviving spouse to file a disclaimer of an intestate award that had vested upon the death of the other

spouse. “It is well established that a contract, oral or otherwise, is not subject to specific performance unless the precise act sought to be compelled is clearly ascertainable. In other words, a court of equity cannot decree specific performance of a contract unless it can determine what must be done to constitute performance.” *Emrich v. Connell*, 105 Wn.2d 551, 558, 716 P.2d 863 (1986) (cited sources omitted). That Michelle was contractually obligated to waive her right to take by intestate succession or to file a disclaimer if Michael died without making a will is not “clearly ascertainable” from the separation contract.

Moreover, the separation contract itself is not a valid disclaimer under RCW ch. 11.86. A valid disclaimer, including of an interest to intestate succession, must “(a) be in writing; (b) be signed by the disclaimant; (c) identify the interest to be disclaimed; and (d) state the disclaimer and the extent thereof.” RCW 11.86.031(1). The separation contract does not identify the right to intestate succession as an “interest to be disclaimed.” And neither spouse could make such a disclaimer by entering into a separation contract itself, because there is no interest yet to disclaim – “an intestate interest is created only upon the death of the creator of the interest, i.e., the death of the intestate.” *Estate of Baird*, 131 Wn.2d 514, 520, 933 P.2d

1031 (1997) (disclaimer of the right to inherit intestate made before the decedent's death was invalid).

Even if a disclaimer of an interest by intestate succession could be made in a separation contract, the language in the separation contract here does not identify “the precise act sought to be compelled.” *Emrich*, 105 Wn.2d at 558. Agreeing to not have “any claim” to any property acquired by Michael after execution of the separation contract (CP 46) might be sufficient to restrain Michelle from petitioning for an award of family support, but it is “too indefinite” a provision to authorize a court to compel specific performance – an order requiring Michelle to execute a disclaimer under RCW ch. 11.86 if Michael died intestate. *See Setterlund v. Firestone*, 104 Wn.2d 24, 25, 700 P.2d 745 (1985) (earnest money agreement was not sufficiently specific to be enforceable).

B. The Court of Appeals erred in implying a waiver of statutory intestate succession rights.

1. An agreement to disclaim intestate succession rights cannot be implied in the separation contract.

The Court of Appeals erred in holding as a matter of law that Michael and Michelle waived their statutory rights to intestate succession when no such provision was included in their separation contract. Courts cannot interpret a separation contract to include a

waiver of intestate succession rights when the parties themselves did not make such an agreement. “It is the duty of the court to declare the meaning of what is written, and not what was intended to be written.” *Marriage of Schweitzer*, 132 Wn.2d 318, 327, 937 P.2d 1062 (1997) (quoted source omitted). *See also Estate of Bachmeier*, 147 Wn.2d 60, 68, 52 P.3d 22 (2002) (“[C]ourts function to enforce contracts as drafted by the parties and not to change the obligations of the contract the parties saw fit to make.”).

Had Michelle and Michael intended to waive any rights of inheritance from the other’s estate, they could have included language expressing that intent. For instance, the separation agreement at issue in *Smith v. Smith*, 36 Wn.2d 164, 172, 217 P.2d 307 (1950) included a provision waiving “any and all other claims and rights whatsoever (including, but not by any way of limitation, dower and all rights under the laws of testacy and intestacy), which she ever had, now has, or might hereafter have against the First Party by reason of their relationship as husband and wife.” In *Estate of Gardner*, 103 Wn. App. 557, 559, 13 P.3d 655 (2000), the separation agreement included a “mutual waiver of any right to ‘assert a statutory share or distributive share in the estate of the other,’ or to ‘make any assertion of dower or curtesy in the property of the other.’

It binds the heirs, next of kin, and assigns of both parties.” Because the spouses here did not include a similar express waiver of their statutory rights to intestate succession, the Court of Appeals could not modify their separation contract to include such a provision under the guise of interpretation. *Schweitzer*, 132 Wn.2d at 327; *Bachmeier*, 147 Wn.2d at 68.

As this Court noted in *Bachmeier*, in reversing Division Two’s decision implying a termination clause in a community property agreement, “while it is conceivable that some spouses might wish to terminate the entire CPA should their marriage become defunct, it is entirely likely that other spouses might prefer to terminate only the conversion prong. Without evidence of the parties’ intentions at execution, we have no foundation upon which we could imply a term contrary to their expressed intention.” 147 Wn.2d at 68.

As in *Bachmeier*, there is no “evidence of the parties’ intentions at execution” regarding rights of inheritance if either spouse died before the marriage was dissolved. Having failed to expressly waive inheritance rights in their separation contract, either Michelle or Michael could have unilaterally terminated any potential right to inherit under RCW 11.04.015 by simply executing a will disinheriting the other spouse. Where Michael did not terminate

Michelle's rights to inherit under intestacy by drafting a will, this Court should not presume that it was his intent to do so. Absent an express waiver or evidence of the spouses' intent, the Court of Appeals should not have implied an agreement to waive intestate rights into the separation contract.

An appellate court cannot simply effect what it believes "might have happened" or "what the parties might have intended" had the parties actually considered a specific issue, as Division One did here. For instance, this Court vacated a dissolution decree entered nunc pro tunc after the husband's death, the effect of which "was to cut off [the wife's] inheritance rights," holding that "the trial court had improperly attempted to make the record reflect what *might* have happened had Mr. Pratt lived" in *Pratt v. Pratt*, 99 Wn.2d 905, 911, 665 P.2d 400 (1983) (emphasis in original). In reversing Division Two's decision that the trial court had authority to enter a divorce decree nunc pro tunc, this Court noted that dissolution actions normally abate upon a spouse's death, because until entry of final decree, "anyone can change his mind," "[t]he parties can reconcile, the terms of the property distribution can be altered or the trial court can decide not to grant the decree." *Pratt*, 99 Wn.2d at 910.

In this case, there was in fact evidence that the spouses were considering reconciliation. It is possible that Michael did not make a will disinheriting Michelle after they entered into the separation contract because he “change[d] his mind” about the divorce, and wished for Michelle to inherit from him. “Where a person has the right to die intestate . . . he is charged with full knowledge of who will succeed to his property if he dies intestate [and] the assumption exists that . . . he is satisfied with the will the law of the state made for him.” *Pitzer v. Union Bank of California*, 141 Wn.2d 539, 550, 9 P.3d 805 (2000) (discussing *Hesthagen v. Harby*, 78 Wn.2d 934, 481 P.2d 438 (1971), and quoting *Wilson v. Jones*, 281 S.C. 230, 314 S.E.2d 341, 343 (1984)).

While there may be a factual issue as to Michael’s actual intent, it is indisputable that the spouses did not contract to waive or disclaim statutory rights of intestate succession in their separation contract, and neither spouse made a new will after executing the contract. As there was no “evidence of the parties’ intentions” to waive intestate succession rights the courts cannot make the record “speak what it did not speak but ought to have spoken” by implying a waiver when one does not exist. *See Pratt*, 99 Wn.2d at 911; *Bachmeier*, 147 Wn.2d at 68.

2. Entering into a separation contract is not an “unequivocal act” evincing an intent to waive statutory intestate succession rights.

Because the separation contract here did not contain “clear and explicit language” waiving the statutory right to intestate succession, Michelle can only be found to have waived that right if there is evidence of “unequivocal acts or conduct evincing an intent to waive” her intestate rights. “[T]o constitute a waiver, other than by express agreement, there must be unequivocal acts or conduct evincing an intent to waive.” *Wagner v. Wagner*, 95 Wn.2d 94, 102, 621 P.2d 1279 (1980).

The Court of Appeals concluded that, by implication, “Michelle waived her marital right to intestate succession by entering into the Separation Contract.” *Petelle*, 8 Wn. App.2d at 724, ¶ 21. But the mere act of entering into a separation contract cannot be a waiver of the right to intestate succession without “clear and explicit language confirming a voluntary relinquishment” of that right. *Boston*, 80 Wn.2d at 75. Separation contracts are intended “to promote the amicable settlement of disputes attendant upon their separation.” RCW 26.09.070. They do not deal with statutory rights of inheritance in the event one spouse dies before a decree of dissolution is entered.

The Court of Appeals again relied on this Court’s decision in *Brown* and Division Three’s decision in *Lindsay*, finding those decisions “persuasive” on the grounds that a “separation contract that is a final settlement of a married couple’s property and rights, effective even upon death, evidences an intent to waive the statutory marital rights of a surviving spouse.” *Petelle*, 8 Wn. App.2d 724, ¶ 22. But again, the “statutory marital right” at issue in *Brown* and *Lindsay* was the right to petition for an award in lieu of homestead, not the surviving spouse’s intestate succession rights – and this distinction makes all the difference.

Homestead (now family support) allowances are intended “to prevent dependency on the part of the surviving spouse.” *Boston*, 80 Wn.2d at 76. Family support awards are “for the protection of the surviving spouse and as a measure of fairness.” *Estate of Crawford*, 107 Wn.2d 493, 502, 730 P.2d 675 (1986). “The statute was enacted for the protection and benefit of the surviving spouse and/or minor children.” *Estate of Dillon*, 12 Wn. App. 804, 806, 532 P.2d 1189 (1975).

Whether an award of family support is granted, and in what amount, is within the probate court’s discretion. RCW 11.54.050(2) (“an award to the surviving spouse . . . is also discretionary”); RCW

11.54.050(1) (“in determining the propriety of the award and the proper amount of the award, if any,” is based on consideration of the factors recited in RCW 11.54.040(2)). In deciding whether to make an award of family support to a surviving spouse, the probate court may consider “the resources available to the claimant . . . , and the resources reasonably available to the claimant . . . during the pendency of the probate, including income related to present or future employment”. RCW 11.54.040(2); RCW 11.54.050(1).

Thus, an award of family support is intended to “protect” the surviving spouse from the negative effect of the other spouse’s death, including liability for community or separate debts. When spouses have already settled their marital “property and rights effective even upon death” *Petelle*, 8 Wn. App.2d 724, ¶ 22, and subsequently live separate and apart, like the spouses in *Brown* and *Lindsay*, entering into a separation contract effecting that settlement may evince an intent to waive the right to petition for an award of family support.²

² The language in the *Brown* separation contract that “no claim whatsoever shall be made by [wife], from [husband], for any alimony whatsoever,” 28 Wn.2d at 438, also supports this Court’s decision in that case that there was an express waiver of an award in lieu of homestead in light of the purposes of a homestead (and now, family support) award, which is to support the decedent’s spouse and family regardless of the decedent’s intent.

“[O]ne who voluntarily absents oneself from the household with the intention of disavowing one's marital obligations, forfeits the right to family support provided for by the statute.” *Yates v. Dohring*, 24 Wn.2d 877, 881, 168 P.2d 404 (1946). “[W]here the spouses, by their conduct, indicate that they no longer have a will to union, then neither may reap the benefits of the community property law, which they would be entitled to had their community relationship remained undisturbed.” *Estate of Osicka*, 1 Wn. App. 277, 282, 461 P.2d 585 (1969) (quoted source omitted) (widow was not entitled to an award in lieu of homestead when she and decedent permanently separated prior to his death). This is particularly true when, as in *Brown* and *Lindsay*, the decedent has made a will disinheriting the other spouse.

But settling disputes related to marital property and rights by entering into a separation contract does not impliedly waive rights to intestate succession. Unlike awards of family support, inheritance under the intestate succession statute is not intended to “protect” statutory heirs, and the award does not depend on needs of the statutory heirs or other property available to the surviving spouse. Unless the surviving spouse is found to have slain or abused the intestate decedent, *see* RCW 11.84.030, she is entitled to take

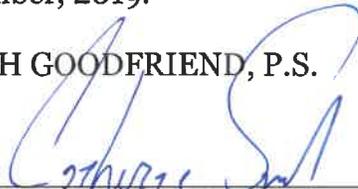
intestate as a matter of right as a statutory heir. Therefore, in this case, the mere act of entering into a separation contract and living separate and apart does not eliminate Michelle's intestate succession rights as Michael's surviving spouse.

IV. CONCLUSION.

This Court should reverse the Court of Appeals and reinstate the trial court's decision.

Dated this 23rd day of December, 2019.

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DECLARATION OF SERVICE

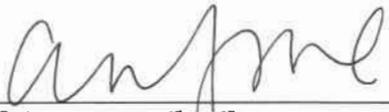
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 23, 2019, I arranged for service of the foregoing Supplemental Brief of Petitioner, to the Court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Ann T. Wilson Law Offices of Ann T. Wilson 1420 5th Ave Ste 3000 Seattle, WA 98101-2393 (206) 625-0990 ann@atwlegal.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Jason W. Burnett Reed, Longyear, Malnati & Ahrens, PLLC 801 Second Avenue, Suite 1415 Seattle, WA 98104-1517 (206) 624-6271 jburnett@reedlongyearlaw.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Michael L. Olver Kameron L. Kirkevold Helsell Fetterman LLP 1001 4th Avenue, Suite 4200 Seattle, WA 98154 (206) 689-2185 molver@helsell.com kkirkevold@helsell.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

<p>Jason W. Anderson Sidney C. Tribe Carney Badley Spellman, P.S. 701 Fifth Avenue, Suite 3600 Seattle, WA 98104-7010 anderson@carneylaw.com tribe@carneylaw.com</p>	<p><input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail</p>
<p>Karen Boxx Keller Rohrback LLP 1201 3rd Ave Ste 3200 Seattle, WA 98101-3052 kboxx@uw.edu</p>	<p><input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail</p>

DATED at Seattle, Washington this 23rd day of December, 2019.



Andrienne E. Pilapil

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**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

In re the Marriage of:

MICHAEL A. PETELLE,

Petitioner,

and

MICHELLE ERSFELD-PETELLE,

Respondent.

No. 17-3-00493-0 SEA

**SEPARATION CONTRACT AND
CR2A AGREEMENT**

This Civil Rule 2A Agreement, by and between MICHAEL A. PETELLE, (herein referred to as "Petitioner") and MICHELLE ERSFELD-PETELLE, (herein referred to as "Respondent") on the below-stated date, is made in order to promote an amicable settlement of disputes attendant to their separation. In consideration of the mutual promises and agreements and other good and valuable consideration herein expressed, the parties hereby stipulate and agree to make a complete and final settlement of all their marital and property rights and obligations on the following terms and conditions. The parties are not contracting to legally separate or dissolve their marriage, but agree if a decree of legal separation or decree of dissolution is obtained, this contract shall be incorporated in said decree and given full force and effect thereby. It is understood and agreed by the parties that this contract shall be final and binding upon the execution of

1 both parties, whether or not a legal separation or decree of dissolution is obtained. It is
2 the intent of the parties that the court approves this contract as fair and equitable at the
3 time it was entered into and thus enforceable. Either party may apply to the Superior
4 Court of the State of Washington for King County to award all such relief and ratify all
5 rights and obligations set forth in this contract. Each party stipulates to the jurisdiction
6 of the Superior Court of the State of Washington for King County to interpret this
7 contract and adjudicate all disputes related to this contract that are not resolved by the
8 dispute resolution provisions contained herein.
9

10 PROPERTY AND DEBTS

11 Separation Date. Final separation defining when the marriage became legally
12 defunct and the community presumption terminated is deemed to have occurred on or
13 about January 27, 2017.

14 Assets and Liabilities. The property and the debts have been equitably divided
15 between the parties as per **Exhibit A** attached hereto.
16

17 Unless otherwise specified herein, each party is fully responsible for his/her post
18 separation debts and each will keep his/her post separation acquisitions. Each party will
19 be responsible for any credit cards in his/her name only except as set forth in **Exhibit A**.
20 Joint credit cards and/or unsecured lines of credit will be closed or re-titled into the
21 name of the party awarded the account.

22 Bank accounts. Unless otherwise specifically provided herein, each party will
23 keep all bank accounts in his/her name. All joint bank accounts will be closed or re-
24 titled into the name of the party awarded the account.
25

1 Employment Benefits. Except as otherwise specifically provided herein, each
2 party shall retain as his or her separate property, free from any interest in the other, all
3 rights and benefits which have been derived as a result of past or present employment,
4 union affiliations, military service, or United States, state or other citizenship (except
5 rights the parties are entitled to receive by virtue of this relationship); including but not
6 limited to sick leave benefits, insurance, educational benefits and grants, health or
7 welfare plans and all other contractual, legislated or donated benefits, whether vested or
8 unvested, and whether directly or indirectly derived through the activity of the parties.
9 Except as otherwise specifically provided, each party shall retain all rights and benefits
10 to which he or she is entitled by state or federal law, including Social Security benefits.

11 Cooperation of Parties. Each party shall, within 30 days of a legitimate request
12 by the other party, execute any and all titles, deeds, bills of sale, endorsements, forms,
13 conveyances or other documents, and perform any act which may be necessary or
14 convenient to carry out and effectuate any and all of the purposes and provisions of this
15 agreement, the decree and related orders.

16 Hold Harmless. Except as otherwise specified in this agreement, each party
17 shall pay and hold the other party harmless, including reasonable attorney fees and
18 costs incurred in defending against any attempts to collect an obligation of the other
19 party, from any expense, loss, claim or liability whatsoever arising from, or in any way
20 connected with any debts and obligations, a) specified herein to be paid by that party, b)
21 due on or related to property awarded to that party, c) incurred by that party subsequent
22 to separation or d) undisclosed by that party to date. Filing for bankruptcy or failure to
23
24
25

1 pay the debts is not a basis to disrupt the property and debt division or maintenance
2 provisions herein.

3 Full Satisfaction of All Claims. All disclosed property not otherwise awarded or
4 assigned in this agreement, whether acquired before the relationship, during the
5 relationship or during any period of separation, shall be, and remain, the sole property
6 of the party in whose possession or control it presently is, free and clear of any claim on
7 the part of the other. All property which shall hereafter come to either party shall be his
8 or her separate property and neither party shall hereafter have any claim thereto.

9 Except as defined in this agreement, each party is hereby released from any and all
10 claims by the other party for injuries or losses, known or unknown, foreseen and
11 unforeseen, which have accrued through the date of execution of this agreement,
12 arising out of the marriage or any other relationship between the parties.
13

14 SPOUSAL MAINTENANCE

15 Spousal Maintenance shall be paid pursuant to **Exhibit A.**

16 ATTORNEY FEES AND COSTS

17 Attorney's fees shall be paid pursuant to **Exhibit A.**

18 ENFORCEMENT

19 Warranty. Each party hereby warrants to the other party that he or she has not
20 incurred and will not in the future incur any liabilities or obligations for which the other
21 party may be liable except as expressly set forth in this contract and that if any claim or
22 proceeding is brought seeking to hold the other party liable on account of any such
23 undisclosed liability or obligation, he or she will hold the other party harmless against
24 any such claim or proceeding, including reasonable attorney fees. Each party further
25

1 warrants under penalty of perjury, that they have fully disclosed all assets and liabilities
2 to the other party in reaching a final property settlement agreement. Any inadvertently
3 omitted assets or liabilities shall be resolved and allocated via arbitration with John
4 Curry per RCW 7.04A.
5

6 Tax consequences. Both parties acknowledge that they have been advised or
7 had the opportunity to seek the advice of an advisor regarding the tax consequences
8 may exist or arise pertaining to the provisions of this contract and that neither the
9 attorney or representative has furnished tax advice but has, instead, directed and
10 advised the parties to obtain independent tax advice from a qualified tax attorney or
11 accountant prior to signing this contract and that each party has had an adequate
12 opportunity to do so. The tax consequences of the division of the property and
13 allocation of the debts shall not be considered as newly discovered evidence.
14

15 Independent Status as Contract. The provisions of this contract may be included
16 and merged into a decree of dissolution. However, it is also the intention of the parties
17 that this contract retains its status independently as a contract between the parties.
18 Each party may enforce their rights as they arise from this contract by contract law, as
19 well as those remedies available for the enforcement of judgment and marital law,
20 specifically including the use of the contempt power of the court, in the event a decree
21 of dissolution or legal separation is granted. It is understood and agreed by the parties
22 that this contract shall be final and binding upon execution by both parties, whether or
23 not a decree of dissolution or legal separation is obtained. This contract may be
24 terminated and modified only by a written document so reflecting, signed by both
25 parties.

1 Entire Contract. This contract, including the attached asset and liability table,
2 embodies all of the agreements of the parties concerning the disposition of property and
3 property rights and all other issues between them. No other agreements, covenants,
4 representations or warranties, express or implied, oral or written, have been made or
5 relied upon by either party with respect to the subject matter of this contract. All prior
6 and contemporaneous conversations, negotiations, possible and alleged agreements
7 and representations, covenants and warranties with respect to the subject matter hereof
8 are waived, merged herein and superseded hereby.
9

10 Effective Date. This contract shall be effective upon execution, and both parties
11 agree to request that any court hearing matters involving the dissolution of marriage or
12 legal separation between the parties shall ratify and confirm the same.
13

14 Effective After Death. Should either party die after execution of this contract, the
15 distribution of property and obligations agreed herein shall be and remain valid and
16 enforceable against the estate of either party insofar as applicable law permits.
17

18 Fairly Negotiated. Both parties acknowledge that he or she is making this
19 contract of his or her own free will and volition and that no coercion, unwritten promises
20 or undue influence whatsoever has been employed against him or her in any
21 negotiations leading to the execution of this contract.
22

23 Interpretation. Both parties agree that no provision of this contract shall be
24 interpreted for or against either party because that party or their counsel drafted this
25 contract. In the event any court of competent jurisdiction shall hereafter declare any
portion of this contract invalid, those parts not subject to the court's determination shall
remain in full force and effect.

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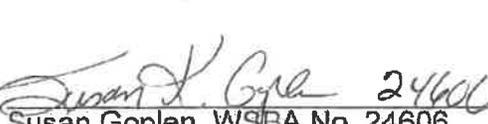
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EACH PARTY STIPULATES AND ACKNOWLEDGES THAT THIS AGREEMENT IS
FAIR AND EQUITABLE.

Dated: 2/14/17


Michael Petelle, Petitioner


Michelle Ersfeld-Petelle, Respondent

 24606
Susan Goplen, WSBA No. 24606
Attorney for Petitioner


Laura Sell, WSBA No. 28828
Attorney for Respondent

EXHIBIT A

Spousal Maintenance: \$10,000 per month for 36 months beginning March 1, 2017;

50% of the total retirement assets acquired during the marriage;

100% of the retirement and other assets brought into the marriage plus all growth;

50% of the total investment assets including the cash value of the life insurance policies;

50% of the equity in the Kenmore and Leavenworth homes; the parties shall list both properties no later than April 1. They shall list Leavenworth with the realtor who represented the sellers when they purchased the home. They shall list the Kenmore house with Scott Goodrich with REMAX. The parties shall cooperate with all aspects of the listing and sale of the properties per the Stipulation Regarding Sale of Home attached. Michelle shall have exclusive use of the Leavenworth house until it sells; Mike shall have exclusive use of the Kenmore house until it sells;

50% of the furnishings and tangible property the parties shall exchange lists of items they each want from both houses by March 15, 2017 if they have disputes about any items which they cannot resolve by March 31, the disputes shall be submitted to John Curry to arbitrate per RCW 7.04A;

50% of the furnishings, tangible property, vehicles, snowmobiles etc. The parties shall utilize Kelley Blue Book, NADA or other reputable sources to value all of the vehicles and exchange a list of the vehicles, values and which ones they want to keep and shall exchange lists with values by March 15, 2017. If the parties are not able to reach agreement regarding the value of the vehicles, how they should be divided or whether they need to pay the other cash in order to effectuate a 50-50 division of the value the disputes shall be submitted to John Curry to arbitrate per RCW 7.04A. Pending sale or award of the vehicles, Mike shall pay all loan payments on any vehicles.

with the exception of the two newer snowmobiles and the orange Yamaha motorcycle along with all (3) other associated with said vehicles which are awarded to Mike without any offset to Michelle

~~Michelle~~ Michelle is awarded the dog, Venus and shall be responsibility for the expenses related to her care.

Mike maintains Michelle on health insurance until the month following the entry of the Decree.

Mike pays to have all photos they both want to be copied otherwise Michelle keeps the photos and memorabilia;

Mike pays an additional \$10,000 to McKinley Irvin for Michelle's attorney's fees. *paid by 3/1/17*

Mike pays 100% of the 2016 income tax liability for both parties;

Mike pays 100% of all credit card balances accumulated through February 14, 2017 whether they are joint, solely in Mike's name or in Michelle's name with Mike added as a signer or business accounts. After the accounts are paid, the parties shall cooperate to remove the authorized signer for the party who is not the primary on the account; *approximate cumulative balance \$19,112.72.*

Mike shall deposit enough funds to pay the overdrafts on the Joint Chase account (3396) and the account should be closed.

Michelle releases all claims of ownership or interest in Sewer Friendly.

Michelle releases all claims to Mike's two wanted homes.

Mike releases all claims to Michelle's Mountlake Terrace Home.

[Handwritten initials]

[Handwritten signature]

[Handwritten signature]

Mike releases all claims against Michelle arising out of any cause of action related to the business or otherwise;

Entry of mutual temporary restraining order by February 17, 2017 (attached). A continuing restraining order in the same form shall be entered with the court along with the Decree.

STIPULATION REGARDING SALE OF HOME

The parties have an interest in real property located at 18709 58th Ave NE, Kenmore, WA 98028 and 2620 Wenatchee Pines Road, Leavenworth, WA. The parties shall place the properties on the market for sale by 4/1/2017 with the realtors designated in the CR2A Agreement signed by the parties. The property shall be actively marketed until the property is sold and the parties shall take all steps necessary to effectuate a prompt sale, including but not limited to reasonable adjustments of the listing price. Each party warrants and stipulates that he or she has not and will not assign, encumber, mortgage, alienate, hypothecate or otherwise affect his or her interest in either property prior to closing except as might otherwise be allowed herein or as might be mutually agreed by the parties in writing. Until closing of the sale is completed, both parties shall hold the property as tenants in common without right of survivorship.

Until closing of the sale is completed, the properties shall be maintained by both parties, who shall cooperate in showing the property, maintaining the property in a condition attractive to prospective buyers. Both parties shall have the use of the properties per the terms of their CR2A Settlement Agreement signed February 14, 2017 pending the sale/closing.

The husband shall make the mortgage payments, insurance payment and tax payments on both properties until sold.

No offer to purchase the property shall be accepted unless approved by both parties, such approval not to be unreasonably withheld.

No repairs or improvements shall be made to the property without the approval of both parties, such approval not to be unreasonably withheld. Labor of the parties shall not be compensated.

Net proceeds remaining from such sale after the payment of all mortgage obligations, broker's fees, closing costs, work orders, taxes, reimbursements and assessments upon said property, etc., shall be divided between the parties as follows: The remaining net proceeds shall then be split 50% to the wife and 50% to the husband. The parties shall cooperate in executing escrow instructions or other documentation as needed to accomplish the provisions of this section. The parties shall fully and promptly cooperate in providing each other with documentation of the tax basis in the property. In the event either party fails to timely cooperate in executing his or her responsibilities under this agreement, such party may be held liable for damages caused by lack of cooperation.

Any disputes between the parties herein related to sale of the real property or any consequences thereof (including but not limited to choice of realtor, signs, occupancy or rental of the property pending sale; maintenance, repairs or improvement to the property; listing price, sales price or terms; taxes, obligations, etc.) shall be subject to binding arbitration upon written submission only with John Curry whose power shall include, without limitation, specific performance or payment of reasonable costs or reasonable penalties for failure to comply with this agreement or with arbitration decisions.

SMITH GOODFRIEND, PS

December 23, 2019 - 4:09 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97463-2
Appellate Court Case Title: In re the Matter of the Estate of Michael Petelle, Deceased.

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- 974632_Briefs_20191223160749SC113750_3260.pdf
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