

FILED
SUPREME COURT
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.

**RESPONDENT GLORIA PETELLE'S
SUPPLEMENTAL BRIEF**

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I. INTRODUCTION

At issue in this case is whether a waiver of “all” marital rights in a separation agreement that explicitly contemplates death includes a surviving spouse’s right to intestate succession, which would otherwise accrue in the event of one spouse’s death. The Court of Appeals correctly concluded that it does.

In the separation agreement at issue, the spouses (1) stipulated that their agreement was “a complete and final settlement of all their marital and property rights,” (2) abandoned any future claim to the other’s property, and (3) stipulated that the agreement would remain effective after either spouse’s death, even without a divorce decree. Faced with facts not materially different from these, this Court previously decided that a separation agreement expressly waived all marital rights, including statutory inheritance rights. *In re Brown’s Estate*, 28 Wn.2d 436, 440, 183 P.2d 768 (1947).

The Court of Appeals correctly determined that *Brown’s Estate* was controlling precedent and reversed the trial court’s decision that Michelle Ersfeld-Petelle could inherit as a surviving spouse despite the separation agreement she had entered into with her late husband, Michael Petelle. A will eliminates any possibility of intestate succession to a surviving spouse. So does a divorce. There is no reason why spouses should be prohibited from accomplishing the same result through a separation agreement. The Legislature has not seen fit to limit the marital rights that may be waived in a separation agreement or to prohibit waiver of the right to intestate

succession. This Court should not take it upon itself to do so. This Court should affirm the Court of Appeals.

II. STATEMENT OF THE CASE

Michael Petelle filed for divorce from Michelle Ersfeld-Petelle after the couple had been married about six years. *Slip Op.* ¶ 2. A few weeks later, Michael and Michelle entered into a written separation agreement. *Id.* ¶ 2; CP 43-53 (copy attached as Appendix A). In that agreement, both parties relinquished “all” of their marital property rights.

Three provisions of the separation agreement are critical in this appeal. First, Michael and Michelle stipulated that the agreement was “a complete and final settlement of *all their marital and property rights* and obligations.” *Slip Op.* ¶ 13 (quoting CP 43) (emphasis by the court). Second, each party abandoned any future claim to the other’s property: “All property which shall hereafter come to either party shall be his or her separate property and neither party shall hereafter have *any claim* thereto.” *Id.* ¶ 21 (quoting CP 46) (emphasis added). Third, the agreement provided that it would remain effective after either party’s death: “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.” *Id.* ¶ 17; CP 48.

Two and a half months after Michael and Michelle entered into their separation agreement, Michael died intestate. *Slip Op.* ¶ 2. Michelle filed a petition for letters of administration, appointment of an administrator, an

order of solvency, and nonintervention powers. *Id.* ¶ 3. Her petition did not disclose the existence of the dissolution action or the separation agreement, nor did she notify Michael’s heirs of her intent to petition for nonintervention powers, as required by RCW 11.68.041. *Id.*

Michelle sought to inherit 75% of Michael’s estate by intestate succession as a surviving spouse. *See Slip Op.* ¶¶ 3-4; RCW 11.04.015. Michael’s mother, Gloria, challenged Michelle’s claim in probate court, arguing that the separation agreement expressly stated it was enforceable even after the death of one of the parties. *Slip Op.* ¶4. The trial court denied Gloria’s motion. *Id.*

The Court of Appeals reversed. *Matter of Estate of Petelle*, 8 Wn. App. 2d 714, 440 P.3d 1026, *review granted*, 194 Wn.2d 1001 (2019). It held that the separation agreement waived *all* marital rights and future claims to the others’ property as stated in the agreement and that this broad waiver included the right to intestate succession. *Slip Op.* ¶ 15. The court rejected Michelle’s argument that to expressly waive the right to intestate succession, the separation agreement had to specifically enumerate “intestate succession” as one of the rights included in “all” marital and property rights. *Id.* The court also noted that, even assuming Michelle were correct that the separation agreement had to specifically enumerate each and every marital right to be deemed an *express* waiver of such rights, Michelle had *impliedly* waived her spousal-inheritance rights, including the right to intestate succession. *Id.* ¶¶ 15-21.

III. ARGUMENT

A. The sole issue for this Court is whether a waiver of “all” marital rights in a separation agreement that explicitly contemplates death includes the right to intestate succession.

Washington law authorizes written separation agreements to promote the “amicable settlement of disputes” that may arise when married persons (or domestic partners) separate. RCW 26.09.070(1). Under such an agreement, spouses may dispose of their property and release each other from any and all obligations. RCW 26.09.070(1).

A separation agreement is presumptively enforceable. *See* RCW 26.09.070; *Little v. Little*, 96 Wn.2d 183, 192-93, 634 P.2d 498 (1981).¹ The agreement “shall be binding” unless one of the parties establishes that it was “unfair at the time of its execution.” RCW 26.09.070(3). Michelle has never claimed that the separation agreement she signed was unfair. This appeal concerns strictly the scope of the waiver of “all” marital rights.

B. Michael and Michelle expressly waived the right to intestate succession.

This Court interprets a separation agreement like any written agreement. Ordinary contract-interpretation principles apply. *See Brown’s Estate*, 28 Wn.2d at 440. The court’s goal is to ascertain the parties’ mutual intent, considering the entire agreement and the circumstances surrounding the transaction. *Id.*; *see also Berg v. Hudesman*, 115 Wn.2d 657, 667, 801

¹ Under prior law, a dissolution court was to adopt the provisions of a separation agreement only if the court deemed the agreement’s terms fair and equitable. *See Little*, 96 Wn.2d at 193.

P.2d 222 (1990); *Boisen v. Burgess*, 87 Wn. App. 912, 920, 943 P.2d 682 (1997).

Washington follows the objective-manifestation theory of contract interpretation. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Under this approach, the court will “attempt to determine the parties’ intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties.” *Id.* The parties’ subjective intent “is generally irrelevant if the intent can be determined from the actual words used.” *Id.* at 503-04. The court “do[es] not interpret what was *intended* to be written but what *was* written.” *Id.* at 504 (emphasis added).

1. “All” means “all.” The parties’ waiver of “all” marital and property rights includes the right to intestate succession.

Waiver is the intentional and voluntary relinquishment of a known right. It may result from an express agreement or be inferred from circumstances indicating an intent to waive. *Jones v. Best*, 134 Wn.2d 232, 241-42, 950 P.2d 1 (1998) (citing *Bowman v. Webster*, 44 Wn.2d 667, 669, 269 P.2d 960 (1954)). A written agreement to waive rights is an express waiver of those rights. *See id.*

The operative word in the separation agreement here is “all.” In the context of a written agreement, “[a]ll’ means all.” *Wilson v. Grant*, 162 Wn. App. 731, 739, 258 P.3d 689 (2011) (citing *Parkridge Assocs., Ltd. v. Ledcor Indus., Inc.*, 113 Wn. App. 592, 602, 54 P.3d 225 (2002)); *see also Knott v. McDonald’s Corp.*, 147 F.3d 1065 (9th Cir. 1998). For instance,

in *Knott*, the sellers of business franchises expressly assigned “all” their right, title, and interest in certain franchises to the buyers. 147 F.3d at 1067. The court held: “This assignment, while admittedly broad, is not ambiguous.... In short, ‘all’ means all.” *Id.*

Michelle and Michael expressly waived “all” marital and property rights. Their separation agreement disposed of all property rights that existed by virtue of the parties’ marriage. The right to intestate succession is one of those rights.

2. Allowing waiver of the marital right of intestate succession is consistent with applicable statutes and precedent, including this Court’s decision in *In re Brown’s Estate*.

A spouse’s right to inherit property by intestate succession is a marital right. RCW 11.04.015. By statute, the net estate of a person dying intestate is distributed largely to the decedent’s surviving spouse. RCW 11.04.015(1). Although the property does not pass to the surviving spouse until the moment of death, RCW 11.04.250, the right to inherit that property exists at the moment a legal marriage begins and terminates at the moment the marriage terminates. RCW 11.04.015; RCW 11.02.005(17). The right is thus waivable at any time during the marriage.

The Court of Appeals’ decision is consistent with not only the statutes on intestate succession but with precedent from this Court. Although the Court of Appeals’ decision was the first published decision in Washington concerning waiver of the right to intestate succession in a separation agreement, it was not the first decision concerning a surviving

spouse's waiver of statutory inheritance rights in a separation agreement. This Court previously addressed waiver of another statutory inheritance right—the homestead allowance (now family support). *Brown's Estate*, 28 Wn.2d at 439-41; *see* ch. 11.54 RCW.

In *Brown's Estate*, the separation agreement provided that (1) it was a “full and complete settlement of all of the property rights of the parties,” (2) all property received by the parties under the agreement or in the future was to be “free and clear of all claims whatsoever” by the other party, and (3) the agreement was “final and conclusive” regardless of whether either party may die before entry of a final dissolution decree. *Brown's Estate*, 28 Wn.2d at 438. The husband died before entry of a final decree in the pending dissolution action. *Id.* at 439. Interpreting the separation agreement, this Court concluded that the husband and wife had expressly waived all marital rights, including statutory inheritance rights. This Court reasoned that it was “clear...that the parties...had in contemplation the possibility of death and obvious[] that they meant to waive *any rights which may accrue upon death*, one of which rights would be the homestead right.” *Id.* at 440 (emphasis added); *see also In re Estate of Lindsay*, 91 Wn. App. 944, 957 P.2d 818 (1998), *review denied*, 137 Wn.2d 1004 (1999); *In re Funderburk's Estate*, 10 Wn. App. 863, 867-76, 521 P.2d 60 (1974).

Brown's Estate is controlling precedent. Both here and in *Brown's Estate*, the separation agreement provided that it was a full and complete settlement of all the property rights of the parties. In both cases, the spouses agreed that their property would be free and clear of all claims by the other

spouse. And in both cases, the agreement explicitly contemplated death prior to entry of a final dissolution decree. Under *Brown's Estate*, Michael and Michelle expressly waived all marital rights, including any inheritance rights that might accrue upon death.

3. There is no material distinction between the inheritance rights involved in *Brown's Estate* and the intestate-succession right involved here.

Michelle has not argued that this Court's decision in *Brown's Estate* is incorrect or harmful; she has sought only to distinguish *Brown's Estate*, and strictly on the basis that it involved the homestead allowance rather than intestate succession. Remarkably, in the Court of Appeals, Michelle conceded unequivocally that the right of intestate succession may be waived, and the Court of Appeals relied on that concession. *Br. of Resp't* at 15-16; *Slip Op.* ¶ 14. Nevertheless, in this Court, she has maintained that the right of intestate succession, unlike a homestead allowance, cannot be waived before a spouse's death. She claims that the surviving spouse's right to intestate succession is not a marital right at all "because it can be unilaterally destroyed by the simple act of execution of a will by the other spouse." *Petition* at 11.

There is no material distinction between the statutory intestate succession right and the statutory homestead right, such that one can be waived and not the other. *Brown's Estate* established a rule applicable to all inheritance rights, holding that the spouses' separation agreement waived "any rights which might accrue upon death, one of which rights would be the homestead right." *Brown's Estate*, 28 Wn.2d at 440 (emphasis

added); *see also Peste v. Peste*, 1 Wn. App. 19, 25, 459 P.2d 70 (1969) (“It is well settled that by post-nuptial agreement, a wife may waive her right to inherit and even in some circumstances her statutory right to a family allowance.”).

Statutory rights certainly may be waived. For instance, married persons have a statutory right to equitable distribution of property, but they may waive that right by agreement. *In re Marriage of Matson*, 107 Wn.2d 479, 482, 730 P.2d 668 (1986); *see also Riley-Hordyk v. Bethel Sch. Dist.*, 187 Wn. App. 748, 762, 350 P.3d 681 (2015) (statutory right to collective bargaining may be waived in a collective bargaining agreement). The fact that a statutory inheritance right may not ultimately accrue at the time of death, because it may have been eliminated by a will, does not mean that a spouse cannot waive the right during marriage. This Court held in *Brown’s Estate* that the spouses waived “any rights which *might* accrue upon death[.]” *Brown’s Estate*, 28 Wn.2d at 440 (emphasis added). This Court’s holding in *Brown’s Estate* allows separating spouses without no wills to bar each other from inheriting their property without being forced to incur the expense of executing wills pending a divorce. No rationale has been given why this Court should deviate from that holding here by deciding that the right of intestate succession cannot be waived.

4. Extrinsic evidence such as subsequent conduct of the parties is not necessary to enforce a waiver and cannot be used to contradict a separation agreement's unambiguous terms.

Contrary to what Michelle has argued, *Brown's Estate* does not stand for the proposition that a waiver in a separation agreement may be enforced only if there is extrinsic evidence of subsequent conduct of the parties consistent with waiver. This Court held that its finding of express waiver was “inescapable” based on the language of the agreement alone, and merely noted that the evidence of subsequent conduct gave “additional force” to its conclusion. *Brown's Estate*, 28 Wn.2d at 440; *see also Lindsay*, 91 Wn. App. at 951-52 (referencing the parties’ subsequent conduct as supporting the result only after observing that the agreement itself “clearly reflect[ed] an intent to give up those rights which would normally follow legal spouses”).

Nor may Michelle use extrinsic evidence of the parties’ personal relationship or communications to contradict the unambiguous agreement. Extrinsic evidence is admissible only to determine the meaning of the specific words and terms used in the written agreement, not to show an intention independent of the writing or to vary, contradict, or modify the written word. *Hearst*, 154 Wn.2d at 503; *see also Berg*, 115 Wn.2d at 670. Evidence of a party’s unilateral, subjective intention is irrelevant. *Id.* at 503-04. There was no evidence that Michael and Michelle agreed to modify their written separation agreement. Evidence that the parties might have

wanted to reconcile, or might have wanted to alter their agreement, is inadmissible to rewrite or void it.

C. Even if the separation agreement did not expressly waive the right to intestate succession, it impliedly waived that right.

Although the Court of Appeals followed *Brown's Estate* and concluded the parties expressly waived all inheritance rights, it concluded in the alternative that if the waiver was not express, it was implied. *Slip Op.* ¶ 14. That alternative holding is on all fours with the Court of Appeals' sound reasoning in *Lindsay*.

In *Lindsay*, as here, the parties signed a written separation agreement but did not divorce before the husband's death. *Lindsay*, 91 Wn. App. at 951. Also similar to here, the agreement stated that "neither has a claim or interest in anything acquired after the [agreement] date...or anytime in the future." *Id.* The Court of Appeals in *Lindsay* concluded that "[t]he agreement clearly reflects an intent to give up those rights which would normally follow legal spouses" and "showed an intent to prevent, waive, and abandon what a surviving spouse could normally take." *Id.* at 951-52. By entering into the agreement, the wife "effectively renounced the marriage and waived the statutory homestead allowance." *Id.* at 952.

The Court of Appeals in *Lindsay* rejected the wife's argument that because the separation agreement did not specifically mention the homestead right, she was entitled to a homestead allowance. 91 Wn. App. at 951. It held that the homestead right could be waived by implication and that the real question was whether the parties' agreement evidenced a

decision to renounce the community with no intention of resuming the marital relationship. *Id.* Because the separation agreement divided all property and waived all claims to the others' property and was never rescinded, revoked, or altered, that test was met. *Id.* at 952.

Even if this Court were to conclude that a waiver of marital property rights must enumerate each and every marital property right to be deemed "express," the waiver here may be deemed an implied waiver, to the same effect. Michelle offers no support for the notion that she meant to carve out intestate succession or any other marital property right.² She and Michael entered into an agreement that implicated all of their property rights and contemplated death. Thus, whether expressly or by implication, the waiver includes the right to intestate succession.

D. Michael's death did not terminate the separation agreement, which explicitly provided it would remain effective after the parties' death.

Michelle has suggested that Michael's death terminated the separation agreement. *See Petition* at 6-7. To be sure, a pending dissolution proceeding terminates if one of the parties dies. *Pratt v. Pratt*, 99 Wn.2d 905, 911, 665 P.2d 400 (1983). But if the spouses had previously entered into a separation agreement, the agreement will remain enforceable after the death of a spouse unless it provides otherwise. *In re Estate of Nelson*, 85

² Indeed, Michelle simply claims that extrinsic evidence shows the parties contemplated reconciliation. *Br. of Resp't* at 26-27; *Petition* at 13. But as explained above, such evidence cannot be used to alter the clear, unambiguous language of the agreement.

Wn.2d 602, 609-10, 537 P.2d 765 (1975)³; *see also Brown's Estate*, 28 Wn.2d at 439; *In re Garrity's Estate*, 22 Wn.2d 391, 398-99, 156 P.2d 217 (1945). The separation agreement here explicitly provided that it would survive either party's death. *Slip Op.* ¶ 17; CP 48. It thus remains enforceable despite the dissolution action's termination.

E. This case does not involve disclaimer of an inheritance under chapter 11.86 RCW.

In challenging the Court of Appeals' ruling here, Michelle has analogized the parties' express contractual waiver of all marital rights to a disclaimer of one's interest in an existing estate. The purpose of this analogy is to suggest that RCW 11.86.021 and this Court's decision in *Matter of Estate of Baird*, 131 Wn.2d 514, 933 P.2d 1031 (1997), are relevant authorities in this case.

This Court concluded in *Baird* that the statute allowing a beneficiary to disclaim an interest in an existing estate, RCW 11.86.021, did not permit a purported disclaimer signed before the estate existed. Under chapter 11.86 RCW, a person entitled to an interest in an existing estate, including by intestate succession, may "disclaim" that interest by delivering a written disclaimer within a certain period of time "after the creation of the interest." RCW 11.86.021(1), .031(1)-(2). Under the legislatively adopted doctrine of relation back, a validly disclaimed interest passes "as if the beneficiary

³ *Nelson* was superseded by statute on other grounds, as stated in *In re Estate of Black*, 153 Wn.2d 152, 162, 102 P.3d 796 (2004).

had died immediately prior to the date of the transfer of the interest.” RCW 11.86.041(1).

This Court’s decision in *Baird* was a straightforward application of the disclaimer statute. After being convicted of first-degree assault of his wife, James Baird had purported to disclaim any interest in his mother’s estate under chapter 11.86 RCW, while his mother was alive. *Baird*, 131 Wn.2d at 516. After Baird’s mother’s subsequent death, Baird’s share of her estate represented the majority of his bankruptcy estate’s potential assets available to satisfy a civil judgment obtained by the wife he had brutally assaulted. *Id.* Rejecting the notion that Baird’s anticipatory disclaimer could be enforced against his fault-free assault victim, this Court unanimously held that “RCW 11.86 does not authorize anticipatory disclaimers of expectancy interests.” *Id.* at 521. This Court reasoned that because an estate does not exist until death, Baird’s purported disclaimer of an interest in his mother’s estate before she died did not meet the statutory requirement that a disclaimer be delivered “after the creation of the interest.” *Id.* at 519-21.

A waiver of the right to intestate succession is not an attempted disclaimer of an interest in an estate. The Court of Appeals did not conclude that Michelle executed a disclaimer under chapter 11.86 RCW or otherwise attempted to disclaim an interest in an estate that would be created upon Michael’s death. Instead, the court concluded that Michael and Michelle contractually agreed to waive all rights in each other’s property that they

previously had by virtue of being married to each other, including the right to inherit any of that property in the future. *Baird* is inapposite.

IV. CONCLUSION

This Court should affirm the Court of Appeals and reaffirm its decision in *Brown's Estate* by deciding that where spouses enter into a separation agreement that expressly waives all marital rights, including future claims to property, and contemplates death, the spouses expressly waive the right to intestate succession.

Respectfully submitted this 23rd day of December, 2019.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Via Appellate Portal:

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DATED this 23rd day of December, 2019.



Patti Saiden, Legal Assistant

APPENDIX

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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

17 Hold Harmless. Except as otherwise specified in this agreement, each party
18 shall pay and hold the other party harmless, including reasonable attorney fees and
19 costs incurred in defending against any attempts to collect an obligation of the other
20 party, from any expense, loss, claim or liability whatsoever arising from, or in any way
21 connected with any debts and obligations, a) specified herein to be paid by that party, b)
22 due on or related to property awarded to that party, c) incurred by that party subsequent
23 to separation or d) undisclosed by that party to date. Filing for bankruptcy or failure to
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 Interpretation. Both parties agree that no provision of this contract shall be
23 interpreted for or against either party because that party or their counsel drafted this
24 contract. In the event any court of competent jurisdiction shall hereafter declare any
25 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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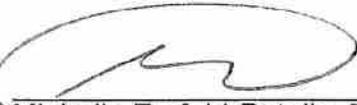
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EACH PARTY STIPULATES AND ACKNOWLEDGES THAT THIS AGREEMENT IS
FAIR AND EQUITABLE.

Dated: 2/14/17


Michael Petelle, Petitioner


Michelle Ersfeld-Petelle, Respondent


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 possible 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 rental homes.

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

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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.

CARNEY BADLEY SPELLMAN

December 23, 2019 - 4:21 PM

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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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