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NO. 62823-2-1

COURT OF APPEALS, DIVISION I, OF THE STATE OF WASHINGTON

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JOHN MORAN II

Appellant

And

MICHELLE DRESS

Respondent

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RESPONDENT'S BRIEF

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## **1. INTRODUCTION**

The respondent asks that the Court deny the appeal filed by the appellant. A review of the pleadings and declarations on file will indicate that Judge Doerty did not abuse his discretion in making ruling subsequent to the entry of the Decree of Dissolution dated July 7, 2008. A review of the case will show that Judge Doerty's rulings furthered the original property award made by the Arbitrator and then adopted by himself as part of the Decree of Dissolution. There was no modification of the Decree of Dissolution. There were rulings made to remedy the inequitable conduct of the appellant and to realign the property and debt division.

The appellant in his brief completely ignores his violation of court order's, and his contempt as founded by the court.

## **2. PROCEDUARAL HISTORY**

The parties agreed that the issues of property and debt division would be decided by arbitration. On March 12,

2008, the arbitrator issued his ruling. The Decree of Dissolution dated July 7, 2008 [CP 136] incorporated by reference the arbitrator's ruling.

The arbitrator specifically stated with regards to the Montana Property the following:

I find that the community owns an undivided 1/3 interest in the Montana property. The value of this property is fluid and as such I cannot assign a specific value to the property. As such, I hereby award a 1/2 interest in the undivided one third of the Montana property to each party. The community's interest shall be sold as soon as possible and the parties shall make a good faith effort to sell the property. The Respondent shall be allowed to be an active participant in the sale and shall be included on the listing agreement. The Respondent shall also sign any sales documents. Both parties are required to act in good faith and with full disclosure to the other. Failure to do so may result in terms against the violating party

**[CP 136-23]**

While the entry of the final pleadings were underway, the Appellant, contrary to the Temporary Restraining Orders, contrary to the Arbitrator's Ruling, on May 14, 2008 sold the community property/Montana Real Property to his father and his business partner. **[CP 145]**

There was evidence that at the time the appellant "sold" the community property contrary to the ruling of the

Arbitrator that the community's interest in the real property was anywhere between \$300,000 to \$500,00. He transferred to a family member and long term business friend for approximately \$85,000. **[CP 160 C]**

The court ordered that the appellant place all proceeds into a trust account. **[CP 135]** Upon failing to comply with that ruling appellant provide an accounting stating how he supposedly used the proceeds for his own personal obligations.

The respondent requested in light of the appellant selling the real property subject to not a bona fide purchaser, that the court adjust the division of assets so as to effectuate the ruling of the arbitrator and thus the court. **[CP 160 C]** The trial court entered an order that clarified the asset distribution in light of the appellant's actions. **[CP 167 A]**.

### **3. APPLICABLE LAW and ARGUMENT**

#### **3.1 Trial Court Did Not Modify Property Division**

The trial court in this case did not modify its property division award when it entered the Order on Instructions. It simply clarified what assets should be awarded to each party

in light of the appellant unilateral decision to liquidate an asset contrary to judicial rulings and orders.

A decree is modified when a party's rights are either extended beyond the scope originally intended or reduced. **In re Marriage of Chrise**, 101 Wash. App. 13,22, 1 P.3d 600 (2000). In contrast, a clarification “is merely a definition of rights already given, spelling them out more completely if necessary. **In re Marriage of Thompson**, 97 Wash. App. 873, 878, 988 P.2d 499 (1999).

In the case of **Angelo v. Angelo** 142 Wash.App. 622, 646, 175 P.3d 1096, 1107 (Wash.App. Div. 2, 2008), the Court of Appeals recognized that the trial court, using its equitable powers, may allocate the remaining separate and community property or enter judgment against one spouse in a dissolution decree to account for wrongful transfers by one spouse.

### **3.2 Court Should Deny Relief In Light of Appellant's Unclean Hands**

As stated in **Portion Pack, Inc. v. Bond**, 44 Wash.2d 161, 170, 265 P.2d 1045, 1051 (1954):

'Equity will not interfere on behalf of a party whose conduct in connection with the subject-matter or transaction in litigation has been unconscientious, unjust, or marked by the want of good faith, and will not afford him any remedy.'

*Income Investors, Inc. v. Shelton*, 3 Wash.2d 599, 101 P.2d 973, 974. Also, see ***Port of Walla Walla v. Sun-Glo Producers, Inc.*** 8 Wash.App. 51, 56, 504 P.2d 324, 328 (Wash.App., 1972)

In the case of ***J. L. Cooper & Co. v. Anchor Securities Co.***, 9 Wash.2d 45, 71-72, 113 P.2d 845, 857 (Wash.1941), the court the court stated that "It is one of the fundamental principles upon which equity jurisprudence is founded, that before a complainant can have a standing in court he must first show that not only has he a good and meritorious cause of action, but he must come into the court with clean hands.

In this case contrary to court orders, arbitrator's rulings, the appellant has the audacity to "sell" the major asset of the community to his father and business associate for below market value and then call foul when the trial court adjusts the assets to take into court the windfall that the

appellant received by dealing an asset contrary to the court's orders. The ruling by the trial court was not a modification but was an order to carrying out and to effectuate his initial ruling that the appellant flaunted. The court found the appellant in contempt of court for his actions. **[CP 152]**

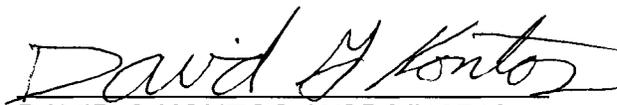
### **3.3 Standard of Review**

A property division made during the dissolution of a marriage will be reversed on an appeal only if there is a manifest abuse of discretion. **In re Marriage of Muhammad**, 153 Wash.2d 795, 803, 108 P.3d 779 (2005).

## **4. CONCLUSION**

The Respondent requests that the court affirm the trial court's rulings and award reasonable attorney's fees and costs to her for having to respond to this appeal.

Dated this \_\_\_ 4<sup>th</sup> day of May, 2010.



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Attorney for respondent.