

**ORIGINAL**

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COURT OF APPEALS  
STATE OF WASHINGTON  
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NO 65813-1-I  
NO 66410-6-I  
NO 66710-6-I

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

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ALI GANJAIE, Appellant

Vs.

KATHERINE GANJAIE, Respondent

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Appellant's Consolidated Reply Brief  
(RAP 10.3)

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Note:

**This Reply Brief filing is to comply with the Appellate Court's revised schedule calling for a consolidation of three outstanding cases into one single Brief.**

### **ASSIGNMENT OF ERRORS (NO 65813-1-I)**

1. The trial court has abused its discretion and erred by not following Washington State law stating that a trial court does not have jurisdiction to order the sale of a parties' assets without their consent (*High v. High*, 41 Wn.2d 811, 822-23, 252 P.2d 272 (1953); *Arneson v. Arneson*, 38 Wn.2d 99, 101, 227 P.2d 1016 (1951)).
2. The trial court erred in ordering a modification of the property division of the Final Divorce Decree entered April 08, 2009, by the Hon. Judge Patricia Clark in King County Superior Court (*In re Marriage of Coyle*, 61 Wn. App. 653, 660-61, 811 P.2d 244 (1991); *Thompson v. Thompson*, 82 Wn.2d 352, 356-57, 510 P.2d 827 (1973); and *Carstens v. Carstens*, 10 Wn. App. 964, 967, 521 P.2d (1974)).
3. The trial court erred in granting the Respondent's motion, despite it being in violation of Federal Civil Rule Procedure 60(c) (1), which states that a motion under 60(b) must be made in a reasonable amount of time, no more than one year from the date of the order/judgment.

### **ASSIGNMENT OF ERRORS (NO 66410-7-I)**

1. The trial court erred by entering the order on November 10, 2010, that modified the Final Decree because the trial court no longer had jurisdiction to modify the existing Final Decree pursuant to RAP 7.2(e). This jurisdiction comes into question when a trial court modifies a judgment or motion after an appellate court has accepted review on the matter. The rule states, in part: “If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision (RAP 7.2(e).”
2. The trial court erred by entering the order on November 10, 2010, that modified the Property Division of the Final Decree, because the trial court no longer had jurisdiction to modify the existing Final Decree pursuant to RCW 26.09.170(1), which prohibits the revocation or modification of a provision regarding property disposition.

### **ASSIGNMENT OF ERRORS (NO 66710-6-I)**

1. The trial court's January 5, 2011 ruling was erroneous in ordering a modification of the property division of the Final Divorce Decree entered April 08, 2009. In said Decree, the Appellant was awarded \$50,000 from the sale of the Family Home. This Court affirmed the property division as ordered in the Final Decree on March 8, 2010, and a Mandate was issued on Case 63464-0-1 on April 16, 2010 (*In re Marriage of Coyle*, 61 Wn. App. 653, 660-61, 811 P.2d 244 (1991); *Thompson v. Thompson*, 82 Wn.2d 352, 356-57, 510 P.2d 827 (1973); and *Carstens v. Carstens*, 10 Wn. App. 964, 967, 521 P.2d (1974)).
2. The trial court no longer had jurisdiction to modify the existing Final Decree pursuant to RAP 7.2(e). This jurisdiction comes into question when a trial court modifies a judgment or motion after an appellate court has accepted review on the matter. Case # 65813-1-1 is pending Appellate review/ruling. RAP 7.2(e) rule states in part: "If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the

appellate court must be obtained prior to the formal entry of the trial court decision.”

## **STATEMENT OF CASE**

### **Procedural Facts:**

This is a post-dissolution matter in which the Respondent seeks to modify the Final Decree of the marital dissolution. The Decree of Dissolution, entered April 8, 2009 by Hon. Judge Patricia Clark, awarded the Appellant \$50,000 from the sale of the family home located at 2931 223<sup>rd</sup> Ave. NE, Sammamish, WA. Respondent was to net the remaining proceeds after all costs associated with the sale and the Appellant's share had been deducted.

The Decree ordered the Family Home be listed at the agreed-upon, appraised price of \$578,000.

This court (Appellate Court, Div I), after due consideration affirmed the ruling of the trial court as it pertains to Division of the Property, including the distribution of the proceeds of sale of the Family Home. A mandate was issued on Case # 6436-0-1 on April 16, 2010.

## ARGUMENT OF ERRORS (NO 65813-1-I)

1. The trial court in Washington State does not have jurisdiction to order the sale of parties' assets without their consent because there is no statutory grant of such power to a Trial Court (*High v. High*, 41 Wn.2d 811, 822-23, 252 P.2d 272 (1953); *Arneson v. Arneson*, 38 Wn.2d 99, 101, 227 P.2d 1016 (1951)). **The Respondent's argument is incorrect in this case because A larger portion of the proceeds more than 50% from the sale of the Family Home were indeed disbursed to the creditors (banks) for 1st and 2nd mortgages, with the remaining proceeds awarded to the Respondent. Both the Statutory Law and Case Laws support the Appellant's argument that the trial court did not have the authority to order the sale of the Family home at a drastically reduced price without the Appellant's consent.**
2. The trial court erroneously ordered a modification of the Final Decree in regards to property division on July, 2, 2010. (*In re Marriage of Coyle*, 61 Wn. App. 653, 660-61, 811 P.2d 244 (1991); *Thompson v. Thompson*, 82 Wn.2d 352, 356-57, 510 P.2d 827 (1973); and *Carstens v. Carstens*, 10 Wn. App. 964, 967, 521 P.2d (1974)). A trial court is prohibited from modifying a property

distribution award in a Final dissolution decree (*See* RCW 26.09.170(1)). Provisions as to property disposition may not be revoked or modified. Unlike maintenance and child support, there is no Authority for a court to modify a property distribution award in a final dissolution decree. Once made, these distributions are final. Here, the trial court made a final property distribution in the Final Dissolution Decree entered April 8, 2009.

3. The proceeding of July 2, 2010 was an evidentiary hearing before the trial court. The trial court made no Findings of Fact or Conclusions of Law in the matter. An Appellate Court reverses a trial court's findings if they are not supported by substantial evidence in the record (*Miles v. Miles*, 128 Wn. App. 64, 69-70, 114 P.3d 671 (2005)). Conclusions of law are reviewed de novo (*Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003)). A conclusion of law is defined as the conclusions that follow, through the process of legal reasoning, when the law as applied to the facts as found by the court (*State v. Niedergang*, 43 Wn. App. 656, 658, 719 P.2d 576 (1986) "If the determination is made by a process of legal reasoning from facts in evidence, it is a conclusion of law."). Findings of fact that appear

in the conclusions of law, and vice-versa, are mislabeled and will be analyzed under the substantial evidence standard (*Winans v. Ross*, 35 Wn. App. 238, 240 n. 1,666 P.2d 908 (1983); *Miles*, 128 Wn. App. at 70). Findings of fact that have legal ramifications are conclusions of law and are reviewed de novo (*Woodruff v. McClellan*, 95 Wn.2d 394,396,622 P.2d 1268 (1980)).

#### **ARGUMENT OF ERROR (NO 66410-7-I)**

1. The trial court erroneously ordered a modification of the Final Decree and Distribution of the Property Division on July 2, 2010, Case # 65813-1-I (Pending Appeal) Trial court entered the second ruling on November 10, 2010, evicting Appellant and his son from the Family Home while out of Jurisdiction (*In re Marriage of Coyle*, 61 Wn. App. 653, 660-61,811 P.2d 244 (1991); *Thompson v. Thompson*, 82 Wn.2d 352, 356-57, 510 P.2d 827 (1973); and *Carstens v. Carstens*, 10 Wn. App. 964,967,521 P.2d (1974)). A trial court is prohibited from modifying a property distribution as set in a Final Decree of Dissolution pursuant to RCW26.09.170(1), in which it is stated that “Provisions as to property disposition may not be revoked or modified.”

2. The proceeding of November, 10, 2010 was an evidentiary hearing before the trial court. The trial court made no Findings of Fact or Conclusions of Law in the matter. An appellate court reverses a trial court's findings if they are not supported by substantial evidence in the record (*Miles v. Miles*, 128 Wn. App. 64, 69-70, 114 P.3d 671 (2005)).

The trial court no longer had jurisdiction to modify the existing Final Decree pursuant to RAP 7.2(e). The trial court no longer has jurisdiction to modify a judgment or motion after an appellate court accepts review. **Respondent's argument that RAP 7.2(e) does not remove the trial court's jurisdiction to modify a judgement or motion, is contradicting with RAP 7.2(e) which simply states that the trial court no longer has jurisdiction to modify a judgment or motion after an appellate court has accepted review. Respondent's additional argument of RAP 7.2(C) pertains to enforcement of the trial court's decision, in this matter enforcing the original Final Decree of Dissolution which was affirmed by this court on March 8, 2010. Mandate was issued on Case # 63464-0-I on April 16, 2010. No motion was filed to stay the enforcement because Appellant intention was not to stop the**

**enforcement of the original Decree but ONLY the Trail Courts new ruling which was being appealed.**

**ARGUMENT OF ERROR (NO 66710-6-I)**

1. The trial court erroneously ordered a modification of the Final Decree in regards to property division on January, 5, 2011 (*In re Marriage of Coyle*, 61 Wn. App. 653, 660-61,811 P.2d 244 (1991); *Thompson v. Thompson*, 82 Wn.2d 352, 356-57, 510 P.2d 827 (1973); and *Carstens v. Carstens*, 10 Wn. App. 964,967,521 P.2d (1974)). A trial court is prohibited from modifying a property distribution award in a Final dissolution decree (*See* RCW 26.09.170(1)). Provisions as to property disposition may not be revoked or modified. Unlike maintenance and child support, there is no authority for a court to modify a property distribution award in a Final Dissolution Decree. Once made, these distributions are final. Here, the trial court made a final property distribution in the Final Dissolution Decree entered April 8, 2009.
2. The trial court no longer had jurisdiction to modify the existing Final Decree pursuant to RAP 7.2(e). This jurisdiction comes into question when a trial court modifies a judgment or motion after an appellate court has accepted review on the matter. Case # 65813-1-

I and 66410-6-I is both pending Appellate review/ruling. RAP

7.2(e).

January 5, 2011 Verbatim Report (B) of Proceeding, pg. 6, paragraph 3 is the trial court's reasoning (Facts and Conclusions of Law), which refers to appealing the court's previous rulings, and is currently pending appellate review. In short, the trial court states that appealing a given motion is seen as a delay of proceedings and therefore validation to issue additional rulings.

January 5, 2011 Verbatim Report (B) of Proceeding, pg. 6, paragraph 4 states that based on Appellant's multiple appeals, the trial court's orders will stand. The court continues with additional comments regarding Appellant's unwillingness to abide by the court's orders referring to appeals in order to delay the sale of the Family Home. The Court justifies that the above actions by the Appellant are grounds for continued jurisdiction and additional rulings in the matter, despite being in direct violation of RAP 7.2(e), and RCW 26.09.170.

Previous rulings of the same court on July 2, 2010 (Argument 1) ordered the sale of the Family Home at a drastically reduced price without the Appellant's consent is the main causes of delay in this

matter. The appellate process, a soft real estate market from September thru the end of each year locally, and a nationwide slow-down in the housing market are other factors of delayed sale of the Family Home.

The trial court no longer had jurisdiction on Jan 5, 2011 to modify the Final Decree of Dissolution and issue a new order to reduce the appellant awarded proceeds from \$50,000 to zero, which has been appealed and affirmed by this Court (Case No 63464-0-I).

## **CONCLUSION**

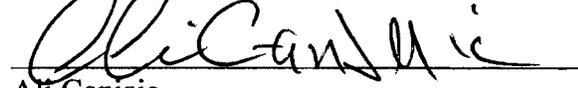
For the foregoing reasons, this court should reverse the trial Court's July 2, 2010 order due to its improper modification of the Final Decree of Dissolution, trial court failure to follow the Washington State Rule of Appellate Procedure 7.2(e), and failure to comply with Federal Civil Rule Procedure 60(c) (1).

Additionally, this court should reverse the trial court's November 10, 2010 order due to its improper eviction of the Appellant from his family home (improper modification of the Final Decree), and failure to follow Washington State RAP 7.2(e).

Finally, this court should reverse the January 5, 2011 order, and re-distribute the net proceeds of the sale of the family home by re-awarding the \$50,000 originally awarded to the Appellant and affirmed by this court on March 8, 2010. Mandate was issued on Case # 63464-0-I April 16, 2010.

This Court should preserve only the portions of the Second and third amended Finding of Facts and Conclusions of Law that enforces the existing Final Decree of Dissolution.

Respectfully Submitted,\*

A handwritten signature in black ink, appearing to read "Ali Ganjaie", written over a horizontal line.

Ali Ganjaie

Appellant

Dated: August 05, 2011

