

No. 68103-6-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

LISA R. PASCALE,

Respondent,

v.

MICHAEL J. PASCALE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE JAMES A. DOERTY

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BRIEF OF RESPONDENT

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## I. RESTATEMENT OF ISSUES

1. The parties' Civil Rule 2A Settlement Agreement provided that the wife would receive spousal maintenance for a total of 96 months and that it was "enforceable in court." After finding that the Agreement was "clear on its face," did the trial court abuse its discretion in enforcing the Agreement and denying the husband's demand for arbitration when there was no "arbitrable dispute" under the arbitration clause of the Agreement?

2. Did the trial court abuse its discretion in awarding attorney fees to the wife when the husband sought to breach the parties' agreement by claiming that the wife was only entitled to 48 months of maintenance and demanding arbitration when the Agreement was "clear on its face" and there was "no arbitrable dispute?"

3. Should this court award attorney fees to the wife based on her need and the husband's ability to pay?

## II. RESTATEMENT OF FACTS

### A. **After Mediation, The Parties Entered Into A CR 2A Agreement Giving The Wife Eight Years Of Maintenance.**

Respondent Lisa Pascale, age 50, and appellant Michael Pascale, age 54, were married on August 12, 1993, after living

together for three years. (CP 1-2, 10) The parties separated in April 2010, and filed a joint petition for dissolution on February 15, 2011. (CP 1, 2, 5) The parties have two sons, ages 15 and 16. (CP 10) The younger son has severe obsessive compulsive disorder, ADHD, and Tourettes Syndrome. (CP 10) The older son has mild obsessive compulsive disorder and ADHD. (CP 10-11)

The parties participated in mediation with Harry Slusher on September 6, 2011. (CP 11) No formal discovery had been completed by the time of mediation. (CP 14) Instead, the parties' settlement negotiations were based on Michael's representation that his annual income was \$300,000, or \$25,000 per month. (CP 17) Lisa was unemployed, and while educated as a nurse, had not work outside the home for 15 years in order to care for the parties' special-needs children. (CP 10, 655) Lisa discovered only after mediation that Michael's monthly income was actually between \$36,000 and \$45,000 per month. (CP 608-09)

Despite Michael's substantial income, the parties had limited assets. The "major" assets were the family residence where Lisa and the children resided, which had little to no equity; the husband's 401(k), which was purportedly worth approximately

\$370,000; and the parties' interest in Overlake Surgery Center, valued at \$9,192. (See CP 12, 43, 391, 1241)

The parties executed a CR 2A Agreement at the conclusion of the day-long mediation. (CP 11) Among other provisions, the parties agreed to an 8-year maintenance award to Lisa, starting at \$9,500 per month for 70 months, \$7,500 per month for 14 months, and \$5,000 per month for 12 months. The terms of the CR 2A Agreement on the amount and duration of maintenance are reproduced below:

<u>amount</u>		<u>duration</u>
9500	9500 /mo. x	48 months
9500	8500	22
then	7500	14
then	5000	12

(CP 44)

The total maintenance award to Lisa, undiscounted to current value, was \$830,000. The parties also agreed that Michael would pay \$1,666 per month to Lisa for an additional 29 months as settlement for Lisa's claims of Michael's "negatively productive conduct" arising from Michael's addiction to pain medication. (CP

11-12, 43, 760) Michael's addiction was the reason why, despite his significant income as an anesthesiologist, the parties had so few assets at the end of their relationship. (CP 11-12, 760) The parties agreed that these payments would be considered "spousal maintenance" for tax purposes, and would commence after the termination of Lisa's "basic" spousal maintenance. (CP 43) This provision is not in dispute.

The basic spousal maintenance package was \$130,000 less than the amount Lisa sought at the start of mediation. (*Compare* CP 44 *with* CP 1244-45)<sup>1</sup> In addition to Lisa's concession on the amount of maintenance, she agreed to use what remained of the community 401(k) to pay down substantial debt of over \$220,000 – including a \$70,000 debt that Lisa asserted Michael had incurred after separation. (CP 13, 39, 1242-43) Any amount remaining in the 401(k) after these debts were paid were to be divided 60/40 in Lisa's favor. (CP 39)

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<sup>1</sup> Michael implies that the "original proposal" for maintenance from Lisa was \$456,000 (App. Br. 4), but Lisa's starting point at mediation was a 7-year maintenance package at \$12,500 for four years with a "step down" to \$10,000 for the remaining three years, for a total maintenance award of \$960,000, undiscounted to current value. (CP 1244-45) In addition, Lisa asked for 25% of any of Michael's gross income over \$300,000 – the amount he claimed was his annual income. (CP 1245)

Lisa was also awarded the family residence, where she and the children reside, with a monthly mortgage obligation of over \$4,500. (CP 41, 115) Beyond that, Lisa received little else in terms of property. Michael was awarded the parties' interest in Overlake Surgery Center, in addition to 40% of the balance of the 401(k) after debts were paid. (CP 39, 43)

By its terms, the CR 2A Agreement was a "full and complete agreement" between the parties, and was immediately "enforceable in court:"

Each party agrees and stipulates this is a full and complete agreement between the parties and is enforceable in court. Each party understands that even though final documents yet need to be prepared this stipulation and agreement is effective and binding upon execution and enforceable in court.

(CP 24) The parties agreed that Michael's counsel would prepare the final documents, and that "[a]ny disputes in the drafting of the final documents, or any other aspect of this agreement (form or substance), or any issue not discussed shall be submitted to Harry R. Slusher for binding arbitration. (RCW 7.04A)." (CP 25, 37)

**B. The Wife Asked The Court To Enforce The CR 2A Agreement After The Husband Sought To Reduce Her Maintenance Award To Four Years. The Trial Court Enforced The CR 2A Agreement After Finding There Was No “Arbitrable Dispute” And The Agreement Was “Clear On Its Face.”**

After mediation, Michael’s attorney proposed final documents that failed to embody the parties’ CR 2A Agreement, providing for only four years of maintenance, not eight years of maintenance as set forth in the CR 2A Agreement. (CP 13) Specifically, the drafts proposed by Michael’s attorney eliminated the first 48 months of maintenance at \$9,500 per month. (CP 13)

Consistent with the terms of the CR 2A Agreement that it was “enforceable in court,” Lisa filed a motion asking the court to enforce the parties’ CR 2A Agreement. (CP 11, 13) Lisa also asked the court to approve entry of final documents awarding her eight years of maintenance, as set out in the CR 2A Agreement. (CP 13) In the alternative, if the trial court determined that CR 2A Agreement was not clear regarding the duration of support, Lisa asked the court to set aside the agreement because there was no valid agreement on the duration of maintenance or because the Agreement was unfair when it was made under RCW 26.09.070. (CP 10)

Michael filed a cross-motion asking the court to order the parties to binding arbitration. (CP 1071) In the alternative, Michael asked the court to enforce the CR 2A Agreement and enter the final documents as he proposed, which provided for a maintenance award of only four years. (CP 1071) Michael also sought an award of attorney fees against Lisa under CR 11, alleging that her motion to enforce was made in bad faith. (CP 1077) In response, Lisa asked that she be awarded attorney fees for having to respond to Michael's motion, and for having to bring her motion to enforce the parties' clear CR 2A Agreement. (CP 612)

On December 2, 2011, both motions were considered by King County Superior Court Judge James Doerty without oral argument. The court rejected Michael's request to order the parties to binding arbitration, finding that "there is no arbitrable dispute." (CP 725) The court found that "the CR 2A Agreement at Section 13 set forth a schedule for payment of spousal support that adds to 96 months (in decreasing amounts over time). The written document is clear on its face. Extrinsic evidence may not be used to modify an agreement that is clear on its face." (CP 723)

As a result of its ruling, the trial court did not reach the wife's motion for alternative relief that the CR 2A Agreement should be set aside because there was no meeting of the minds or because the CR 2A Agreement was unfair when executed. (See CP 724-25) The trial court found that the "wife's motion was warranted by the facts and law and that the time spent by her attorney was reasonable and necessary given the importance of the issues presented." (CP 726) The court awarded the wife \$6,000 in attorney fees. (CP 726)

The husband appeals. (CP 735)

### III. ARGUMENT

#### A. **The Trial Court Properly Denied The Husband's Demand For Arbitration After Finding That There Was "No Arbitrable Dispute."**

On the husband's appeal, the question is not whether there was a valid agreement to arbitrate (App. Br. 8), but whether there was a "controversy subject to an agreement to arbitrate." RCW 7.04A.060(2). The trial court properly rejected the husband's demand for arbitration after determining that there was no dispute subject to arbitration. (CP 725) RCW 7.04A.060(2) ("The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate."); *Davis v.*

**Gen. Dynamics Land Sys.**, 152 Wn. App. 715, 719, ¶ 10, 217 P.3d 1191 (2009) (“trial court, not an arbitrator, generally determines the arbitrability of a dispute”), *rev. denied*, 168 Wn.2d 1022 (2010).

Here, the “controversy” was enforcement of the CR 2A Agreement. The trial court properly determined that it was not subject to the parties’ agreement to arbitrate when the Agreement setting forth the provisions for maintenance was “clear on its face.” (See CP 723, 725) The CR 2A Agreement provides that the only controversies subject to arbitration are those relating to the “drafting of the final documents” and the “form or substance” of the CR 2A Agreement. (CP 25) This clause does not require that issues of enforcement be subject to arbitration. See **Nelson v. Westport Shipyard, Inc.**, 140 Wn. App. 102, 115, ¶ 34, 163 P.3d 807 (2007) *rev. granted*, 163 Wn.2d 1033 (2008), *rev. voluntarily dismissed* (Sept. 17, 2008). Instead, under the terms of the CR 2A Agreement, enforcement is specifically reserved for the court: “this stipulation and agreement is binding upon execution and enforceable in court.” (CP 24, emphasis added)

Leaving enforcement of the CR 2A Agreement to the courts is consistent with RCW 26.09.070, which authorizes the court to decide the enforceability of separation contracts. RCW 26.09.070(3) (a separation contract “shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence [ ], that the separation contract was unfair at the time of its execution”); **Marriage of Grimsley-LaVergne & LaVergne**, 156 Wn. App. 735, 742, 236 P.3d 208 (2010), *rev. denied*, 170 Wn.2d 1030 (2011) (“The legislature expressly designed [RCW 26.09.070] to address the enforceability of parties' predissolution agreements.”) Because the trial court determined that there was “no arbitrable dispute,” (CP 725), it properly enforced the CR 2A Agreement as required by its terms. (CP 24, 723)

This case is more like **Nelson** than **Townsend v. Quadrant Corp.**, 173 Wn.2d 451, 268 P.3d 917 (2012), relied on by the husband. (App. Br. 9-11) In **Nelson**, the plaintiff challenged the enforceability of a shareholders' agreement, claiming it was entered under duress, coercion, and misrepresentation. Defendants asserted that plaintiff's claim was subject to arbitration under the

provision of the agreement that “in the event of any disputes among any of the parties arising out of this agreement, then such disputes shall be submitted to arbitration.” *Nelson*, 140 Wn. App. at 106, ¶ 7. Division Two disagreed, holding that this language “does not expressly encompass disputes about the validity, enforceability, or scope of the Agreement as whole.” *Nelson*, 140 Wn. App. at 114, ¶ 29. Accordingly, the “trial court correctly ruled that the court, not the arbitrator, should resolve the parties' disputes about the enforceability” of the shareholders' agreement. *Nelson*, 140 Wn. App. at 115, ¶ 34.

The arbitration clause in *Townsend* had far broader language than the agreements at issue in this case or in *Nelson*. The arbitration clause in *Townsend* required that “any controversy arising out of or relating to this agreement,” including any “claimed breach, or any claimed defect relating to the property, [and] any claim brought under the Washington State Consumer Protection Act” was to be determined by arbitration. 173 Wn.2d at 454, ¶ 2. As a consequence, under the terms of the *Townsend* agreement the Court held that plaintiffs' challenge to the agreement based on

claims of procedural unconscionability was a matter reserved for the arbitrator. *Townsend*, 173 Wn.2d at 459-60, ¶¶ 16, 17.

Unlike the agreement in *Townsend*, however, and as in *Nelson*, the arbitration clause in this case “does not expressly encompass disputes about the validity, enforceability, or scope of the Agreement as whole.”<sup>2</sup> *Nelson*, 140 Wn. App. at 114, ¶ 29. Instead, the agreement expressly states that it is “enforceable in court.” (CP 24) Thus, the enforcement of the CR 2A Agreement, which is what the wife sought here, is not a controversy subject to arbitration.

**B. The Trial Court Did Not Abuse Its Discretion Under CR 2A In Enforcing The Parties’ Agreement That Set Forth The Amount And Duration Of The Wife’s Maintenance Award.**

Because there was no arbitrable dispute, the trial court properly enforced the parties’ CR 2A Agreement providing the wife with 8 years of maintenance. Civil Rule 2A compels enforcement of a written settlement agreement signed by the parties. *In re Patterson*, 93 Wn. App. 579, 585, 969 P.2d 1106 (1999) (“When the party undertakes a settlement directly with the other party,

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<sup>2</sup> Further, unlike in *Townsend*, the arbitration clause in this case does not encompass “breach” of the Agreement. (See CP 25) Here, any breach was to be, and was, properly resolved by the trial court. (See CP 24)

reduces it to writing, and signs it [ ] the requirements of CR 2A are met"). Normal contract principles apply to determine the effect of the parties' written agreement. **Marriage of Ferree**, 71 Wn. App. 35, 39, 856 P.2d 706 (1993) ("CR 2A supplements but does not supplant the common law of contracts"). A trial court's decision to enforce a settlement agreement under CR 2A is reviewed for an abuse of discretion. **Patterson**, 93 Wn. App. at 586.

In deciding whether to enforce a CR 2A agreement, the issue for the court is not whether the challenging party wishes to "abide by [the agreement], but rather whether the agreement was disputed in the sense that [challenging party] had controverted its existence or material terms in such a way as to raise a genuine issue of fact." **Ferree**, 71 Wn. App. at 45. "Absent fraud, overreaching, or collusion, the courts will not set aside a property settlement agreement." **Marriage of Curtis**, 106 Wn. App. 191, 194, 23 P.3d 13, *rev. denied*, 145 Wn.2d 1008 (2001).

In order to manufacture a "dispute," the husband claims that the CR 2A Agreement provides that the wife only "receive maintenance until the youngest child leaves home" in four years. (App. Br. 13) But nowhere in the CR 2A Agreement is there any

provision tying the duration of maintenance to when the younger child graduates high school and *might* leave home.<sup>3</sup>

In construing a CR 2A Agreement, the “court must first look to the language of the agreement, not expressions absent from the agreement.” ***Hadley v. Cowan***, 60 Wn. App. 433, 438, 804 P.2d 1271 (1991). The language of the CR 2A Agreement clearly provides eight years of maintenance – the “duration” of the maintenance was for 48 months + 22 months + 14 months + 12 months. (CP 44)

It does not matter that the husband claims that he believed that he only agreed to four years of maintenance. (CP 1075-76) In construing an agreement, the court must not “interpret what was intended to be written but what was written.” ***Hearst Communications, Inc. v. Seattle Times Co.***, 154 Wn.2d 493, 504, 115 P.3d 262 (2005) (citations omitted). The court must “determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the

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<sup>3</sup> In addition to having no support in the parties' CR 2A Agreement, this argument presumes that the parties' younger son, who suffers from ADHD, severe obsessive-compulsive disorder, and Tourette's Syndrome, will “leave home” in four years. Nothing in this record supports that presumption.

parties.” *Hearst*, 154 Wn.2d at 503. The court “generally gives[s] words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent.” *Hearst*, 154 Wn.2d at 503-04.

The husband also attempts to avoid his agreement by claiming that an award of eight years of maintenance is somehow overly “generous” to the wife. (App. Br. 13) But the husband ignores the fact that after a 20-year relationship (three years cohabiting and 17 years of marriage), he leaves the marriage with a minimum annual income of at least \$300,000 (but more likely income closer to \$500,000), and the ability as a private practice anesthesiologist to earn more. Meanwhile, the wife, at age 50<sup>4</sup>, is left without employment, no work experience in the past 15 years, a home with little to no equity, and a portion of the husband's 401(k), which would be largely depleted to pay off substantial debts incurred by the community and the husband.

Because of the limited assets available for distribution, a long-term maintenance award was entirely appropriate (and

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<sup>4</sup> Appellant refers to wife, at age 50, as “youthful.” (App. Br. 13) While that is kind of him, it is unlikely that future employers would necessarily agree that a 50-year old woman with no current job skills is “youthful.”

expected) to lessen the gap between the parties at the end of their 20-year relationship. Under RCW 26.09.090, “the trial court is not only permitted to consider the division of property when determining maintenance, but it is required to do so.” **Marriage of Rink**, 18 Wn. App. 549, 552-53, 571 P.2d 210 (1977); see also **Marriage of Estes**, 84 Wn. App. 586, 593, 929 P.2d 500 (1997) (the parties’ standard of living during the marriage and their post-dissolution economic condition are paramount concerns when considering maintenance and property awards); **Marriage of Washburn**, 101 Wn.2d 168, 179, 677 P.2d 152 (1984) (maintenance is a “flexible tool by which the parties’ standard of living may be equalized for an appropriate period of time”); **Marriage of Morrow**, 53 Wn. App. 579, 583, 770 P.2d 197 (1989) (affirming award of lifetime maintenance when “so many assets’ were beyond the reach of distribution”).

Had the court (or an arbitrator) determined that the CR 2A Agreement only provided for four years of maintenance, it should be set aside as being “unfair at the time of its execution” in light of the substantially disparate economic circumstances the parties would be left. RCW 26.09.070; see Arg. § C, *infra*. The trial court

did not abuse its discretion in instead enforcing the CR 2A Agreement, which as the trial court found “set forth a schedule for payment of spousal support that adds up to 96 months (in decreasing amounts over time). The written document is clear on its face.” (CP 723)

**C. If This Court Concludes That CR 2A Agreement Does Not Clearly Provide The Wife With 8 Years Of Maintenance, The Agreement Must Be Set Aside Because There Was No “Meeting Of The Minds” And The Agreement Is Not Enforceable Under RCW 26.09.070.**

If this court concludes that the parties’ CR 2A Agreement was not “clear on its face” in providing the wife eight years of maintenance, the agreement must be set aside because there was no “meeting of the minds” on the duration of maintenance, and the agreement is unenforceable under RCW 26.09.070 because it was not fair at the time of its execution. See RCW 7.04A.060(1) (agreement to arbitrate can be revoked “upon a ground that exists at law or in equity”).

A long-term maintenance award was “vitaly important” to the wife because the parties had very little property to divide at the end of the parties’ 20-year relationship. (CP 12) The wife made “substantial financial concessions” at mediation, including agreeing

to pay substantial community debts from assets awarded to her based on her understanding that she would receive eight years of maintenance. (CP 13)

The only significant "asset" of the community was Michael's earning capacity.<sup>5</sup> (CP 12) Michael represented during mediation that his income was \$25,000 per month. (CP 17) As Lisa only learned *after* mediation, when he tried to truncate her agreed maintenance from eight to four years, Michael's monthly income in the three months preceding mediation in fact ranged from \$35,708.26, to \$44,937.42. (CP 608)<sup>6</sup> In the two months following mediation, he earned an average of \$39,562 per month. (CP 609)

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<sup>5</sup> Respondent recognizes that a professional's earning capacity is not a divisible asset of the marital estate. ***Marriage of Leland***, 69 Wn. App. 57, 72, 847 P.2d 518, *rev. denied*, 121 Wn.2d 1033 (1993). But it is certainly a factor that can and should be considered in deciding whether a property division and maintenance award are fair and equitable. ***Leland***, 69 Wn. App. at 72.

<sup>6</sup> Lisa also discovered after mediation that Michael cashed out accrued vacation time, which he never previously disclosed. (CP 610-11) Michael also failed to disclose amounts that he received from a wrongful death lawsuit arising from his father's death from mesothelioma. (CP 611) Lisa also discovered after mediation that Michael was a plaintiff in a second lawsuit for legal malpractice against the lawyer that represented him in the wrongful death lawsuit, in which he sought money damages. (CP 611) Lisa acknowledged that the wrongful death lawsuit proceeds and the contingent legal malpractice claim might be considered Michael's separate property, but asserted that the information should have been disclosed as it was relevant to Michael's "economic circumstances" at the end of the marriage. (CP 612)

Meanwhile, Lisa was unemployed, and her only “income,” with the exception of any maintenance that she would receive, was child support. (See CP 1244-45)

Under these circumstances, especially given the small marital estate to be divided, it would be expected that the wife would receive long-term maintenance – not, as the husband claims, maintenance for only four years. See e.g. **Marriage of Sheffer**, 60 Wn. App. 51, 57, 802 P.2d 817 (1990) (increasing maintenance award when trial court failed to adequately consider parties’ economic circumstances and holding that maintenance should be utilized as a “flexible tool to more nearly equalize the post-dissolution standard of living of the parties, where the marriage is long term and the superior earning capacity of one spouse is one of the few assets of the community”); see also **Marriage of Hadley**, 88 Wn.2d 649, 657-58, 565 P.2d 790 (1977) (affirming trial court’s use of maintenance as a substitute for wife’s interest in community property awarded to husband); **Marriage of Morrow**, 53 Wn. App. at 581 (affirming lifetime maintenance award after 23-year marriage). An agreement providing the wife with only four years of maintenance, leaving her in a significantly worse economic

situation compared to the husband after a 20-year relationship, would be unfair under RCW 26.09.070 and RCW 26.09.090.

Further, to the extent this court concludes that there is any dispute as to the duration of the wife's maintenance award, the CR 2A Agreement must be set aside because there was no "meeting of the minds" on a material term of the agreement. "For a contract to exist, there must be a mutual intention or 'meeting of the minds' on the essential terms of the agreement." ***Saluteen-Maschersky v. Countrywide Funding Corp.***, 105 Wn. App. 846, 851, 22 P.3d 804 (2001). "In the absence of mutual assent there can be no contract." ***Swanson v. Holmquist***, 13 Wn. App. 939, 942-43, 539 P.2d 104 (1975) ("Since the document did not reflect a common understanding of an essential term of the agreement, that is, did not reflect a mutual intent or mutual assent to the term, there was no contract"). If it is not "clear on its face" that the parties' CR 2A Agreement provided the wife with eight years of maintenance, then there was no "meeting of the minds."

According to the husband, he believed the Agreement required him to only pay four years of maintenance. (CP 1075-76) The wife, on the other hand, believed the Agreement required him

to pay eight years of maintenance. (CP 12) As the husband states in his brief, the difference is over half of a million dollars. (App. Br. 4) Because there were very few assets to divide after this 20-year relationship, both the amount and duration of the maintenance award were the most significant aspect of the agreement, in order to make up the difference in the parties' economic circumstances. If there was no "meeting of the minds" on this essential term, then was no agreement and it must be set aside. ***Saluteen-Maschersky***, 105 Wn. App. at 851.

**D. The Trial Court Properly Awarded The Wife Her Attorney Fees.**

The party challenging an award of attorney fees bears the burden of proving the trial court exercised its discretion in a way that was clearly untenable or manifestly unreasonable. ***Marriage of Crosetto***, 82 Wn. App. 545, 563, 918 P.2d 954 (1996). The trial court did not abuse its discretion in awarding attorney fees to the wife based on the husband's intransigence, evidenced by his litigious behavior in resisting entry of final documents consistent with the plain terms of the parties' CR 2A Agreement.

As the trial court found, "the wife's motion was warranted by the facts and law and that the time spent by her counsel was

reasonable and necessary given the importance of the issues presented.” (CP 726) Here, the trial court recognized that the husband was intransigent by breaching the CR 2A Agreement in seeking to limit the wife’s maintenance award to four years. The husband’s actions in resisting enforcement of the plain terms of the CR 2A Agreement increased the wife’s legal fees by requiring her to bring a motion for enforcement, and to respond to the husband’s cross-motion, which warranted an award of attorney fees. Under these circumstances, the trial court did not abuse its discretion in making its fee award. **Marriage of Burrill**, 113 Wn. App. 863, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003) (affirming award of attorney fees when mother’s actions unnecessarily increased the father’s attorney fees); **Marriage of Wallace**, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002), *rev. denied*, 148 Wn.2d 1011 (2003) (affirming award of attorney fees to wife when husband’s actions unnecessarily increased the wife’s attorney fees).

The trial court also properly denied the husband’s demand for CR 11 sanctions against the wife for bringing her motion to enforce the CR 2A Agreement. “A trial court’s decision to impose

or deny CR 11 sanctions is reviewed for abuse of discretion. A complaint may be subject to CR 11 sanctions if it lacks factual or legal basis, and the attorney who signed the complaint failed to conduct a reasonable inquiry into the factual and legal basis of the claim. The burden is on the movant to justify the request for sanctions". *Brin v. Stutzman*, 89 Wn. App. 809, 827, 951 P.2d 291, *rev. denied*, 136 Wn.2d 1004 (1998). Here, the wife's motion to enforce the clear terms of the parties' CR 2A Agreement was warranted in both law and fact. Accordingly, there was no basis for an award of attorney fees against the wife.

**E. This Court Should Award Attorney Fees On Appeal To The Wife.**

The wife asks this court to award her attorney fees and costs for responding to this appeal, pursuant to RCW 26.09.140, on the basis of her need and the husband's ability to pay attorney fees. This court has discretion to award attorney fees after considering the relative resources of the parties and the merits of the appeal. RCW 26.09.140; *Leslie v. Verhey*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003 (1999). Here, the husband earns approximately \$36,000 gross per month, and even after paying spousal maintenance and child support, he enjoys

more than twice the income of the wife. An award of attorney fees to the wife under RCW 26.09.140 is warranted.

#### IV. CONCLUSION

This court should affirm the trial court's enforcement of the parties' CR 2A Agreement and its award of attorney fees to the wife. If the CR 2A Agreement was not enforceable as written, the Agreement must be invalidated because there was either "no meeting of the minds" or because the Agreement was not fair. In any event, the wife is entitled to her attorney fees on appeal.

Dated this 25<sup>th</sup> day of May, 2012.

SMITH GOODFRIEND, P.S.

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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 May 25, 2012, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

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**DATED** at Seattle, Washington this 25th day of May, 2012.



Victoria K. Isaksen