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No. 70562-8-I

See Ruling  
dated 2-24-14

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Court of Appeals of the State of Washington  
Division 1

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Exhibits  
attached to  
AR Stricken  
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Zachary B Harjo,

Appellant

v.

Gelsey Hanson,

Respondent

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Appeal from Superior Court of King County

Honorable Julie Specter, Judge

King County Superior Court Case No. 09-2-25941-1-SEA

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Reply of Appellant

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## II. ARGUMENT

The trial court has signed orders proposed by Hanson in 2013, which are based on Hanson's false statements, while being led to believe in signing the orders it was merely: 1.) confirming a "prior order" for condo rents (CP 229), 2.) accepting the "tax calculation" rather than "the kept books of the corporation" in splitting 2010 profits (CP 176, 229), 3.) enforcing a "prior order" to produce accounting and awarding attorney's fees (CP 189, 229), and 4.) confirming a "prior order" for an equitable division (CP 188).

In reality the trial court abused its discretion in each instance as it: 1.) compounded the previous error on remand for condo rents by awarding \$13,000 based on unsupported facts (CP 188), 2.) created a division for Ocho 2010 split of profits, that by its own definition is inequitable, by using the wrong IRS line item and referring to it as profit (186), and 3.) assigned attorney fees for "failure to comply with the courts prior orders" (CP 189) when there was no order, 4.) contradicted its own definition for an equitable division by creating new and unsupported rights for Hanson for relative need and correspondingly took rights away from Harjo that were previously granted (CP 188).

The court utterly failed to perceive the misleading nature of Hanson's false statements and abused its discretion by signing Hanson's orders based on these false and unsupported statements rather than aligning the orders with its own Findings of Fact, with which the orders are now at odds.

Hanson in her Response is less comfortable with her falsities under the scrutiny of the higher court and reverses the assertions she previously made to the trial court and contradicts her own Proposed Orders, which the trial court signed, admitting the following in *Brief of Respondent*:

- 1.) "that the actual amount at issue [for condo rents] is only \$2,898" (p. 9), (the difference between the \$6500 calculated in the transfer equalization payment to arrive at the \$52,205 and the actual number as recorded in Findings of Fact, half of \$7,204),
- 2.) and that \$5,919 cannot be called "profit" without assigning a new definition to that term which ignores regular expenses of the business (p. 6), (Hanson does not defend her assertion that the kept books don't match the tax form which reveals that position as indefensible),
- 3.) "the court had not specifically ordered Harjo to produce the records" (p. 11),
- 4.) "the court originally found that a 50/50 division was fair and equitable" (p. 10).

In summary Hanson, after strenuously arguing that Harjo's motions and arguments are incorrect and even frivolous, now flip-flops and unwittingly corroborates Harjo's arguments for this action in Court of Appeals because her previous positions are without merit, having been shown to be false. However, Hanson by no means comes clean in her Response and continues to violate her obligation of candor to this court. That Hanson is not able to simply play by the rules and allow either court to decide the case on its merits betrays the illegitimacy of her arguments.

The matter before this court is that the trial court failed to create orders based on the facts of the case and uniformly relied on Hanson's statements without reconciling them to the facts, even after Harjo's many attempts to bring them to the court's attention (CP 113-114, CP 115, CP 118, CP 112, CP 190-194. CP 195-198). The orders based on unsupported false statements are untenable and are therefore an abuse of discretion.

"A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (citing *Mayer*, 156 Wash.2d at 684, 132 P.3d 115). *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010).

A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* "A trial court's decision is manifestly unreasonable if it 'adopts a view' that no reasonable person would take." *In re Pers. Restraint of Duncan*, 167 Wash.2d 398, 402-03, 219 P.3d 666 (2009) (quoting *Mayer v. Sto Indus., Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71P.3d 638 (2003)»).

Hanson's Brief attempts to obscure from this court her previous assertions to the trial court, yet she continues her frivolous waste of both parties', superior court's, and this Court's time by irrationally insisting upon the same award in her favor while abandoning old false statements for new false statements. Hanson in her Response is misleading the Court of Appeals the same way she has mislead the trial court. For condo rents, Hanson states that, "the amount at issue is only \$2,898" (*page 9*) and yet she avoids entirely that she prevailed upon the court to award an arbitrary \$13,000 for condo rents *and* condo value. Now in arguing for the court's "broad discretion" Hanson hopes to have her order for \$13,000 affirmed regardless of the fact that the result would not achieve the \$2898 she now claims is at issue. Hanson goes on to mislead the Appellate Court stating, "clarification is exactly what the trial court did when it found that the contested \$2898 should be allocated to Hanson based on the overall fairness of the property division." *Brief of Respondent, page 9.*

Similarly, Hanson now claims discretion of the court warrants awarding Hanson 50% of a value that is 100 times her share of the 2010 profits and her prior argument, that the tax form and Ocho books are at odds with each other, has been dropped. Also in her Response she states that while Harjo had not been ordered to produce accounting as the award

for attorney's fees states, Hanson should be awarded attorney's fees for other reasons, and more still for this court action.

Hanson is not correct when stating that there are two issues in this appeal: "(1) whether \$2,898 should be included in the judgment against Harjo; and (2) the amount of profits from 2010 that should be reduced to judgment against Harjo". (*Brief of Respondent, page 1*) This is a mischaracterization that intends to diminish the full scope of what is at hand in order to get away with another fast one. Within Hanson's two narrow issues she argues the court was within its discretion to: contradict the record while claiming the court is *nearly* observing its definition of equity (\$13,000 rather than \$3602, the remanded item for condo rents), and in another instance employing its definition of equity by awarding Hanson "half this amount" (*CP 186*) implying an even split (2010 profits) while in both cases the wrong number is used. All the while Hanson maintains:

"While the court originally found that a 50/50 division was fair and equitable, the court may nevertheless find that a 50.5/49.5 division is also fair and equitable under the circumstances." (*Brief of Appellant, page 10*)

It must be noted that a \$3,000 difference on an award of \$50,000 is not 1% it is 6% and that the current flawed order for \$13,000 is 26% of the total award. Hanson acknowledges that 50/50 is the goal and claims that

this is basically achieved when off by only 1 percentage point in her favor even though the actual order changes the total distribution award by 26%.

“the court may accept, at face value, the calculation of profits presented by the tax return. Here, the measure of profits was perfectly acceptable. It is exactly the amount of Ordinary Business Income that appears on line 22 of the Partnership Tax Return. CP 148.” (*Brief of Appellant, page 7*)

Tellingly, the division for profits (although the wrong number) was 50/50 illustrating that both Hanson and the court know that an even division is the court’s intent.

Rather than two issues in this appeal as Hanson states, there are in fact four issues, all of which can be resolved by referring to Judge Spector’s Findings of Fact and Conclusions of Law: 1.) Condo Rents, 2.) Split of 2010 Profits, 3.) Attorney’s Fees, and 4.) Equity. The fourth issue carries much greater ramification (and is a component of all the other issues as well) but is also straightforward as its resolution is also derived directly from Findings of Fact.

1.) Condo Rents

Findings: “He also deposited in his separate account \$7,204 in rental income following separation.” *Findings CP 7, line 4-5.*

Unsupported Current Order:

“The court finds that petitioner should be awarded a total of \$13,000 for half of the rents collected (\$6,500) and the rental value of the condo after the Respondent began occupying the condominium (\$6,500). Furthermore, the \$52,205 was intended to

create a fair and equitable division of property, and while not mathematically precise, the higher amount accomplishes the court's goal of providing a fair result to Gelsey, given her greater need and the award of the parties' businesses to Zachary." *June 10, 2013 Judgment and Order on Motion to Reduce, CP 188*

Analysis: Hanson states that Harjo "did not assign error to the court's failure to offset condo rents against the judgment." (*Brief of Respondent, page 8*). This is a nonsensical statement. The court did calculate condo rents in the judgment calculation against Harjo and did so incorrectly by using the wrong number and including "rental value" for \$6500, an argument it previously declined to adopt. Harjo assigns error to the court's entire order dated June 10, 2013 which among other things failed to follow the remand in accordance with Court of Appeals which directed the trial court to "clarify its findings with regard to the amount of rental income owed to Hanson or to adjust the property equalization transfer payment" (*CP 23*). Hanson's Response inadvertently supports Harjo in stating, "The court's continuing equitable jurisdiction includes the ability to grant whatever relief the facts warrant" (*Brief of Respondent, page 9*). However, she cannot provide any facts that support the current order for \$13,000, and therefore claims broad discretion is evidence in and of itself, even if the \$13,000 award contradicts Findings.

"Harjo is incorrect when he asserts 'no evidence has been presented.' ... Again, Judge Spector was the trial judge in this matter, and she is best able to determine what is fair and equitable

to the parties under the circumstances. ‘The court’s continuing equitable jurisdiction includes the ability to grant whatever relief the facts warrant’ ... As in a dissolution action, the division of property need not be equal nor focus on mathematical preciseness; the goal of fairness is achieved by considering the totality of the circumstances of the parties... ‘The key to an equitable distribution of property is not mathematical preciseness, but fairness. This is attained by considering all of the circumstances of the marriage, past and present, with an eye to the future needs of the persons involved. Fairness is decided by the exercise of wise and sound discretion not by set or inflexible rules.’” (Brief of Respondent page 9-10, for illustrative purposes case law citations have been removed)

Hanson wants no part of the facts and insists that the court is soundly and wisely exercising its discretion on the post-trial circumstances of the parties “in its continuing jurisdiction” (*page 9*). In order for the court to achieve what Hanson is stating, the court would have to literally re-try the case to establish alternate findings regarding equity. This line of reasoning from Hanson is irrational. It is not rational to re-define equity three years after establishing a specific definition for equity as a binding right in

Findings of Fact and Conclusions of Law:

“The court finds that an equitable division, taking into account the contributions of each and allocating the remainder to result in a 50/50 division of property is appropriate, fair and equitable.”  
*Findings of Fact page 5, CP 5*

Hanson admits that “the court originally found that a 50/50 division was fair and equitable” *Brief of Respondent page 10* and that for this case the standard is equity *Brief of Respondent page 13*. It is not possible in the

realm of logic to argue that the court is *empowered* to define equitable, then to *define* equitable, and to then arrive at a result that is *not within its own definition of equity* and consider that result equitable and rational. If the court does so it is at odds with itself, irrational, and the resultant order is clearly an untenable abuse of discretion.

Courts review "findings of fact under a 'substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.'" *Korst v. McMahon*, 136 Wn.App. 202, 206, 148 P.3d 1081 (2006)

A court will not disturb the trial court's approval of a property distribution unless there is a clear and manifest abuse of discretion. *Baird v. Baird*, 6 Wn.App. 587, 591, 494 P.2d 1387 (1972)

Hanson, in her pattern of false statements, has completely mis-stated the issues to the trial court and yet the trial court bases orders on these false statements:

"Court of Appeals found that more findings were needed in regard to the rents collected by Respondent [Harjo] but not shared with Petitioner [Hanson] and also what lost rents Petitioner [Hanson] is entitled to after Respondent [Harjo] began occupying the condo." *Petitioner's Motion to Reduce*, CP 35

"In the alternative, petitioner requests that the original judgment be affirmed because the court intended to create an offset for the rental value of the condo after Harjo occupied it, which was worth approximately \$2,898." *Petitioner's Motion to Reduce* CP 36

However while she argues for an extra \$2898 for a total of \$6500 ("approximate" in this instance is designed to support the original figure

of \$52,205) she then proposes an order for condo rents *and* rental value for \$13,000 which the court signed:

“The court finds that petitioner should be awarded a total of \$13,000 for half of the rents collected (\$6,500) and the rental value of the condo after the Respondent began occupying the condominium (\$6,500).” *June 10, 2013 Judgment and Order on Motion to Reduce, CP 188*

Now in Response, because Hanson is unable to rationalize her duplicity for the signed order for \$13,000, she again employs her diversionary tactic of *accusing Harjo* of being inconsistent about the dispute being over \$2898:

“(At times, Harjo admits that the actual amount at issue is only \$2,898. CP 116.) Clarification is exactly what the trial court did when it found that the contested \$2,898 should be allocated to Hanson based on the overall fairness of the property division.” *Brief of Respondent, page 9*

Hanson never addresses that Findings unambiguously states: “He also deposited in his separate account \$7,204 in rental income following separation.” *Findings CP 7, line 4-5*. Hanson fails to honestly represent to both courts the binding decision made by the appellate court in that its decision “governs all subsequent proceedings in the action in any court.” RAP 12.2. That decision by the higher court is unambiguous:

Harjo also argues that the court’s findings are inconsistent with its calculation. He points out that the court found that he collected rent of \$7204 after the parties’ separation, but then calculated that he owed Hanson \$6500 for half of the rents collected, thus implying that he collected a total of \$13,000 in rental income. In its response

to Harjo's post trial motion below, Hanson suggested that the court amend its findings to clarify that Hanson is entitled to compensation not only for the rental income collected, but also for the rental value of the condo after Harjo occupied it. The trial court declined to adopt this finding. We agree that the figure used to calculate the amount owed to Hanson for her half-interest in rent is unsupported by the court's findings. Accordingly, we remand for the trial court either to clarify its findings or to adjust its calculation of the equalization payment. *Court of Appeals Decision, CP 28*

Hanson argues for the \$2898 without pointing to any support but merely claiming she is entitled "under the circumstances" implying relative need:

"Judge Spector was well within her authority to determine that the disputed \$2,898 should fall towards Hanson instead of Harjo. Harjo received a business worth \$222,000, in addition to other property. CP 8. The \$2,898 is a negligible percent of the overall distribution of property. While the court originally found that a 50/50 division was fair and equitable, the court may nevertheless find that a 50.5/49.5 division is also fair and equitable under the circumstances." *Brief of Respondent, page 11*

One need look no further than the following quote from Findings to know that the trial court did not consider either party disadvantaged and in stating that maintenance does not apply it follows that relative need was not established as it is not applicable for a "non-marital relationship dissolution" (CP 13). The court's intention in this matter could not be more clear, carefully identifying equity as 50/50. If relative need had been found and if this had been a marriage dissolution maintenance might

apply. But the court states that maintenance is not available for this non-marital dissolution and did not find greater need for either party:

“Each of the party will bear their own attorneys fees.

2.12 MAINTENANCE.

Does not apply. Maintenance is not available in a non-marital relationship dissolution...

2.13 FEES AND COSTS.

Does not apply because attorney fees are not available in a non-marital relationship dissolution. The court has taken into consideration the amount of fees each party has paid in this action as a part of their overall economic circumstances following the dissolution of their relationship.” *Findings, CP 13*

It is irrational and an abuse of discretion that the order from June 10, 2013 (CP 188) includes a rationale of relative need for Hanson.

"A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (citing *Mayer*, 156 Wash.2d at 684, 132 P.3d 115). *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010).

"[A]n order 'clarifying' a judgment explains or refines rights already given. It neither grants new rights nor extends old ones." *Kemmer*, 116 Wn.App. at 933 (citing *Rivard v. Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677 (1969)).

The order does not clarify the courts previous judgement, it grants new rights to Hanson and is at odds with RAP 12.2 in failing to observe the Appellate Decision. Hanson points to the deeply flawed tabulation from Findings and refers to it as an “order” even though this tabulation was thrown out and replaced:

“Harjo misleads the Court of Appeals regarding what the trial court ordered. The trial court, *in its 2010 orders*, required Harjo to reimburse Hanson for \$6,500 for half the rents collected on the condominium. CP 11” *Brief of Respondent, page 8*

The Table From Findings, CP 11:

Gelsey’s separate home equity goes to Zach to pay Ocho buyout	\$166,250
Zach’s buyout of Gelsey’s ½ of Ocho	(\$111,000)
Zach owes Gelsey for ½ of rent collected on condominium	\$6,500
50% of Homeowner dues to Zach	\$2,241.50
Gelsey also owes Zach \$10,00 home lien	(\$10,000)
ZACH OWES GELSEY:	<u>\$45,250</u>

Hanson cherry picks one of many flawed numbers and considers this valid evidence of a court “order”. If that were the case then Harjo should be arguing that “Gelsey’s separate home equity goes to Zach to pay Ocho buyout \$166,250”.

The court records the rents collected as \$7,204. (CP 7). Court of Appeals in its decision recognizes the error and additionally notes that the court declined to adopt rental value. The award in 2013 for \$13,000 for condo rents ignores the instructions of the higher court by failing to correct the original error. There is no clarification in Hanson’s argument or in the order for condo rents but there is a modification to parties’ rights that results in a clear and manifest abuse of discretion. The order for condo rents for \$13,000 and the basis of relative need should be reversed.

2.) Split of 2010 Profits

Findings: “Gelsey is entitled to her share of Ocho’s benefits through the end of 2010” (CP 9) ... the income stream from Ocho is, by nature of joint ownership, a joint asset, as are the expenses and liabilities joint obligations” *Findings* (CP 10).

Current Order: “The court previously ordered that Ocho profits for 2010 be split. Pursuant to the 2010 Ocho tax return, total profits were \$11,839. It is not appropriate to reduce this due to difference between the tax calculation and the kept books of the corporation. Petitioner is entitled to half this amount, or \$5919....” CP 186

Analysis: Hanson accepts the IRS form 1065 as the appropriate document for determining the year-end results of the Partnership but she is unwilling to accept one aspect of those results, the line item that shows profit.

Hanson does not continue to support her original argument:

“As to the additional profits from Ocho from 2010, if the tax return is to be believed, it appears that Ocho earned Ordinary business income of \$11,839 in 2010 (line 22 of form 1065). Schedule M reduces this to \$114 based on the difference between the tax return and the books of the corporation. However, the tax return should be considered more accurate.” (*Reply Motion to Reduce CP 176*).

Hanson made this argument only in Reply leaving Harjo no opportunity to respond and the Order was based upon this nonsensical argument. The court did not recognize that Schedule M, Net Income Per Books, is a component of the tax record and it is not possible that it is at odds with itself. The court might have seen the folly in Hanson’s illogical statement had Harjo not been denied the opportunity to participate in the

process. The result was material bias against Harjo who's request for Oral Argument (*CP 190*) in reconsideration was also denied. *Order Denying Respondent's Motions, CP 199*.

Hanson now argues that the trial court can use any approach it likes in determining profits due to its having heard testimony regarding the accounting of the business at trial. Hanson then states that the court may simply accept "the calculation of profits presented by the tax return." (*page 7*). However, Hanson does not point to the calculation of profits in the tax return, she points again to Ordinary Income that includes non-deductible business expenses. Hanson, realizing she has no facts to support her prior statement, now claims that the trial court's discretion in 2013 trumps the facts. This is another example of Hanson's multiple faulty rationales while inexplicably arriving at the same incorrect conclusion:

"The finding that the tax return's calculation of profits constituted the business "profits" for purposes of this equity relationship is therefore supported by substantial evidence." *Brief of Respondent, page 7*.

Harjo disagrees that there is any evidence that supports the current order. The correct line item, Net Income Per Books, is M-1, line 1: \$114.

The trial court in Findings provides this direction:

"the income stream from Ocho is, by nature of joint ownership, a joint asset, as are the expenses and liabilities joint obligations." *Findings, CP 10*

The trial court has defined joint ownership to include the payment of expenses. The stated intent in the order is to evenly divide profits and the award to Hanson for the pre-expense \$5919 is untenable as it fails to achieve the standard for an equitable division based upon the courts own definition of joint ownership, profit and a 50/50 split (“half this amount” CP 186). Hanson seeks to enjoy the benefit of Ocho without being held accountable to her obligation to the partnership in paying its expenses. Just as Hanson inappropriately withdrew \$30,000 in violation of the partnership agreement in 2009 without considering the liabilities of the business, she attempts to take money inappropriately for 2010 before the business has paid its obligations, the Employee Social Security and Medicare.

The award to Hanson for \$5919 does not achieve the order’s stated goal of awarding  $\frac{1}{2}$  profit. Instead it additionally penalizes Harjo in the amount of \$5919 making his profit for that year not +\$57 but -\$5871, and enables Hanson to receive the benefit of the credit of \$5862 and then to also enjoy \$5919 via a cash payment from Harjo. This result misrepresents to the IRS Hanson’s distributions for 2010.

Hanson states in her Response that “\$5,919...This amount also reflected her ‘Partner’s Share of Profits on Form K-1’ ”. *Brief of Respondent, page 3*. This is a false statement. Hanson’s K-1 is analyzed in

detail in Brief of Respondent, pages 19-22. There is no K-1 language “Partner’s Share of Profits”. The K-1 does state “Current year increase...\$57”. See also *Hanson’s K-1, CP 168*.

The trial court’s order states there is a difference between the tax calculation and the kept books of the corporation, yet the court, when ordering a split between partners, did not review the tax form 1065 critically enough to understand that there is no difference, in error:

“total profits were \$11,839. It is not appropriate to reduce this due to difference between the tax calculation and the kept books of the corporation. Petitioner is entitled to half this amount, or \$5919....” *Judgment and Order for Profits For Ocho, CP 186*

Rather: 1.) The trial court abuses its discretion by basing yet another order on Hanson’s false statements which is an untenable error because there is no difference between the tax calculation and the kept books of the corporation; 2.) The trial court abuses its discretion by dividing the wrong number when stating it intended to divide profit.

A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* " A trial court's decision is manifestly unreasonable if it ' adopts a view' that no reasonable person would take." *In re Pers. Restraint of Duncan*, 167 Wash.2d 398, 402-03, 219 P.3d 666 (2009) (quoting) *Mayer v. Sto Indus., Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71P.3d 638 (2003»).

It is not rational to assert that the tax return calculates profit, accept the tax return as evidence of profit, and then use a line item that isn’t the result

of the tax return's calculation for profit and claim that it is "substantial evidence" of profit.

Courts review "findings of fact under a 'substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.'" *Korst v. McMahon*, 136 Wn.App. 202, 206, 148 P.3d 1081 (2006)

3.) Attorney's Fees

Findings: There is no support in the record nor was there ever a court order which required Harjo to provide accounting.

However, "2.14 FEES AND COSTS. Does not apply because attorney fees are not available in a non-marital relationship dissolution." CP 13.

Current Order: "The Respondent was ordered to provide an accounting... These fees are awarded based on Mr. Harjo's failure to comply with the Court's prior orders." CP 189

Analysis: After misleading the court that it had ordered Harjo to produce accounting, in Hanson's Response she acknowledges that this is not true.

"The court had not specifically ordered Harjo to produce the records" (*Brief of Respondent page 11*).

Even though Hanson admits there was no order, she maintains the lie that Harjo didn't comply:

"The trial court also properly awarded Hanson attorney's fees based on Harjo's noncompliance with the court's orders." (*Brief of Respondent page 1*)

Hanson knows that the order is invalid without non-compliance and violates the rules of this court falsely stating there was non-compliance.

The CPA provided the year end results to both partners each year; Hanson always had access to all accounting through the accountant. Hanson always had access to the business' CPA as amply demonstrated at trial for 2009 year end results (EX 1) and 2010 would have been no different. The IRS has stated "there is no outstanding issue on this tax period". (EX 2) Following her assault on Harjo, Hanson was barred from returning to Ocho premises but was not precluded from contact with the business' CPA, to whom she always had access. (EX 1)

"A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (citing *Mayer*, 156 Wash.2d at 684, 132 P.3d 115). *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010).

CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer

Hanson violates the Professional Code of Conduct and should be compelled to correct her false statements to the trial court. The order for attorneys fees should be reversed.

4.) Equity

Findings: "The court finds that an equitable division, taking into account the contributions of each and allocating the remainder to result in a 50/50 division of property is appropriate, fair and equitable." *Findings, page 5, lines 17 – 19, CP 5*

Current Order: “Furthermore, the \$52,205 was intended to create a fair and equitable division of property, and while not mathematically precise, the higher amount accomplishes the court’s goal of providing a fair result to Gelsey, given her greater need and the award of the parties’ businesses to Zachary.” *Judgment and Order on Motion to Reduce*, CP 188

Analysis: Hanson acknowledges, “the court originally found that a 50/50 division was fair and equitable” *Brief of Respondent*, page 11.

A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." Id. " A trial court's decision is manifestly unreasonable if it ' adopts a view' that no reasonable person would take." In re Pers. Restraint of Duncan, 167 Wash.2d 398, 402-03, 219 P.3d 666 (2009) (quoting) Mayer v. Sto Indus., Inc., 156 Wash.2d 677, 684,132 P.3d 115 (2006) (quoting State v. Rohrich, 149 Wash.2d 647, 654, 71P.3d 638 (2003»).

"[A]n order 'clarifying' a judgment explains or refines rights already given. It neither grants new rights nor extends old ones." *Kemmer*, 116 Wn.App. at 933 (citing *Rivard v. Rivard*. 75 Wn.2d 415, 418, 451 P.2d 677 (1969)).

The order on remand instructed the trial court “either to clarify its findings... or to adjust its calculation of the equalization payment” (CP 28). The resulting order granted a new right to Hanson, that of relative need, and modifies rather than clarifies the parties’ rights. It is a sea change moment that re-casts the entire case in a light that has no basis in the record and which Hanson only achieves through her perpetual post trial litigation coupled with the trial court’s lack of suspicion that Hanson’s ethical integrity does not preclude her making false statements.

Not only is relative need unsupported and therefore not allowed, but a specific definition for equity was established as a 50/50 split *after* considering contributions of parties. The court abused its discretion by signing orders in 2013 that include the brand new right for Hanson of relative need that deny Harjo rights granted him and retroactively justify errors on which Hanson now attempts to capitalize, rendering moot the evidence and proceedings at trial as well as Findings of Fact and lending credence to Hanson's falsities.

There is no assignment of relative need for either party in Findings of Fact. Given that relative need was never established at trial there may not be any presumption for it for either Hanson or Harjo. Hanson claims that the trial court has such mastery of the facts from the trial in 2010 as well as the current situation of parties to use its "broad discretion" to wisely and soundly arrive at a new and contradictory definition of equitable. However, by incorporating Hanson's false statements into orders the trial court reveals that it does not soundly and wisely employ facts, as it is now at odds with its own facts. Hanson makes this assertion without a single word of rationale in this regard from the trial court, and without the court gathering any information that would be required to make such an assessment. The trial court went out of its way to specifically define for this case that an appropriate, fair, and equitable outcome is a 50/50 split

and since that determination no evidence has been allowed, requested, or considered that would in any way amend this. Although relative need is not available per the established Findings, Hanson hopes that both courts will accept her argument that 4 years after the end of the 7 year “non-marital” (CP 28) relationship, Harjo is suddenly responsible for her financial well being to the detriment of his own. Both parties agree that the right for an equal division was established in Findings. Hanson contends that the trial court has the discretion to change its definition of equity and replace it without any support in the record with its diametric opposite, relative need.

Although the time for litigation on this matter is long since over and Harjo stands firmly that it is, the record would certainly support Harjo having greater need. In 2009 Hanson earned over \$100,000 and Harjo earned \$33,941. Also, in 2010 the court records that Hanson earned \$30.45/hour and that Harjo earns “\$36/hour based on a 40-hour work week. Zach typically works 50-60 hours a week.” CP 14.

Hanson states in her Response:

“Again, Judge Spector was the trial judge in this matter, and she is best able to determine what is fair and equitable to the parties under the circumstances. “The court’s continuing equitable jurisdiction includes the ability to grant whatever relief the facts warrant. *Ronken v. Bd....*” *Brief of Respondent page 9*

The trial court did determine what is fair and equitable and did base the Findings on the facts. The Findings cannot be re-imagined or equity redefined to the exact opposite of the established definition. The trial court failed to make judgements based on facts. Such a failure is abuse of discretion since it results in a factual error, which means the discretion is based on untenable grounds. Alternatively, by its own rulings, the ultimate distribution is unjust and inequitable. The court specifically defined just and equitable for this dissolution as 50/50:

“The court finds that an equitable division, taking into account the contributions of each and allocating the remainder to result in a 50/50 division of property is appropriate, fair and equitable.”  
*Findings of Fact page 5, CP 5*

### III. CONCLUSION

“Harjo misunderstands the law of equitable division of property following a marital-like relationship. He may be correct that “there is only one version of exact.” However, exactitude is not the standard – equity is. Within its broad discretion, the trial court made a fair and equitable decision in resolving this property dispute.” *Brief of Respondent, page 13*

“Furthermore, the \$52,205 was intended to create a fair and equitable division of property, and while not mathematically precise, the higher amount accomplishes the court’s goal of providing a fair result to Gelsey, given her greater need and the award of the parties’ businesses to Zachary.” *June 10, 2013 Judgment and Order on Motion to Reduce, CP 188*

Hanson refuses to acknowledge that the court defined equity for this non-marital dissolution and established this binding right in Findings of

Fact. Contrary to what Hanson now contends on behalf of her own personal gain, that definition does not allow for a re-evaluation of “all of the circumstances of the marriage, past and present, with an eye to the future needs of the persons involved” *Brief of Respondent page 10*. First, because the court allowed as relevant only the contributions each party made to the non-marital and business relationship up to the point of formal separation on May 31, 2009; second, because neither party was at any point considered by the court to have a greater or lesser financial need than the other. Just as the court may not now decide that its “continuing jurisdiction” can modify any other established right to property already awarded to either party as Hanson claims, the court may not now modify a rationale for the rights it already awarded. That the court did not intercept the dishonest, falsified nature of Hanson’s conduct in direct violation of the very rules of the institution is indeed an error of the court. The process allows for that error to now be corrected even though Hanson is comfortable violating the rules, and therewith Harjo’s rights, again in the Appellate Court. Hanson’s ruse depends on her being able to likewise deceive the higher court into making the same error and not detecting or sufficiently vetting her ever more egregious false statements.

Whereas Hanson has the means to employ an expert to subvert the established process that allows for the facts to be brought to light and

subsequently weighed on their merits, Harjo's more modest means do not allow for such a luxury and he is relegated to the layman's tools at his disposal: facts, disclosure, and integrity

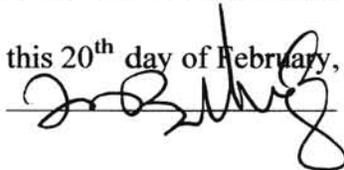
"While the issues raised by Harjo may have been debatable at the trial court, the resolution is within the trial court's discretion. There are no debatable issues on appeal." *Brief of Respondent, page 13*

Sleight of hand is second nature in Hanson's arguments. There is no debate that the rights granted Harjo in the Findings of Fact are being suppressed by awards to which Hanson has no right. There is also no debate that the trial court abused its discretion in regards to those rights by modifying them without support in the record.

Harjo requests that the Court of Appeals finalize the Judgments and Orders as follows and provide oversight in its implementation. A final Judgment and Order should include the following in order to realize the totality of the court's original intention for the rights it granted through Findings of Fact:

- A. The order for condo rents should be reversed and replaced with an amount for Hanson of \$3602
- B. The award of attorney's fees should be reversed.
- C. That attorney for Ms. Hanson be required to correct the false statements to the trial court consistent with the Rules of Professional Conduct.
- D. The order for the split of profits 2010 should be reversed and replaced with an order for \$57 to Hanson.

Respectfully submitted this 20<sup>th</sup> day of February, 2014

  
Zachary B Harjo, Pro Se

## EXHIBIT 1

**Cc:** Gelsey Hanson; Jim Weber; janetgibb@comcast.net; zbharjo@hotmail.com; Laura Colberg; janet@gibbcpa.com

**Subject:** RE: Harjo/Hanson

Dear Mr. Hart:

At this point, I am waiting for a response to an email I sent Gelsey last week regarding her guaranteed payment account. She wants to review transactions posted to the account before the return is finalized. I sent her another email yesterday with an update of the account asking her to respond by noon today. Should I take her non-response to both emails to mean that the account looks fine? Please advise.

Once I hear back from her, I will finalize the return as my schedule allows.

Thank you for your assistance,

**Janet Gibb | CPA, M.S. Tax**  
999 N Northlake Way, Suite 304  
Seattle, WA 98103  
T 206.282.3400  
F 206.971.5085

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**From:** Richard K. Hart [mailto:[rhart@hsblawyers.com](mailto:rhart@hsblawyers.com)]  
**Sent:** Tuesday, May 04, 2010 3:21 PM  
**To:** Laura Colberg  
**Cc:** Gelsey Hanson; Jim Weber; [janetgibb@comcast.net](mailto:janetgibb@comcast.net)  
**Subject:** Harjo/Hanson  
**Importance:** High

Below please find a 4/23/10 email by which Mr. Weber requested material from your client to enable Mr. Weber to proceed with his evaluation. I again checked with Mr. Weber today and learned that this material had still not been provided. I will bring a motion and seek terms for your client's delay of many months despite repeated requests for compliance in this matter unless all materials necessary for Mr. Weber to complete his evaluation are provided to his office by the close of business on Friday, May 7, 2010.

Very Truly Yours,

8/5/2010

FROM: Janet Gibb <janetgibb@comcast.net>  
Subject: Updated Draw Accounts

To: zbharjo@hotmail.com, "Gelsey Hanson" <gelsarus@yahoo.com>

Date: Wednesday, May 5, 2010, 4:03 PM

Zach and Gelsey,

Attached is a PDF of your updated accounts. Please review and call me by tomorrow at noon (Thursday, May 6<sup>th</sup>) with anything that looks amiss. I will finish the return tomorrow afternoon.

Thank you,

Janet

Janet Gibb | CPA, M.S. Tax  
TAX + CONSULTING  
999 N Northlake Way, Suite 304  
Seattle, WA 98103  
T 206.282.3400  
F 206.971.5085

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No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 9.0.819 / Virus Database: 271.1.1/2861 - Release Date: 05/07/10 23:26:00

8/5/2010

5

**To:** Gelsey Hanson  
**Cc:** Jim Weber; Laura Colberg; zbharjo@hotmail.com; Richard K. Hart  
**Subject:** RE: Updated Draw Accounts  
**Importance:** High

Gelsey,

In order for me to finish up the return today, please get back to me by noon. Jim Weber and the lawyers are waiting for the return in order to move forward.

By the way, Zach provided me with a copy of the \$7,000 cancelled check that was put to his QuickBooks' draw account. My understanding is that your aunt was doing the bookkeeping at that time. The check was payable to you, so the last spreadsheet that shows the \$7,000 increase to your draw account is verified and correct.

Please email/call if you have questions.

Thanks for your prompt attention,

Janet

Janet Gibb | CPA, M.S. Tax  
999 N Northlake Way, Suite 304  
Seattle, WA 98103  
T 206.282.3400  
F 206.971.5085

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**From:** Gelsey Hanson [mailto:gelsarus@yahoo.com]  
**Sent:** Friday, May 07, 2010 5:13 PM  
**To:** Janet Gibb  
**Subject:** Re: Updated Draw Accounts

Hi Janet,

I just saw this email and I haven't had time yet to review this, could you wait until Monday?

Thanks,

8/5/2010

## EXHIBIT 2

OCTOPI LLC  
OCHO  
% GELSEY HANSON MBR  
2325 NW MARKET ST  
SEATTLE WA 98107-4027

Taxpayer Identification Number: 39-2065126  
Tax Period(s): Dec. 31, 2010

Form: 1065

Dear Taxpayer:

This is in response to the inquiry of Jan. 24, 2014, from your representative. We have no record that you authorized her to act for you in this matter. Please notify her that we have replied directly to you. If you wish to authorize a third party to represent you, please complete Form 2848, Power of Attorney and Declaration of Representative. If you wish an appointee to inspect and/or receive confidential tax information, please complete Form 8821, Tax Information Authorization. For more information about these forms, visit our website at [www.irs.gov](http://www.irs.gov) or call the telephone number listed at the end of this letter.

Our records indicate that Schedules K-1 were filed with Form 1065 for the tax period ending Dec. 31, 2010. There is no outstanding issue on this tax period at this time.

If you need forms, schedules, or publications, you may get them by visiting the IRS website at [www.irs.gov](http://www.irs.gov) or by calling toll-free at 1-800-TAX-FORM (1-800-829-3676).

If you have any questions, please call us toll free at 1-800-829-0115.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number ( ) \_\_\_\_\_ Hours \_\_\_\_\_

12/30/14