

71831-2

71831-2

No. 71831-2



COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

LILY S. FU,
Appellant/Cross-Respondent,

v.

GARY RICHARDSON,
Respondent/Cross-Appellant.

APPELLANT'S REPLY BRIEF

Ronald J. Meltzer, WSBA No. 1203
Attorneys for Appellant/Cross-
Respondent

SINSHEIMER & MELTZER, INC., P.S.
701 Fifth Avenue, Suite 4100
Seattle, WA 98104-7073
Telephone: 206-340-4700

 ORIGINAL

TABLE OF CONTENTS

A. REPLY TO RESPONDENT’S ARGUMENT REGARDING APPELLANT’S BRIEF..... 1

1. Response to Restatement of Facts 1

2. Ms. Fu Refused to Transfer the Properties In Defiance of Multiple Unappealed Court Orders 3

3. The Trial Court Found that Ms. Fu’s Intransigence Should Not Bar Implementation of the CR2A Agreement but Declined to Order Transfer of the Properties 3

4. Ms. Fu’s Challenge to the CR2A Agreement Is Untimely, Misstates Prior Rulings, and Ultimately Seeks the very Relief she Obtained Below 3

5. Mr. Richardson is Entitled to his Fees In Responding to Ms. Fu’s Continued Intransigence and Frivolous Appeal 5

B. RESPONSE TO CROSS-APPEAL 6

C. CONCLUSIONS 10

TABLE OF AUTHORITIES

WASHINGTON CASES

Matter of Marriage of Greenlee
65 Wash.App. 703, 829 P.2d 1120 (1992)4

W.G. Platts, Inc. v. Platts
49 Wash.2d 203, 298 P.2d 1107 (1956).....6

In re Marriage of Wallace
111 Wash.App. 697, 45 P.3d 1131 (2002)9

In re Marriage of Kaseburg
126 Wash.App. 546, 108 P.3d 1278 (2005) 10

STATUTES

RCW 5.60.0702

COURT RULES

CR 41(b)4

A. REPLY TO RESPONDANT'S ARGUMENT REGARDING APPELLENT'S BRIEF.

1. RESPONSE TO RESTATEMENT OF FACTS

Mr. Richardson's counterstatement of the facts repeats claims made in the trial court that Ms. Fu misrepresented the status of her title until a point in time subsequent to the court ordering her to sign quit claim deeds in her personal capacity: "Ms Fu executed quit claim deeds in her individual name, without revealing that record title was in the name of 'The Lily Fu Living trust' her personal revocable living trust" (App. Brief p. 6, 7). "The entirety of Ms. Fu's factual challenges rests on her unsupported statement that she disclosed the transfers to Mr. Richardson during their marriage and Mr. Richardson does not deny or rebut this assertion" (App. Brief p. 12).

However, the record below indicates that Mr. Richardson knew or should have known about the title issues long before he attempted to record the quit claim deeds signed by Ms. Fu. In a pleading filed by Mr. Richardson's counsel in support of a motion to enforce the decree (CP 503-515) it was stated, "The wife claimed in her mediation statement that the only property owned in her name was the Stanwood house." It was known at the time of the mediation that the wife held some property in the name of the Lily Fu Living Trust and the Lily Fu

Limited Partnership. At the very least this is an admission by respondent's counsel that at the time of mediation before the CR2A Agreement was signed, he knew or had the ability to know the Colby Ave. property was not titled in the name of Lily Fu.

Respondent contends that RCW 5.60.070 prevents this court from considering the mediation materials. However, Respondent clearly waived this protection of this privilege when he made voluntary disclosure of the materials in a pleading filed with the court.

By April 2012 Mr. Richardson certainly was aware of the status of the title to both properties. In a declaration of Lily Fu, filed in April 2013 (CP 294-343) she attached pleadings she filed in April 2012, almost one year prior to signing the quit claim deeds. Exhibits B and D to her declaration are deeds reflecting that the Colby Ave. property was in the name of the Lily Fu Living Trust as of June 2008 and the Lake Ketchum property was in the name of the Lily Fu Living Trust in December 2004 (CP 294-343).

The assertion made by Respondent at p. 13 of his brief, "Mr. Richardson learned that Ms. Fu had placed title to the two properties in her trust only after Ms. Fu signed quit claim deeds that she knew would be ineffective", is clearly incorrect. The assertion by Respondent at p. 13 of his brief that Appellant's contention Ms. Fu

actually disclosed the status of title is “patently frivolous” is belied by respondents own pleadings as indicated above.

2. MS. FU REFUSED TO TRANSFER THE PROPERTIES IN DEFIANCE OF MULTIPLE UNAPPEALED COURT ORDERS

The short answer is Ms. Fu transferred her individual interest in the properties as is conceded at p. 6 of Respondent’s brief. What she did not do is transfer the properties in her capacity as the trustee of the living trust or the family limited partnership. Whether this was intransigence or a legal inability to do so or her exercising her rights to the letter of the CR2A Agreement it is not a defiance of a court order

3. THE TRIAL COURT FOUND THAT MS. FU’S INTRANSIGENCE SHOULD NOT BAR IMPLEMENTATION OF THE CR2A AGREEMENT BUT DECLINED TO ORDER TRANSFER OF THE PROPERTIES.

This argument is essentially the basis for the cross-appeal appellants response is contained in the section of this brief which responds to the cross appeal.

4. MS. FU’S CHALLENGE TO THE CR2A AGREEMENT IS UNTIMELY, MISSTATES PRIOR RULINGS, AND ULTIMATELY SEEKS THE VERY RELIEF SHE OBTAINED BELOW.

Ms. Fu, in her appeal, seeks very limited relief. Contrary to Respondent’s assertion, she does not seek to set aside the CR2A

Agreement. This was the object of much of the activity in the trial court and was unsuccessful. As Respondent correctly notes, these rulings were not appealed. The sole relief sought by Ms Fu's appeal is that Mr. Richardson's motion to implement be denied with prejudice in so far as it sought transfers of real property from entities not before the court.

The trial court did not grant Ms. Fu the relief she seeks on this appeal; i.e. a final termination of litigation with Mr. Richardson regarding enforcement of the title issues to the two properties in the dissolution action. *Matter of Marriage of Greenlee*, 65 Wash.App. 703, 829 P.2d 1120 (1992) cited by Respondent is not on point. The parties to the appeal conceded the issues raised by the appeal were moot.

An involuntary dismissal without prejudice is a remedy governed by CR 41(b):

“(b) Involuntary Dismissal; Effect. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him or her.

- (1) Want of Prosecution on Motion of Party...
- (2) Dismissal on Clerk's Motion...
- (3) Defendants' Motion After Plaintiff Rests...”

None of the circumstances described in the rule were present.

The dismissal without prejudice ordered by the trial court in the instant case occurred after both sides had presented their case in full. Mr. Richardson did not ask for a voluntary dismissal of his Motion to Implement the Decree. The court's refusal to grant Mr. Richardson's Motion to Order Transfer of Title was based on the absence of necessary parties to this action. As pointed out in Appellant's opening brief, and unrebutted by Respondent, those necessary parties will never be before this court in this dissolution action. See Appellant's opening brief pages 11-13. Therefore, as the facts cannot change, the result of the motion to implement cannot change. The appropriate ruling was a denial of the motion to implement with prejudice.

Contrary to respondent's assertion, the court did not defer specific enforcement of the CR2A Agreement to a separate fraudulent transfer action. The trial court's findings make no mention of a fraudulent transfer action (CP 37-44). There is no evidence in the record that a fraudulent transfer action was pending at the time the Findings were entered.

5. MR. RICHARDSON IS ENTITLED TO HIS FEES IN RESPONDING TO MS. FU'S CONTINUED INTRANSIGENCE AND FRIVOLOUS APPEAL.

This appeal raises a narrow issue of whether the courts ruling to dismiss without prejudice instead of with prejudice was proper.

Appellant has put forth authorities to support her contentions. Mr. Richardson is free to enforce the remaining provisions of the CR2A Agreement. Whatever intransigence Ms. Fu may have demonstrated in the trial court it is not present in this appeal

B. RESPONSE TO CROSS-APPEAL.

The issue raised in the cross-appeal is the failure of the trial court to order Ms. Fu to issue deeds to the properties at issue on behalf of her family limited partnership and/or her family trust.

Respondent urged the trial court to order Ms. Fu to transfer the properties claimed by the respondent in her capacity as the general partner of the limited partnership. The court was faced with conflicting testimony as to whether Ms. Fu's family partnership was an alter ego of Ms Fu. This partnership had been in existence long before the dissolution action was filed (RP 8-9). Other family members have interests in the partnership. In 2012, the year in which the CR2A Agreement was executed, Ms. Fu owned only 31% of the Limited Partnership (RP 10). The court could and did recognize that other parties were needed to determine whether Ms. Fu treated the limited partnership as an alter ego.

Respondent relies on the case of *W.G. Platts, Inc. v. Platts*, 49 Wash.2d 203, 298 P.2d 1107 (1956). This case differs significantly

from the instant case. The court in the cited case specifically found the corporation was an alter ego of Mr. Platts, stating at page 205:

“Of a certainty Willard G. Platts is in no position to ask any relief of this court or any court for any inconvenience or loss the placing of the lien on the corporate property may have caused *him*.

The action to set aside the lien and for damages is on the theory that W. G. Platts, Inc., was not a party to the divorce action and no lien could be placed on its property in that action. That would be true if W. G. Platts, Inc., was not at the time of the imposition of the lien the alter ego of Willard G. Platts, and if the interests of justice did not require that the court disregard the corporate entity. The trial court found:

‘That Willard G. Platts purchased the fuel business property in 1947 in Yakima * * *; that at said time the fuel business property included the land upon which the liens involved in this action were impressed; that * * * during the years 1948, 1949 and 1950, Willard G. Platts operated said fuel business as a sole proprietor under the name Independent Fuel Company; that early in 1951 he organized the plaintiff corporation, W. G. Platts, Inc., to which he conveyed the fuel business and fuel business property, receiving in exchange therefore 673 of the 675 shares of stock of said corporation; that the other two shares of stock were issued, one share each to Cora Platts, his mother, and to Lawrence G. Platts, his brother. * * * That at the time of the trial of said divorce action * * * and at the time the court announced its decision therein, Willard G. Platts was the owner of 99.7% of the stock of W. G. Platts, Inc., the plaintiff corporation herein; that further he was practically and entirely in control of the business and affairs of said corporation and that the corporation was in the complete control and domination of * * * Willard G. Platts; that the corporation was in fact the alter ego of Willard G. Platts, * * *.’ Finding of fact No. 5.

'That at the time of the entry of the divorce decree, Judge Barnett [the trial judge in the divorce action] in fixing the lien against the corporate property, considered the matter of substantial identity of Mr. Platts and the corporation and in effect pierced the corporate veil, holding that the corporation was the alter ego of Mr. Platts.' Finding of fact No. 7.

'That at the time of said divorce action and upon the appeal all of the corporate property and the individual property of Willard G. Platts were considered by both court and counsel as being the property of Willard G. Platts, * * *.' Finding of fact No. 6."

In this matter the trial court did not make any finding of alter ego nor should the court have made such a finding. At best the evidence was in conflict.

Respondent contends that Ms. Fu has not cited any case where a party to a dissolution action was able to thwart a CR2A obligation by putting title in the name of an alter ego. It should be noted that the transfers of the Lake Ketchum and the Colby Ave. properties occurred in January 2012, were recorded in March 2013 and were from Ms. Fu's living trust to the family partnership. See Respondent's Exhibits 31 and 34. Thus, even if these transfers were deemed fraudulent and set aside, title would not be in Ms. Fu's name. In fact, the Colby Ave. property was purchased by the Lily Fu Family Trust in 2008) and was never in Ms Fu's name (CP 346). Given this evidence, the court properly declined to enter a finding that the family trust and/or the family limited partnership were alter egos of Ms. Fu.

In re Marriage of Wallace, 111 Wash.App. 697, 45 P.3d 1131

(2002) is directly on point. The court found a transfer of community property by the husband to his father was fraudulent and the property was awarded to the wife. The court stated at p. 709:

“Randy next argues that the trial court erred by purporting to disestablish his father's property rights to the Mandy Road property. *See In re Marriage of Soriano*, 44 Wash.App. 420, 422, 722 P.2d 132 (1986) (“The dissolution court has no power over the property as to the rights of third parties claiming an interest in the property.”). Here, Randy refers to one of the trial court's findings: ‘[Randy]’s transfer of cash to his father for debts and other claimed debts owed to his father was fraudulent. Any alleged debt owing on the Mandy Road property was barred by the statute of limitations and the court finds that there were no such debts.’ Clerk’s Papers at 15.

Despite Randy’s conception of this finding, the trial court did not determine the rights of any non-party, including his father. In his oral ruling, the trial court expressly stated that he lacked the authority to set aside Randy’s conveyance of the Mandy Road property to his father.”

This is clearly what the trial court did in this case. Mr. Richardson was awarded Ms. Fu’s interest in the properties. Should the transfer to the family partnership by the living trust be deemed fraudulent and the living trust be deemed an alter ego of Ms Fu in a subsequent action, Mr. Richardson obtains what he believes to be the benefit of the CR2A Agreement.

An appellate court applies a manifest abuse of discretion standard to a trial court's dissolution findings. *In re Marriage of Kaseburg*, 126 Wash.App. 546, 108 P.3d 1278 (2005). Given the conflicting evidence, there is no basis for a manifest abuse of discretion in failing to find the limited partnership was an alter ego of Ms. Fu.

Counsel for respondent misrepresents the argument made by appellant regarding the order entered by commissioner Bedle. Ms. Fu has never contended that Commissioner Bedle ruled that the entire decree be reopened. His order granted limited relief regarding the issue of reopening the decree based on the lack of understanding of the trial judge as to the true nature of the title. Judge Okrent's final order entered on October 16, 2014 vacated the previous Findings and Conclusions except for the portion which terminated the parties' marriage and continued a finding that the CR2A Agreement was valid (CP 228-229). By such ruling the trial court was left only with the option of enforcing the settlement agreement as written. As previously argued, the absence of other parties prevented any other result.

C. CONCLUSION.

The cross-appeal of Respondent should be denied. The trial court's ruling denying the motion to implement without prejudice

should be reversed and the motion to implement should be denied
with prejudice.

RESPECTFULLY submitted this 21 day of January, 2015.

SINSHEIMER & MELTZER, INC., P.S.

By: Ronald J. Meltzer
Ronald J. Meltzer, WSBA No. 4203
Attorneys for Appellant/Cross-
Respondent

No. 71831-2

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

LILY S. FU,
Appellant/Cross-Respondent,

and

GARY RICHARDSON,
Respondent/Cross-Appellant.

PROOF OF SERVICE

Ronald J. Meltzer
Attorneys for Appellant/Cross-
Respondent

SINSHEIMER & MELTZER, INC. P.S.
701 Fifth Avenue, Suite 4100
Seattle, WA 98104-7073

Telephone: 206-340-4700



CLERK OF COURT
DIVISION 1
JAN 13 2011

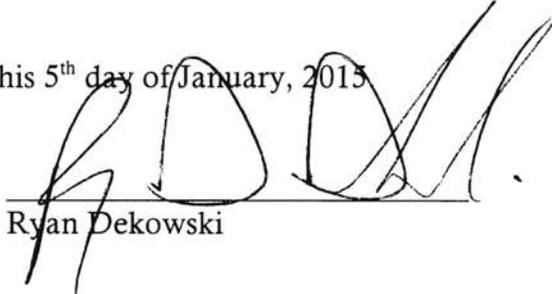
 ORIGINAL

I, Ryan Dekowski, certify that all at times mentioned herein I was and now am a citizen of the U.S. and a resident of the State of Washington, over the age of 18 years, not a party to this proceeding or interested therein, and competent to be a witness therein.

On January 5, 2015 I caused a copy of Appellant's Reply Brief to be served on the attorneys for Respondents at the address below:

Office of Clerk Court of Appeals- Division I One Union Square 600 University St. Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email
Howard Goodfriend Smith Goodfriend, P.S. 1619 8 th Ave. N. Seattle, WA 98109	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email
Bruce Moen Moen Law Office, PS 600 University St., Suite 3312 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email

SIGNED AT Seattle, WA this 5th day of January, 2015



Ryan Dekowski