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No. 71831-2

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

GARY RICHARDSON,

Respondent/Cross-Appellant,

v.

LILY FU,

Appellant/Cross-Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR SNOHOMISH COUNTY
THE HONORABLE DAVID KURTZ

BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

A trial court in a marital dissolution has authority to specifically enforce a CR 2A agreement in response to a spouse's attempt to avoid her obligation to transfer property by placing title in the name of an alter ego that she controls. In this case, an arbitrator, a commissioner, and a superior court judge each held in a series of unappealed orders that the parties' CR 2A agreement was valid and enforceable and ordered appellant Lily Fu to transfer two of eighteen properties to her husband Gary Richardson, as she had agreed in the CR 2A. When Ms. Fu claimed that it was impossible to perform her obligation because she had conveyed the properties to a family partnership that she controlled, the trial court held a two day evidentiary hearing, after which it found that the purported "impossibility" was "largely of her own making and should not be allowed to bar the implementation of the CR 2A."

The trial court's findings are supported by overwhelming evidence and should be affirmed. The trial court erred, however, in declining to specifically enforce the CR 2A in this action, and instead required Mr. Richardson to bring a fraudulent conveyance action to quiet title. This Court should remand for entry of a decree quieting title in the properties to Mr. Richardson, and declaring

that Ms. Fu, the Lily Fu Living Trust, the Lily Fu Family L.P., and any person or entity claiming title through them have no right, title or interest in the two properties. This Court should also affirm the money judgments for Ms. Fu's nonpayment of her monetary obligations and declare that the assets of Ms. Fu's alter ego entities are available for levy and attachment to enforce the monetary obligations of Ms. Fu. This Court should award Mr. Richardson his fees because the trial court's findings are supported by the overwhelming evidence of Ms. Fu's intransigence and her appeal is frivolous.

II. ASSIGNMENT OF ERROR ON CROSS-APPEAL

1. The trial court erred in declining to specifically enforce the CR 2A in this action because "there may be additional parties who have an interest in said parcels and who are not before the court in this action." (FF 18, CL 2, CP 42) (Appendix A)

III. RESTATEMENT OF ISSUES

A wife entered into a CR 2A agreement to convey two parcels of real estate to her husband to settle their divorce without disclosing that she had placed record title to the properties in her revocable living trust of which she was trustor, trustee, and sole beneficiary, and without disclosing that she had executed, but not

recorded, deeds transferring the properties to her family limited partnership in which she was general partner.

1. Does substantial evidence support the trial court's findings that any "impossibility" in implementing the CR 2A is of the wife's making and that she should not benefit from that "impossibility"?

2. Did the trial court err in refusing to enforce the CR 2A by quieting title in the husband against the wife, her trust, and her family partnership as the wife's alter egos?

3. May the wife appeal the trial court's May 2014 decision resolving how to implement the CR 2A after failing to appeal four appealable orders holding the CR 2A enforceable?

4. Did the trial court have the authority to resolve whether the wife purposefully undermined the CR 2A?

5. Is the wife aggrieved by the trial court's order denying without prejudice the husband's efforts to enforce the CR 2A and instead authorizing him to bring a separate fraudulent transfer action?

6. Should the husband be awarded his attorney's fees on appeal due to the wife's continued intransigence and frivolous appeal?

IV. RESTATEMENT OF FACTS

A. Lily Fu agreed to transfer two properties and make monthly payments to her ex-husband Gary Richardson in a CR 2A agreement distributing their marital estate.

Gary Richardson and Lily Fu married on December 31, 1989. (CP 204) They separated and filed for divorce in June 2011. (CP 204) Ms. Fu is a sophisticated real estate investor who had acquired eighteen properties by the time of the parties' separation, sixteen of which had no encumbrances. (CP 210, 267, 647; RP 43-44)

Following a mediation on March 13, 2012 at which both spouses were represented by counsel, Mr. Richardson and Ms. Fu fully settled all issues in their marital dissolution,¹ executing a CR 2A agreement distributing their property. (FF 1-3, CP 38; Ex. 3; CP 204-10) The agreement was "intend[ed] to be a fully binding and enforceable CR-2A Settlement Agreement." (FF 6, CP 38; CP 87, 89, 204-05) Each party agreed to "fully cooperate to implement the terms of this CR-2A Settlement Agreement and sign all documents/undertake all acts necessary to implement this agreement." (CP 208)

¹ The only issue in this marriage was property. The parties had no dependent children. (CP 610)

The agreement gave Ms. Fu \$5.9 million of the parties' \$6.5 million estate, including sixteen of the properties. (CP 210; 1/6 RP 72) Mr. Richardson was awarded the "Lake Ketchum" and "Colby" properties.² (FF 7-8, CP 39; CP 210) Ms. Fu agreed to pay Mr. Richardson 120 monthly payments of \$2,151 as an "equalizing lien" and to pay off within five years her personal line of credit (then \$190,259), which encumbered the Lake Ketchum property. (FF 7, 15, CP 39, 41; CP 206-07)

B. Ms. Fu refused to transfer the properties in defiance of multiple unappealed court orders.

Ms. Fu refused to transfer the properties or to make the required monthly payments, requiring Mr. Richardson to file a motion to enforce the CR 2A. (CP 681-84) On April 27, 2012, Snohomish County Superior Court Judge Richard Okrent ruled "the parties entered into a valid CR 2A" and referred for arbitration by the mediator Ms. Fu's specific challenges to the values and character of the property distributed under the parties' agreement. (CP 80; Ex. 35) The arbitrator rejected Ms. Fu's arguments (CP 86-92; Ex. 36), finding that the CR 2A was the result of reasoned negotiation and that it eliminated risk for each party:

² The Lake Ketchum property's address is in Stanwood. The Colby property's address is in Everett.

In theory if the parties had taken this matter to trial . . . it is possible that Mr. Richardson [] might have received very little property. By the same token, the court at trial could have . . . split the property in a way much more favorable to Mr. Richardson, potentially even 50/50. The parties assessed these risks in the all day mediation and agreed to the division of assets and debts based on their evaluations of these risks.

(CP 89) On July 30, 2012, Judge Okrent enforced the arbitration award, entering a decree of dissolution approving and incorporating the CR 2A, and awarding Mr. Richardson \$1,000 in attorney's fees. (FF 4, CP 38; CP 608-11; *see also* CP 641-45) Ms. Fu did not appeal the decree.

Ms. Fu still refused to transfer the properties and refused to pay the equalizing lien. On February 26, 2013, in an unappealed order Snohomish County Superior Court Commissioner Arden Bedle granted Mr. Richardson's renewed motion to enforce and for contempt, entered judgment against Ms. Fu for \$22,477.95 in lien arrearages, awarded Mr. Richardson \$1,500 in attorney's fees, and required Ms. Fu to "proceed immediately to the office of [Mr. Richardson's attorney] and sign 2 quit claim deeds today." (CP 202-03; Ex. 37) Ms. Fu executed quitclaim 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.³ (FF 9, 12, CP 39-40; CP 346, 498; 1/3 RP 60, 75-77; Exs. 13-14, 41-42)

On March 7, 2013, after discovering that Ms. Fu’s deeds were ineffective to transfer title, Mr. Richardson sought an order requiring Ms. Fu to “execute quit claim deeds which effectively transfer title.” (CP 579) Ms. Fu instead, on March 15, recorded warranty deeds, transferring “[f]or no consideration” title from her trust to the “Lily Fu Family LP” in which she as general partner is “solely responsible for the management of the Partnership business,” and authorized to “convey . . . any of the property . . . of the limited partners . . . and in connection therewith, to execute in the Partnership’s name, any and all deeds.” (FF 13, CP 40; Exs. 8-9, 31, 34; CP 432, 435, 519, 523) Ms. Fu’s immediate family members are the limited partners. (CP 432) On March 19, 2013, Commissioner Bedle, entered an order stating, “To the extent that the true nature of the title was not known by the trial judge, the decree needs to be reopened.” (CP 201)

³ Ms. Fu transferred the Lake Ketchum property to her trust in 2004. (CP 346) Ms. Fu acquired the Colby property in 2008, titling it in her trust’s name. (CP 346, 498)

Judge Okrent found that Ms. Fu had purposefully defied the CR 2A and the court's orders, refusing to convey the properties or pay the equalizing lien:

It's also clear that Ms. Fu is a very sophisticated real estate investor, and that at the time she was deposed and at the time she signed the CR 2(a) agreement, it's clear to me that she knew exactly what she was doing when she basically decided that she was not going to pay her ex-husband a dime and was not going to convey those properties. . . . Ms. Fu is intransigent. She will not convey the properties. . . . I think she knows full well what she was doing. She's not going to pay. She's going to set up a situation with irrevocable trusts and limited partnerships providing a barrier, a tactical barrier to prolong this until Mr. Richardson just goes away.

(CP 267-68) On July 11, 2013, Judge Okrent again affirmed the arbitrator's ruling that the CR 2A was a "valid and enforceable property settlement agreement" and ordered "[t]he case . . . set for trial on the issue of implementation of the CR2A agreement," awarding Mr. Richardson \$10,000 in attorney's fees. (CP 229, 268) Ms. Fu did not appeal.⁴

⁴ Judge Okrent vacated his initial written order entered on July 11, 2013, because Ms. Fu's counsel presented it without notice to Mr. Richardson's counsel. (CP 228-29; Ex. 38; *see also* CP 633-35)

C. The trial court found that Ms. Fu's intransigence should not bar implementation of the CR 2A, but declined to order transfer of the properties.

After hearing two days of testimony on implementing the CR 2A, Judge David Kurtz ("the trial court") issued a decision on March 19, 2014, "ordering a large monetary judgment against" Ms. Fu, rather than specific performance. (CP 69-70, 102) Mr. Richardson moved for reconsideration alleging a money judgment would be uncollectible. (CP 74-78)

On May 9, 2014, the trial court revised its decision, finding that the "impossibility" in transferring the properties was "largely of [Ms. Fu's] own making and should not be allowed to bar the implementation of the CR 2A." (FF 14, CP 41; *see also* FF 16, CP 41) As had the arbitrator, the commissioner, and Judge Okrent, the trial court rejected Ms. Fu's contention "that she was confused at the time of entering into the said CR 2A." (FF 5, CP 38) In agreeing to transfer the properties, Ms. Fu represented that she "either owned said properties at that time or, alternatively, that she could convey the properties from either the Lilly Fu Trust or the Lilly Fu Family LP as may be necessary." (FF 9, CP 39-40; *see also* FF 11, CP 40) By transferring title to her family partnership two weeks after being ordered to convey the properties Ms. Fu "effectively

defeated the provisions of the CR 2A and effectively circumvented the intended result of compliance with the Court's Order." (FF 13, CP 40-41) The trial court found that Ms. Fu had failed to account for rents she improperly collected on the Colby property and that she failed to make any payments on the equalizing lien. (FF 15, 17, CP 41-42)

Nonetheless, the trial court declined to specifically enforce the CR 2A agreement, "because there may be additional parties who have an interest in said parcels and who are not before the court in this action. Consequently, the actual transfer of title sought in the Motion to Implement should be denied without prejudice." (CL 2, CP 42; *see also* FF 18, CP 42; CP 34, 69-70) The trial court entered a judgment of \$30,114 in lien arrearages through March 2014 and awarded Mr. Richardson \$4,000 in attorney's fees. (CP 33-36; CL 3-4, CP 43)

Ms. Fu has not made any lien payments since April 2014, and as of December 2014 she is \$71,950.95 in arrears overall on the lien. Nor has Ms. Fu accounted for the rents from the Colby property, which she continues to collect without authorization, nor has she paid off her line of credit encumbering the Lake Ketchum property, as she agreed in the CR 2A.

Ms. Fu appeals. (CP 1-32, 52-67) Mr. Richardson cross-appeals. (CP 685-86)

V. ARGUMENT

A. The trial court properly found based on overwhelming evidence that any “impossibility” in implementing the CR 2A is the result of Ms. Fu’s purposeful thwarting of her agreement.

The trial court’s findings that Ms. Fu purposefully undermined the CR 2A and that she should not benefit from her actions are supported by overwhelming evidence. Ms. Fu’s challenge to that decision is without merit.

This Court “review[s] a conclusion of law based on findings of fact to determine whether the trial court’s findings are supported by substantial evidence, and if so, whether those findings support the conclusions of law. Substantial evidence is evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Miller v. Paul M. Wolff Co.*, 178 Wn. App. 957, 963, ¶ 8, 316 P.3d 1113 (2014) (citation omitted). “In the absence of a clear challenge, we treat findings of fact as verities on appeal.” *Estate of Palmer*, 145 Wn. App. 249, 265, ¶ 35, 187 P.3d 758 (2008).

Ms. Fu's failure to provide any support for her challenges to the trial court's factual findings is reason alone for rejecting her appeal. RAP 10.3(a)(6) (argument must include "references to relevant parts of the record"); *Palmer*, 145 Wn. App. at 265, ¶ 35 ("Counsel is obligated to demonstrate why specific findings of the trial court are not supported by the evidence and to cite to the record in support of that argument."). Ms. Fu does not cite the record once in her argument. (App. Br. 9-15) The entirety of Ms. Fu's factual challenge rests on her unsupported statement that "she disclosed the transfers to Mr. Richardson during their marriage" and that "Mr. Richardson did not deny or rebut" this assertion. (App. Br. 13) Ms. Fu makes no argument that she paid the equalizing lien, and it is undisputed that she has not made *any* payments. (1/3 RP 46) This Court should reject Ms. Fu's perfunctory factual challenges. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (court will not consider arguments "not supported by any reference to the record").

In any event, the trial court correctly rejected Ms. Fu's contention that she was "confused" about the meaning of a CR 2A agreement she signed with the advice of counsel, as had the

arbitrator in 2012. (FF 5, CP 38) Ms. Fu agreed to transfer the properties in exchange for retaining sixteen other properties, worth nearly \$6 million, and avoiding the risks associated with trial. (1/6 RP 72-73 (quoting arbitration decision at CP 89)) Mr. Richardson learned that Ms. Fu had placed title to the two properties in her trust only after Ms. Fu signed quitclaim deeds that she knew would be ineffective. (1/3 RP 75-76; FF 12, CP 40 (unchallenged)) Even then Ms. Fu did not disclose that she had signed, but not yet recorded, deeds transferring the property to her family partnership. (FF 13, CP 40-41; 1/3 RP 75-76) And she recorded those deeds two weeks *after* a commissioner held her in contempt for failing to transfer the properties. (FF 13, CP 40-41; CP 202-03, 519, 523)

Ms. Fu's contention on appeal – that she actually disclosed before signing the CR 2A that she did not have record title to the properties or the ability to transfer them – is patently frivolous.⁵ Ms. Fu concealed the fact that record title was in her Living Trust and engaged in a subterfuge to place those properties in her family partnership when she was ordered to convey them. (1/3 RP 35, 44,

⁵ See, e.g., App. Br. 9 (“Respondent entered into this agreement knowing . . . that Appellant Lily Fu did not have legal title to two properties she promised to transfer as part of this agreement.”), App. Br. 13 (“The transfers by Ms. Fu were known prior to the execution of the CR2A Agreement.”).

57, 76-77) Indeed, Ms. Fu does not challenge the trial court's finding that she represented that she controlled the properties and had the ability to transfer title. (FF 9, 11, CP 39-40)⁶

Ms. Fu falsely states that she disclosed the status of the properties in discovery leading up to the CR 2A. (App. Br. 3-4) Ms. Fu testified in her March 6, 2012, deposition that “[s]ome of [her] real estate is in [the family partnership] and some is not” and that she “put a few houses in the family limited partnership.” (Ex. 16; *see also* CP 348-50) Ms. Fu’s vague statement that a “few” or “some” properties were titled in the name of her family partnership falls far short of disclosing that she “did not have individual title to the two properties which are at issue” or the power to transfer those specific properties, as she agreed in the CR 2A. (App. Br. 4)

Nor do the (unspecified) tax returns purportedly produced by Ms. Fu in discovery refute the trial court’s findings. (App. Br. 4) The partnership tax return for 2012 (Ex. 12; CP 456), which shows that the properties are held by the partnership, is dated March 2013 – a year *after* Ms. Fu signed the CR 2A agreement. The tax return

⁶ The trial court aptly noted that because the CR 2A agreement explicitly addressed the line of credit on the Lake Ketchum property, which would have impeded transferring title, Mr. Richardson appropriately believed there were no other obstacles to transferring title. (1/6 RP 74-75)

for 2011 (completed in early 2012), shows that Ms. Fu was earning income from the properties *as an individual*. (CP 564) Ms. Fu relies on a mediation statement, which is not in the record and is inadmissible as a matter of law, but in any event, does nothing to establish her purported disclosures. (*Compare* App. Br. 4, 6 *with* RCW 5.60.070 (mediation materials “are privileged and confidential and are not subject to disclosure”))

That Mr. Richardson may have had general knowledge of Ms. Fu’s estate planning vehicles does not establish that he knew Ms. Fu did not have record title to the specific properties she agreed to transfer under the CR 2A. (App. Br. 6-7) To the contrary, Ms. Fu never disclosed the details of her estate planning to Mr. Richardson. (1/3 RP 35, 82-83) As the trial court stated, “Yes, there perhaps was a vague understanding about the existence of Ms. Fu’s living trust and/or the family limited partnership agreement. But given the evidence, the family dynamics, and the reasonable inference from the language of the 2A agreement itself, the husband reasonably believed that the wife had the power to control the properties.” (1/6 RP 73-74)

The procedural history of this case underscores the depth of Ms. Fu’s intransigence and dissembling. In response to Mr.

Richardson's initial efforts to enforce the CR 2A she did *not* argue that she did not have record title to the properties or the power to transfer them. Instead, Ms. Fu affirmed that *she owned the properties in her individual name*:

- “All of the properties were acquired by deeds *to me in my individual name.*” (CP 540, 647) (emphasis added)
- The Lake Ketchum property was “owned *at all times of public record as the sole property of respondent.*” (CP 535, 677) (emphasis added)
- “the [line of credit on the Lake Ketchum property] and all of the documents creating it *are in my individual name.*” (CP 541, 648) (emphasis added)

Because Ms. Fu should have effectuated the transfer of the properties long ago, the trial court properly awarded Mr. Richardson two months rent from the Colby property that Ms. Fu deposited into the registry of the court. (App. Br. 14) Ms. Fu has continued to pocket rent from the Colby property and failed to provide any accounting of those rents. (FF 17, CP 41-42; 1/3 RP 57) If Ms. Fu's immediate family members believe they were harmed by Ms. Fu's decision to deposit rents into the court, they may recover against Ms. Fu directly. (App. Br. 14) *See also Diamond Parking,*

Inc. v. Frontier Bldg. Ltd. P'ship, 72 Wn. App. 314, 318, 864 P.2d 954 (1993) (“general partners owe limited partners a fiduciary duty described as *the highest standard of conduct*”) (emphasis in original; internal quotation omitted), *rev. denied*, 124 Wn.2d 1028 (1994). Ms. Fu’s appeal is without merit.

B. On Mr. Richardson’s cross-appeal, this Court should direct the trial court to quiet title in Mr. Richardson because the trial court’s findings establish that Ms. Fu used her alter ego entities to evade her obligation to convey the two properties.

The trial court’s findings that Ms. Fu used her living trust and her family partnership to evade her CR 2A obligations establish Mr. Richardson’s right to specific performance of the CR 2A, as well as his right to execute on the assets of the trust and partnership to enforce Ms. Fu’s delinquent monetary obligations. The trial court instead allowed Ms. Fu’s intransigence to defeat enforcement of the CR 2A, relegating Mr. Richardson to a fraudulent conveyance action against “third parties” who are entirely under Ms. Fu’s control. (FF 18, CL 2, CP 42) This Court should remand for entry of an order quieting title in Mr. Richardson against Ms. Fu, her trust, and her partnership, and directing that the assets of Ms. Fu’s trust and partnership are available for satisfaction of her monetary obligations.

Civil Rule 2A “insure[s] that negotiations undertaken to avert or simplify trial do not propagate additional disputes” by requiring settlement agreements be made in writing or agreed to in open court. *Marriage of Ferree*, 71 Wn. App. 35, 41, 856 P.2d 706 (1993). A court presiding over an action involving a CR 2A agreement has the authority to enforce it. *See, e.g., Ferree*, 71 Wn. App. at 45; *Kwiatkowski v. Drews*, 142 Wn. App. 463, 482, ¶ 37, 176 P.3d 510, *rev. denied*, 164 Wn.2d 1005 (2008); Tegland, 15 Wash. Prac., Civil Procedure § 53.26 (2d ed. 2009) (“the appropriate recourse is a motion to enforce” when settlement agreement is breached while an action is pending).

The trial court may also as justice requires, disregard an alter ego entity of a party to a dissolution in order to enforce the decree. *W. G. Platts, Inc. v. Platts*, 49 Wn.2d 203, 207-09, 298 P.2d 1107 (1956). In *Platts*, a corporation brought an action to remove a lien imposed on its property in a dissolution action involving its majority shareholder. The Court rejected the corporation’s argument that it “was not a party to the divorce action and no lien could be placed on its property in that action,” because the shareholder’s “control and use [of] the corporation as a tool or instrument for carrying out his own plans and purposes” rendered

it his alter ego. 49 Wn.2d at 205, 209. The Court further reasoned that the shareholder had “acquiesced in and consented to the divorce decree.” 49 Wn.2d at 209. The Court held that a stock transfer to third parties prior to the divorce decree did not “in any way change[] the domination and control of the corporation.” 49 Wn.2d at 207. The Court concluded, “Because the interests of justice require it, the judicial disregard of the corporate entity by the trial court was warranted in the divorce action.” 49 Wn.2d at 207-08.

The trial court here manifestly abused its discretion in refusing to disregard the trust and family partnership as alter egos of Ms. Fu. Ms. Fu was the trustor, trustee, and sole beneficiary of her trust, with full authority to transfer trust property. (CP 355, 359, 361, 369, 382, 421) Ms. Fu was also the general partner of her family partnership “solely responsible for the management of the Partnership business” and authorized to “convey . . . any of the property . . . of the Limited Partners . . . and . . . to execute in the partnership’s name, any and all deeds.” (CP 432, 435, 437 (authorizing Ms. Fu to “convey[] in the name of any Partner” partnership property); *see also* RCW 25.10.381) Ms. Fu confirmed at trial that she views the trust and partnership property as

interchangeable with her own, or as she put it, “the transfer is me to myself.” (1/3 RP 155; *see also* 1/3 RP 44, 56-57, 101, 103) Ms. Fu indiscriminately uses rents earned from trust and partnership property to pay her personal line of credit that is secured by the Lake Ketchum property awarded to Mr. Richardson. (1/3 RP 56-57, 155-56; 1/6 RP 32) Both the trust and partnership were nothing more than tools “for carrying out [Ms. Fu’s] own plans and purposes,” *i.e.*, her estate planning, and no “transfer” has “in any way changed [her] domination and control of” trust and partnership property. *Platts*, 49 Wn.2d at 207, 209.

As the arbitrator previously found (CP 89), here as in *Platts*, Ms. Fu acquiesced – indeed expressly agreed – to the transfer of the properties from her alter ego entities “for fear more onerous terms would be imposed upon” her. 49 Wn.2d at 209. Ms. Fu agreed to transfer the properties in exchange for retaining sixteen other properties and because she recognized the risk that a dissolution trial could result in a 50/50 split rather than the over ninety percent share (\$5.9 of \$6.5 million) she received under the CR 2A. (1/6 RP 72-73) It “would be unconscionable and a denial of justice” to allow Ms. Fu’s dissembling to nullify the promise she made in exchange for these substantial benefits. *Platts*, 49 Wn.2d at 209.

Ms. Fu has not cited any case in which a party to a dissolution was able to thwart a CR 2A obligation to transfer property by putting title in the name of that party's alter ego. *Marriage of Kaseburg*, 126 Wn. App. 546, 108 P.3d 1278 (2005) (App. Br. 11-12); *In re Marriage of Wallace*, 111 Wn. App. 697, 45 P.3d 1131 (2002), *rev. denied*, 148 Wn.2d 1011 (2003) (App. Br. 12). In *Kaseberg* the property at issue, the parties dream home, was “not before the trial court for valuation or distribution,” because of a valid foreclosure action known to both parties – not because of a party's secret transfers to her alter ego entities. 126 Wn. App. at 559, ¶ 34. Likewise, *Wallace* did not involve a spouse claiming her transfers of property “[f]or no consideration” to her alter ego entities defeated a property settlement. (*Compare* 519, 523 *with* 111 Wn. App. at 709-10)

The trial court had ample authority to enforce the CR 2A and manifestly erred by refusing to do so, rewarding Ms. Fu's intransigence and punishing Mr. Richardson by requiring further litigation. This Court should remand for entry of an order quieting title in Mr. Richardson against Ms. Fu, her trust, and her partnership. It should direct the trial court to order that the assets of Ms. Fu's trust and partnership are available for satisfaction of her

other obligations under the decree, including not only the money judgments but also her obligation to remove her personal line of credit as an encumbrance to the Lake Ketchum property awarded to Mr. Richardson.

C. Ms. Fu's challenge to the CR 2A is untimely, misstates prior rulings, and ultimately seeks the very relief she obtained below.

1. Ms. Fu cannot now challenge the CR 2A having failed to appeal four orders affirming its validity.

Ms. Fu's appeal fails for another reason: an arbitrator, a commissioner, and a judge have each affirmed the validity of the CR 2A. Ms. Fu failed to appeal any of their rulings. She cannot now challenge the CR 2A.

A party must seek review within 30 days of the entry of an appealable order to challenge it on appeal. RAP 5.2; *Bushong v. Wilsbach*, 151 Wn. App. 373, 213 P.3d 42 (2009). A decree of dissolution is a final judgment, as is a contempt adjudication establishing the party's willful resistance to the court's orders. *Marriage of Swanson*, 88 Wn. App. 128, 142 n.46, 944 P.2d 6 (1997), *rev. denied*, 134 Wn.2d 1004 (1998); *Wagner v. Wheatley*, 111 Wn. App. 9, 15-16, 44 P.3d 860 (2002). A court's confirmation of an arbitrator's award is also an appealable order. RCW

7.04A.280(1)(c). When a party fails to challenge an appealable order, that order becomes the law of the case. *Beltran v. State Dept. of Social and Health Services*, 98 Wn. App. 245, 254, 989 P.2d 604 (1999) (unappealed summary judgment is “now the law of the case”), *rev. granted*, 140 Wn.2d 1021 (2000).

Ms. Fu did not appeal 1) Judge Okrent’s April 27, 2012, order affirming the validity of the CR 2A, 2) the decree of dissolution incorporating the CR 2A after the arbitrator affirmed its validity, 3) the February 26 order holding her in contempt for failing to transfer the properties and make lien payments, or 4) Judge Okrent’s order affirming that the CR 2A had not been vacated, but was “[a] valid and enforceable property settlement agreement.” (CP 80, 202-03, 229, 608-11; *see also* App. Br. 9 (“various Superior Court judges hearing this case have affirmed the validity of this agreement.”)) *See Deskins v. Waldt*, 81 Wn.2d 1, 5, 499 P.2d 206 (1972) (“The proper method of challenging the correctness of an adverse ruling is by an appeal and not by disobedience.”). She does not assign error to them now.

Each of these orders establish the law of the case. Ms. Fu cannot now challenge the CR 2A months and years after failing to

appeal the orders affirming its validity. This Court should reject Ms. Fu's untimely challenge to the CR 2A.

2. The commissioner did not vacate the CR 2A agreement.

Ms. Fu's argument that the trial court lacked any authority to enforce the CR 2A is also meritless and is based on the falsehood that Commissioner Bedle "vacat[ed] the CR2A Agreement." (App. Br. 3) In his order, Commissioner Bedle reopened the decree, not the CR 2A, stating, "*To the extent* that the true nature of the title was not known by the trial judge, the *decree* needs to be reopened." (CP 201 (emphasis added)) Commissioner Bedle recognized that "[n]o action now is appropriate" and that how best to implement the CR 2A would be resolved by future courts.

Thus, on April 24, 2013, Judge Okrent entered an order setting for hearing on June 6, 2013, the issue of "whether the decree will be vacated, partially vacated, or otherwise resolved." (CP 639-46) After that hearing held "pursuant to . . . order of Court Commissioner Arden Bedle," Judge Okrent found that Ms. Fu was using the title "issues" as a subterfuge for defeating the CR 2A and ordered a trial be held to resolve whether Ms. Fu had rendered enforcement of the CR 2A impossible. (CP 262-64) Ms. Fu ignores

that both the trial court and Judge Okrent confirmed the validity of the CR 2A following Commissioner Bedle's order. (CP 229; FF 4, 6, CP 38 (unchallenged)) The trial court was free to take appropriate action to enforce the CR 2A in response to Ms. Fu's intransigence. (See also § V.B)

3. Ms. Fu is not aggrieved because her appeal seeks the very relief granted by the trial court – that the CR 2A agreement be enforced by a separate fraudulent transfer action.

Only an aggrieved party has standing to appeal. RAP 3.1. The trial court granted Ms. Fu the relief she seeks on appeal – deferring specific enforcement of the CR 2A to a separate fraudulent transfer action. Because Ms. Fu has already received the relief she seeks, this Court should reject her appeal.

For a case to be justiciable there must be “an actual, present and existing dispute.” *W. Coast Pizza Co. v. United Nat. Ins. Co. Re: Policy No. XTP0079005*, 166 Wn. App. 33, 37 n.2, ¶ 9, 271 P.3d 894 (2011). An appeal lacking an actual controversy between the parties should be dismissed as moot. *Price v. Price*, 174 Wn. App. 894, 902, ¶ 16, 301 P.3d 486 (2013) (“We consider a case moot if there is no longer a controversy between the parties.”).

Ms. Fu argues that the trial court lacked the power to order the transfer of the properties without joining as parties her alter ego entities. (App. Br. 10 (“the Lily Fu Limited Partnership and perhaps the Lily Fu Living Trust . . . were not and could not be made parties to this litigation”), 11 (“What the court cannot do in this case is rewrite the agreement and add parties”), 13) Ms. Fu ignores that the trial court *agreed* with her and declined to specifically enforce the CR 2A “because there may be additional parties who have an interest in said parcels and who are not before the court.” (CL 2, CP 42) Ms. Fu is not aggrieved by an order granting her the very relief she seeks on appeal. Her appeal should be dismissed.

D. Mr. Richardson is entitled to his fees incurred in responding to Ms. Fu’s continuing intransigence and frivolous appeal.

Ms. Fu continues to raise frivolous arguments to delay and ultimately avoid complying with her obligations under a valid and enforceable CR 2A agreement she signed voluntarily and with the advice of counsel. This Court, as did the courts below, should award Mr. Richardson his attorney’s fees incurred in responding to her intransigence and frivolous arguments. RAP 18.1, 18.9.

This court may award fees on appeal based either on a party’s intransigence below or on appeal. *Mattson v. Mattson*, 95

Wn. App. 592, 606, 976 P.2d 157 (1999) (awarding fees on appeal based on “intransigence at trial” and “appeal of that outcome”); see also *Marriage of Wallace*, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002) (App. Br. 12). Mr. Richardson “was forced to come to the court to enforce [his] decree” because Ms. Fu failed to comply with “a clear legal right” embodied in a dissolution agreement. *Marriage of Greenlee*, 65 Wn. App. 703, 708, 710, 829 P.2d 1120, rev. denied, 120 Wn.2d 1002 (1992). “[I]f intransigence is demonstrated, the financial status of the party seeking the award is not relevant.” *Mattson*, 95 Wn. App. at 604.

Ms. Fu’s intransigence has wholly undermined the very purpose of CR 2A agreements – “insur[ing] that negotiations undertaken to avert or simplify trial do not propagate additional disputes.” *Marriage of Ferree*, 71 Wn. App. 35, 41, 856 P.2d 706 (1993). The court below found Ms. Fu intransigent on four separate occasions and awarded Mr. Richardson his attorney’s fees (CL 4, CP 43; CP 203, 267-68, 610), a fact she ignores in blaming Mr. Richardson for dragging out this proceeding. Mr. Richardson is entitled to his fees for being forced to come to court numerous times to enforce his “clear legal right” under the CR 2A. *Greenlee*, 65 Wn. App. at 710.

Mr. Richardson is also entitled to his attorney's fees under RAP 18.9 because Ms. Fu's appeal fails to raise a debatable issue. § V.A, C; *Greenlee*, 65 Wn. App. at 710 (appeal disputing clear dissolution agreement was frivolous). In the same breath, she argues both that she agreed to transfer properties to Mr. Richardson and that she lacked the authority to do so. She offers no argument in defense of her failure to make *any* payments on the equalizing lien or her failure to account for rents from the properties. Moreover, her appeal seeks relief that she was *granted*. *Greenlee*, 65 Wn. App. at 711 (appeal of moot order was frivolous).

IV. CONCLUSION

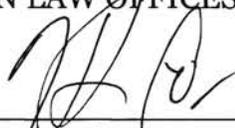
This Court should remand for entry of an order quieting title in Mr. Richardson against Ms. Fu, her trust, and her partnership, and directing that the assets of Ms. Fu's trust and partnership are available for satisfaction of *all* her obligations under the decree. This Court should also affirm the trial court's findings regarding Ms. Fu's intransigence, and award Mr. Richardson his attorney's fees on appeal.

Dated this 5th day of December, 2014.

SMITH GOODFRIEND, P.S.

MOEN LAW OFFICES, P.S.

By: 

By: 

Howard M. Goodfriend

Bruce R. Moen

WSBA No. 14355

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Ian C. Cairns

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Attorneys for Respondent/Cross-Appellant

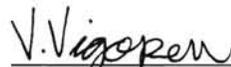
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 5, 2014, I arranged for service of the foregoing Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-File
Bruce Moen Moen Law Offices, PS 600 University Street, Suite 3312 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Walter John Sinsheimer Sinsheimer & Meltzer, Inc. P.S. 701 5th Avenue, Suite 4100 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 5th day of December, 2014.



Victoria K. Vigoren

Honorable David Kurtz
~~Hearing Date: April 10, 2014~~
~~No Oral Argument~~

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

In Re the Marriage of

No. 11-3-01652-0

GARY RICHARDSON,
Petitioner

and

LILY FU,
Respondent

**FINDINGS OF FACT, CONCLUSIONS OF
LAW ON JUDGMENT ON IMPLEMENTING
THE PROVISIONS OF A CR 2A
AGREEMENT
ON RECONSIDERATION**

This matter having come on for trial to implement a mediated settlement agreement between the Parties dated March 13, 2012 and arising from a then pending proceeding for a dissolution of marriage. A Decree of Dissolution was entered herein on July 30, 2012 (which was mostly vacated on 6/8/2013 and 10/16/2013).

Trial was held on January 5 and January 6, 2014. The Court admitted evidence offered by the Parties, which included a copy of a settlement agreement of the Parties, the testimony of Gary Richardson, and the testimony of Lily Fu, and based upon the evidence admitted therein, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON RECONSIDERATION

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ORIGINAL

FINDINGS OF FACT

1. This matter comes before the Court on the Petitioner Husband's application to implement the provisions of a settlement agreement between the Parties dated March 13, 2012, and hereafter referred to as the CR 2A. Specifically, the Petitioner Husband seeks to enforce the provisions that he receive title to the Lake Ketchum property pursuant to paragraph entitled ASSET DIVISION on page three of the CR 2A, that he receive title to the Colby property pursuant to the same paragraph of the CR 2A, and that he receive the monthly payments of \$2,151 per month in payment of the \$258,100 identified on the schedule of assets appended to the CR 2A.
2. The CR 2A resulted from a proceeding for dissolution of marriage that was commenced herein in 2011.
3. The Parties entered into the CR 2A as a mediated settlement agreement dated March 13, 2012.
4. A Decree of Dissolution was entered herein on July 30, 2012, which incorporated the CR 2A by reference. Later, while the marriage while still terminated, the Decree was mostly vacated, but not the CR2A, per Judge Okrent's order of 10/16/2013.
5. The Respondent Wife resists the implementation of the CR 2A. She has testified that English is not her first language and has testified that she was confused at the time. The testimony of the Respondent Wife that she was confused at the time of entering into the said CR 2A is not credible and is not persuasive.
6. The CR 2A of March 13, 2012 was approved by the Court by Decree entered herein on July 30, 2012 and is enforceable, but the parties dispute how the CR2A is to be implemented.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
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1 7. The CR 2A provides that the Petitioner Husband was to receive property located at 31414 - 79th
2 Drive Northwest, Stanwood, Washington 98292 (the "Lake Ketchum property") and legally
3 described as: Lot 8, Lake Ketchum Recreation Tracts Division No. 5, according to the plat
4 thereof recorded in Volume 22 of plats, pages 12 and 13, in Snohomish County, Washington,
5 which had an assigned value of \$239,600 (as recited in the CR 2A) and the Respondent Wife
6 was to pay the debt on said property (recited at \$190,259 in the CR 2A). Thus, in practical
7 terms, the real value to the husband of the Lake Ketchum property was \$429,859 according to
8 the values recited in the CR 2A.

9 8. The Petitioner Husband was to receive the property located at 721 Colby Avenue, Everett,
10 Washington 98201 (the "Colby property") and legally described as: Lot 2, Block 138, First
11 Addition to Legion Park, according to the plat thereof recorded in Volume 12 of plats, page
12 123, records of Snohomish County, Washington, which had an assigned value of \$272,300 (as
13 recited in the CR 2A).

14 9. Prior to the mediation, the two properties had been previously conveyed from the Respondent
15 Wife so that title was not held in her name individually. The first conveyance was from herself
16 individually to herself as Trustee of the Lily Fu Trust. She was both the Trustor and the Trustee
17 of said trust. The second conveyance was on January 2, 2012, approximately two months prior
18 to the mediation, from herself as Trustee to a partnership known as the Lily Fu Family LP and
19 of which she was the Managing Partner. The CR 2A is signed by the Respondent Wife and
20 provides that said properties go the Petitioner Husband, all of which gives the misleading
21 impression that the Respondent Wife either owned said properties at that time or, alternatively,
22

23 FINDINGS OF FACT AND CONCLUSIONS OF LAW
24 ON RECONSIDERATION

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1 that she could convey the properties from either the Lilly Fu Trust or the Lilly Fu Family LP as
2 may be necessary.

3 10. The amount of loss to the Petitioner Husband by the Respondent Wife's failure to comply with
4 the CR 2A is \$511,900 based upon the assignments of value recited in the CR 2A. This Court
5 makes no finding that said valuations are accurate today, but sets forth said valuations for the
6 identity of the property and the agreement of the Parties.

7 11. At the time of entering into the CR 2A, each Party indicated effective control of the assets
8 subject to said agreement.

9 12. By the entry of an Order on February 26, 2013, the Respondent Wife was directed to convey to
10 the Petitioner Husband the two parcels of real estate pursuant to the provisions of the CR 2A;
11 specifically, the Lake Ketchum property located at 31414 79th Drive, Snohomish, Washington
12 98292 and the Colby property located at 721 Colby Avenue, Everett, Washington 98201. The
13 Respondent Wife executed two quitclaim deeds which had been prepared by the attorney for the
14 Petitioner Husband, one deed for each respective property. However, while conveying her
15 individual interests, the deeds did not convey either legal title or marketable title because of ~~the~~
16 prior conveyances to Lily Fu Family LP. Consequently, the execution of the two deeds by the
17 Respondent Wife did not comply with the spirit and intended purpose of said Order.
18

19 13. She then recorded the conveyances from the trust to the partnership on March 15, 2013,
20 approximately two weeks after signing the deeds to Petitioner Husband pursuant to the Court
21 Order. Her recordation of these earlier conveyances destroyed marketable title to the Petitioner
22

23 FINDINGS OF FACT AND CONCLUSIONS OF LAW
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1 Husband and effectively defeated the provisions of the CR 2A and effectively circumvented the
2 intended result of compliance with the Court's Order.

3 14. The Respondent Wife asserted as a defense impossibility of compliance with the Order of
4 February 26, 2013 because e.g., the transfer of the property on 1/2/2012 to the Lily Fu Family
5 LP. The Court finds that the "impossibility" is largely of her own making and should not be
6 allowed to bar the implementation of the CR 2A.

7 15. Regarding the so-called "equalizing lien", the Respondent Wife has not made any monthly
8 payments to the Petitioner Husband of \$2,151 per month as agreed payment of \$258,100
9 identified on the schedule of assets appended to the CR 2A. Commissioner Bedle previously
10 awarded judgment of \$22,447.95 (plus interest) for arrearages through January 2013. The
11 Respondent Wife has now missed 14 more payments through 3/1/2014, totaling \$30,144, plus
12 interest from the date of each missed payment.
13

14 16. Almost two years has elapsed and said provisions of said agreement have not been
15 implemented. The failure of implementation has been caused primarily by the actions of the
16 Respondent Wife. Specifically, the Respondent Wife has not conveyed to the Petitioner
17 effective control of the parcels of real estate identified as the Lake Ketchum property located
18 31414 79th Drive, Snohomish, Washington 98292 and the Colby property located at 721 Colby
19 Avenue, Everett, Washington 98201.

20 17. The Respondent Wife has collected rents from the Colby property which rents would have
21 belonged to the Petitioner Husband if the property had indeed been conveyed to him as intended
22 pursuant to the CR 2A. The amount of the unpaid rents are unknown to the Respondent

23 FINDINGS OF FACT AND CONCLUSIONS OF LAW
24 ON RECONSIDERATION

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1 Husband. ~~Largely in lieu of these unknown rents and as part of his judgment, the Husband will~~
2 ~~receive interest from 3/13/2012.~~ The Respondent Wife did pay into the Registry of the Court
3 two months payments which should now be disbursed to the Petitioner Husband to partially
4 satisfy the judgment. The Respondent Wife has not provided an accounting of rents received.

5 18. The Wife has testified that she conveyed her real estate interests into a family trust and/ or a
6 family partnership with additional gifting of interests within the trust and/ or partnership. The
7 evidence is that there may be additional parties who have an interest in said parcels and who are
8 not before the court ^{in this action,} ~~at this time.~~

CONCLUSIONS OF LAW

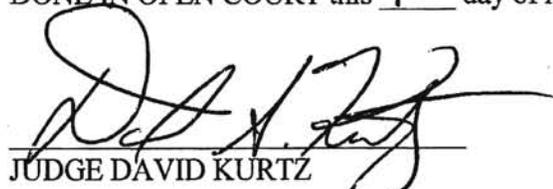
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- 10 1. This Court has in personam jurisdiction over the Parties herein including the Parties
11 individually, the Respondent Wife as Trustee, as a Managing Partner, or as an Agent or in any
12 other capacity and the Court also has in rem jurisdiction of all of the assets of the Parties,
13 including the Lake Ketchum property, the Colby property, any interest of the Respondent Wife
14 in the Lily Fu Living Trust whether as Trustor, Trustee, or as Beneficiary or Remainderman,
15 and any interest of the Respondent Wife in the assets and partnership known as Lily Fu Family
16 LP whether as General Partner, Limited Partner, or otherwise.
- 17
- 18 2. The Motion to Implement should not be granted at this time because there may be additional
19 parties who have an interest in said parcels and who are not before the court ^{in this action,} ~~at this time.~~
20
21 Consequently, the actual transfer of title sought in the Motion to Implement should be denied
22 without prejudice.

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- 1 3. The other aspects and potential judgments of the CR 2A are not affected by the court's decision
2 on the Lake Ketchum and Colby properties. For example, the wife will continue to be
3 responsible for the equalizing lien of \$258,100 although there is no acceleration clause which
4 makes the full \$258,100 due and payable at this time. Also, the earlier judgment of \$22,477.95
5 for payments and interest due on this lien through January 2013 still stands. The husband can
6 have further judgment for amounts accrued since last January 2013 which equals 14 payments
7 of \$2,151 through 3/1/2014, or \$30,114, plus 12% interest from the date of each missed
8 payment.
- 9 4. The Court shall impose attorney fees and costs against the Respondent Wife in the amount of
10 \$4,000.

11
12 DONE IN OPEN COURT this 9th day of ~~April~~^{May}, 2014.

13
14 
15 JUDGE DAVID KURTZ

16
17 Presented by:

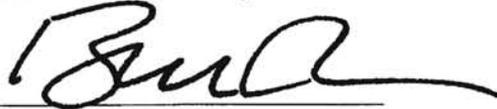
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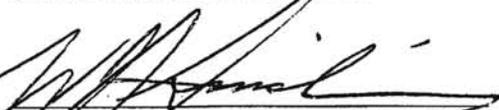


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Approved as to form:

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