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Court of Appeals  
Division III  
State of Washington  
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SUPREME COURT  
STATE OF WASHINGTON  
6/10/2025  
BY SARAH R. PENDLETON  
CLERK

Case #: 1042710

**No. 40030-1-III**

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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IN RE MARRIAGE OF:

DAVID GIDEON,

Respondent

&

BRENDA GIDEON

Appellant

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APPELLANT'S PETITION FOR REVIEW BY  
WASHINGTON STATE SUPREME COURT

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COLUMBIA FAMILY LAW CENTER  
(FORMERLY CLEMENT LAW CENTER)

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In re Gideon;  
Appellant's Petition for Review  
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A. IDENTITY OF PETITIONER

Brenda Gideon, appellant below, asks this Court to accept review of a Division III Court of Appeals decision terminating review.

B. COURT OF APPEALS DECISION

The Court of Appeals decision of May 8, 2025, held that Brenda Gideon could not directly attack the 2023 dissolution decree in a motion to vacate and the trial court did not abuse its discretion when denying Brenda Gideon's motion to vacate and found no misrepresentation or concealment by David Gideon, the Respondent. (See attached as Appendix A).

C. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals decision conflict with prior Appellate Court decisions regarding the fiduciary duty that spouses owe to each other in dissolution proceedings?
2. Does the Court of Appeals decision conflict with prior decisions of the Washington Supreme Court regarding

the fiduciary duty that spouses owe to each other in  
dissolution proceedings?

3. Do spouses in Washington State have a fiduciary duty to  
disclose fully and fairly all material facts relating to the  
amount, character and value of the property involved in  
a dissolution proceeding?

#### D. STATEMENT OF THE CASE

##### **Procedural History**

Ms. Gideon, the appellant, brought a Motion to Vacate  
the Findings & Conclusions About a Marriage and the Final  
Divorce Order that were entered in Lincoln County Superior  
Court on May 2, 2022.

Lincoln County Superior Court denied both Ms.  
Gideon's Motion to Vacate and subsequent Motion for  
Reconsideration.

Ms. Gideon appealed those decisions of the Lincoln  
County Superior Court and alleged that Lincoln County  
Superior Court failed in discharging its statutory obligation

under RCW 26. 09.080 in “justly and equitably dividing the parties’ property” in the dissolution of her marriage with Mr. Gideon.

Further, Ms. Gideon alleged that Mr. Gideon breached his affirmative fiduciary duty, as her spouse, to disclose the amount, character and value of the property in his possession under Washington Law, not only to herself but to the trial court.

The Court of Appeals upheld the trial court’s decision, holding that Brenda Gideon could not directly attack the 2023 dissolution decree in a motion to vacate and the trial court did not abuse its discretion when denying Brenda Gideon’s motion to vacate and found no misrepresentation or concealment by David Gideon, the Respondent.

### **Statement of the Facts**

David and Brenda Gideon were married in Seattle, Washington on May 20, 1995. (CP 1)

David worked for Boeing and Brenda worked as a nurse.

On January 31, 2022, Mr. Gideon filed a Petition for Divorce in Lincoln County Superior Court. (CP 1 – 4).

In Section 3, page 1 of the “Petition,” the “Petition” read as follows under the heading “Request for Divorce:”

“This marriage is irretrievably broken. I ask the court to dissolve our marriage and any domestic partnerships or civil unions. Our marital community ended on 5/20/1995.” (CP 1).

On page 3 of the “Petition,” Section 11, the “Petition” reads as follows under the heading “Written Agreements:”

“My spouse and I signed a written agreement on 1/11/2022 which is not filed with the court but which is incorporated by reference and should be enforced to the extent that it is consistent with the court’s orders in this case.” (CP 3).

In Section 12, on page 3 of the “Petition,” the “Petition” asked “the court to divide the real property fairly (equitably), as

explained below.” Further in Section 12, on page 3, the “Petition” identified the real property in Edmonds, Washington and proposed that Mr. Gideon would receive it stating “100% Petitioner.” (CP 3)

In Section 13, page 3 of the “Petition,” the “Petition” read as follows under the heading “Personal Property:”

“Other: I ask the court to divide our personal property as described in Exhibit A which is attached to the Final Order and incorporated herein by reference.” (CP 3).

In Section 14, page 3 of the “Petition,” the “Petition” read as follows under the heading “Debts:”

“Other: I ask the court to divide our debts as described in Exhibit B which is attached to the Final Order and incorporated herein by reference.” (CP 3).

In Section 15, page 3 of the “Petition,” the “Petition” read

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as follows under the heading “Spousal Support:”

“Spousal support is not needed.” (CP 3).

Mr. Gideon signed and verified the “Petition” on page 4, followed by the signature of Mr. Gideon’s attorney. Also found on page 4 of the Petition for Divorce, was Ms. Gideon’s signature indicating that she was joining in the Petition. (CP 4).

On May 2, 2022, Lincoln County Superior Court entered Findings & Conclusions About a Marriage and the Final Divorce Order which dissolved the marriage of the parties that began on May 20, 1995. (CP 5 – 15).

The Findings & Conclusions About a Marriage stated in Section 4 on Page 2 that “[t]he spouses were married on 5/20/1995 at Seattle, Washington.” (CP 6).

The Findings & Conclusions About a Marriage found that “[t]he marital community ended on 5/20/1995,” and that “[t]he parties stopped acquiring community property and incurring community debt on this financial separation date” in Section 5,

page 2. (CP 6).

The Findings & Conclusions About a Marriage entered by the Court on May 2, 2022, did not contain a description of any of the parties' assets or liabilities including the parties' real property. (CP 6 – 7).

The Findings & Conclusions About a Marriage signed by the Court on May 2, 2022, was verified and dated by Mr. Gideon on 01/20/2022. There was no indication when either Mr. Gideon's attorney or Ms. Gideon signed the "Findings." (CP 9).

The Final Divorce Order entered by the Court on May 2, 2022, (CP 10 – 15), did not contain a description of the parties' assets or liabilities and the disposition of those assets and liabilities other than the real property located in Edmonds, Washington. (CP 10 – 11; 14 – 15).

The Final Divorce Order in Section 15 did reference a "written contract" on 1/11/2022 that would be "enforced to the extent that it is consistent with this Final Order." (CP 11).



Beginning with the “Petition for Divorce,” and including the “Findings of Fact & Conclusions About a Marriage” and the “Final Divorce Order,” there was no mention of what the value of any of the parties’ assets or liabilities were, the extent of the community property that existed, and the extent of the separate property. Further, nowhere in any of the documents was there mention of the Condominium that Ms. Gideon had purchased while the parties were married, and it was not included in the disposition of any of the assets and liabilities. (CP 1 – 15).

Mr. Gideon was represented by Kevin Hogan, and Ms. Gideon was unrepresented.

On May 2, 2023, Ms. Gideon, through counsel filed a Motion To Vacate Order Final Orders, (hereinafter “Motion to Vacate”), in Lincoln County Superior Court. In the Motion to Vacate, Ms. Gideon stated that Mr. Gideon knew that she was not “privy” to any of the financial information of their marriage and that “he knew she was unaware of his financial status.” (CP

20). Ms. Gideon stated that at the time she signed the handwritten “agreement” on January 11, 2022, Mr. Gideon was aware that Ms. Gideon “had no access to money, was desperate,” and was very “fragile as far as her health and finances.” Mr. Gideon offered Ms. Gideon \$250,000.00 in one lump sum and \$100,000 a year for four years if she signed a separation agreement.” As part of the “agreement,” Mr. Gideon ended up with the family home, two cars, “his pension (amount unknown, all his investments (amount unknown) that he obtained during their marriage, and his 401k (amount unknown).” (CP 20). Mr. Gideon did not disclose his financial information and when Ms. Gideon had asked about it in the past, Mr. Gideon refused to provide it to Ms. Gideon. Ms. Gideon became aware sometime after the divorce was finalized that Mr. Gideon was in possession of “mutual funds and stocks that were all obtained during the marriage and may have been obtained with community funds.” (CP 20). Ms. Gideon stated that this was just one small financial detail she has discovered. (CP 20).

Mr. Gideon filed a responsive declaration to Ms. Gideon's Motion to Vacate. In Mr. Gideon's responsive declaration, he stated that he would "routinely share with her information on our finances and for that matter anything else that she asked." Mr. Gideon went on to offer that "I'm a very honest and open person." (CP 43).

Mr. Gideon, the "honest and open person," went on to state that Ms. Gideon received in the "divorce settlement" "\$890,000+" which "is definitely more than having no money." (CP 44). Mr. Gideon went on to claim that "[w]e are both claimants on a lawsuit filed by both of us and so far have been awarded \$210k, all of which has gone to Brenda." (CP 44). Mr. Gideon represented in his declaration that he "bought out her interest in the house, and she used those funds to purchase her condo." (CP 45). Mr. Gideon volunteered to the court that he "had significant funds before our marriage as I had been working for 7 years full time before our wedding." (CP 45). Mr. Gideon

stated that he had “paid 80% on our down payment for our first house,” and that the “first house was purchased the year we got married, March 1995 right before our marriage.” (CP 45).

Mr. Gideon claimed that “[m]any of my investments were purchased before our marriage due to seven years full-time work primarily at Boeing before our marriage.” (CP 45). Mr. Gideon responded to Ms. Gideon’s claim that she had no knowledge of the couple’s finances at the time she signed the written “agreement” by stating “[d]uring our initial divorce settlement we discussed finances in great detail and Brenda had all the knowledge of our finances.” (CP 45)

Mr. Gideon in his responsive declaration offered that he doesn’t “have any monthly income other than my interest on savings.” (CP 46). This statement was followed by a detailed disclosure of Ms. Gideon’s resources in which Mr. Gideon stated that she was getting “approximately \$2,337 per month for disability and Social Security...She also gets \$349 per month

through her workplace health insurance, and she also has an approximately \$1,900 per month pension.” (CP 46).

Near the end of his declaration, Mr. Gideon stated that they “both had the same representation for our uncontested and a jointly agreed upon divorce agreement.” (CP 48).

On August 1, 2023, the Court held a hearing via Zoom on Ms. Gideon’s motion to vacate. Per the Clerk’s minutes, Judge Jeffrey S. Barkdull summarized “his findings” and the “Court does not find fraud and denys the motion to vacate.” (CP 91).

On August 28, 2023, the Court signed the “Order Of Denial On Motion To Vacate Final Orders.” (CP 92 – 93). The “Order Of Denial On Motion To Vacate Final Order” stated that “the Court finds no evidence of fraud or misrepresentation.” (CP 92).

On September 7, 2023, Ms. Gideon timely filed a Motion for Reconsideration on the “Order of Denial On Motion To Vacate Final Orders” dated August 28, 2023. (CP 96 – 108). In

the Motion for Reconsideration, as in the Motion To Vacate, Ms. Gideon had alleged that Mr. Gideon took advantage of her based on her having cancer and the fact that she was a victim of domestic violence at the hands of Mr. Gideon during the entirety of the marriage. (CP 101).

Ms. Gideon argued in the Motion for Reconsideration that since Mr. Gideon was in complete control of the parties' financial resources, and had withheld all financial information from Ms. Gideon, that Mr. Gideon had breached his fiduciary duty by failing to disclose to Ms. Gideon the existence of the parties' property prior to dissolution as required under Seals v Seals, 22 Wn. App. 652, 590 P.2d 1301 (1979). (CP 101).

Further, in the Motion for Reconsideration, Ms. Gideon accurately stated that Mr. Gideon not only failed in his fiduciary duty to Ms. Gideon by failing to fully disclose the financial information that was in his possession to her prior to entry of the final orders in this matter, but Mr. Gideon also failed in his

fiduciary duty to the Court. (CP 102). Again, Ms. Gideon correctly and accurately pointed out that since there was no disclosure of the extent of the property and liabilities, the Court could not make a determination under RCW 26.09.080 that what was reflected in the Findings of Fact & Conclusions of Law, and Final Divorce Order on May 2, 2022, was a disposition of the property and the liabilities of the parties that was just and equitable. Ms. Gideon's Motion to Vacate and subsequent Motion for Reconsideration alleged that Mr. Gideon's failure to disclose the financial information resulted in there being no relevant factors upon which the Court could make any determination under RCW 26.09.080. (CP 103).

On September 26, 2023, the Court entered the Order Denying Motion for Reconsideration. The Court found that there was "no basis to grant Respondent's Motion for Reconsideration." (CP 113). The Court further ordered that "Respondent's Motion for Reconsideration is denied." (CP 113).

E. ARGUMENT WHY REVIEW SHOULD BE  
ACCEPTED

**1. The Court of Appeals decision conflicts with prior Appellate Court decisions regarding the fiduciary duty that spouses owe to each other in dissolution proceedings.**

The Court of Appeals did not acknowledge the fiduciary duty that David Gideon had to Brenda Gideon. The Court of appeals affirmed the Trial Court's finding that there was no evidence of fraud or misrepresentation by David Gideon.

The Court of Appeals did not acknowledge that David Gideon, as the spouse of Brenda Gideon, owed her "the highest fiduciary duty." Peters v. Skalman, 27 Wn. App. 247, 251, 617 P.2d 448 (1980). And with that an affirmative duty to disclose all community and separate property before and during dissolution. Seals v. Seals, 22 Wn. App. 652, 655-56, 590 P.2d 1301 (1979).

The record before the Trial Court and the Court of Appeals clearly showed that Mr. Gideon did not disclose the amount, character and value of the property in his possession



which was a breach of David Gideon's fiduciary duty to Brenda Gideon. David Gideon breached his affirmative duty to Brenda Gideon by failing to disclose, or "suppress" the amount, character and value of the property in his possession.

The Court of Appeals erred in not recognizing that when a duty to disclose exists, the suppression of a material fact amounts to misrepresentation. Crisman v. Crisman, 85 Wn. App. 15, 21-22, 931 P.2d 163 (1997). David Gideon's breach of his affirmative duty was misrepresentation and is a basis to grant the relief that Brenda Gideon sought pursuant to CR 60(b).

**2. The Court of Appeals decision conflicts with prior Washington State Supreme Court decisions regarding the fiduciary duty that spouses owe to each other in dissolution proceedings.**

The Court of Appeals decision contradicts prior Washington State Supreme Court decisions. In Friedlander v. Friedlander, 80 Wn.2d 293, 494 P.2d 208, the Washington Supreme Court talked at length about the fiduciary relationship

that exists between parties that enter into a prenuptial agreement, stating;

“the relationship of the parties to the contract becomes of primary importance. It is well recognized that even an engagement to marry creates a confidential relationship. Hamlin v. Merlino, 44 Wn.2d 851, 865, 272 P.2d 125 (1954); Juhasz v Juhasz, 134 Ohio St. 257, 264, 16 NE.2d 328 , 117 A.L.R. 993 (1938); Parties to a prenuptial agreement do not deal with each other at arm's length. Their relationship is one of mutual confidence and trust which calls for the exercise of good faith, candor and sincerity in all matters bearing upon the proposed agreement. Bauer v Bauer, 1 Ore App. 504 464 P.2d 710 (1970).“ Friedlander, at 301.

This is how the prior decisions of the Washington State Supreme Court view the fiduciary relationship when persons are entering into marriage. The relationship between a husband and wife after marriage is not and is not expected to be an arm's length relationship. That relationship continues as one of trust and confidence.

The Court of Appeals decision contradicts the prior decisions of the Washington State Supreme Court that define the relationship between spouses as fiduciaries to each other,

and require a full and fair disclosure of all material facts relating to the amount, character and value of the property involved in a dissolution proceeding.

**3. Spouses in Washington State have a fiduciary duty to disclose fully and fairly all material facts relating to the amount, character and value of the property involved in a dissolution proceeding and it was error for the Court of Appeals to not recognize this.**

When a trial court decides a motion to vacate under CR 60(b), the court sits in equity. E.g., Haller v. Wallis, 89 Wn.2d 539, 543, 573 P.2d 1302, 1305 (1978). “[T]he court should exercise its authority liberally ‘to preserve substantial rights and do justice between the parties.’” In re Marriage of Hardt, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985) (quoting Haller, 89 Wn.2d at 543). A trial court’s exercise of discretion is not a rote application of technical legal standards; its decision must be “in accord with equitable principles and terms.” Haller, 89 Wn.2d at 543.

It is in this context of “equitable principles” “to preserve substantial rights and do justice” that the trial court must consider

that during a marriage, spouses do not deal at arms' length, but rather, they have a fiduciary duty of disclosure to each other, even after they contemplate dissolution. Seals, 22 Wn. App. at 655. This fiduciary duty extends to "agreements which have been reached between them." Id. Seals shows how Mr. Gideon's fiduciary duty of disclosure does not support the trial court's decision to deny Ms. Gideon's Motion to Vacate. Seals emphasized that spouses have a fiduciary duty. Id. at 656. Mr. Gideon did not disclose the nature and extent of the property in his possession to Ms. Gideon, and Ms. Gideon did not know about many of the assets' existence or the extent of their values. Not only was disclosure required as a result of the fiduciary duty owed between spouses, but that fiduciary duty also required Mr. Gideon to disclose to the trial court the nature and extent of the property in his possession and control under RCW 26.09.080, and Mr. Gideon breached that duty also. This Court should not allow CR 60 to become a shield for misconduct instead of what it is meant to be: a discretionary judicial tool for achieving

equity. See Peoples State Bank, 55 Wn. App. at 372 (confirming that CR 60(b)(4)’s goal is to avoid judgments “which were unfairly obtained,”). CR 60 and its application is not meant to result in windfalls for those who withhold information as Mr. Gideon did in January 2022 and continuing with his responsive declaration to the Motion to Vacate that he filed on May 30, 2023.

If this Court concludes that CR 60(b)(4) did not support vacation of the orders entered on May 2, 2022, Ms. Gideon would argue that CR 60(b)(11) would support the requested relief. CR 60(b)(11) supplies a catchall, authorizing a trial court to vacate an order for “[a]ny other reason justifying relief from the operation of the judgment.” CR 60(b)(11). This catchall applies “to situations involving extraordinary circumstances not covered by any other section of the [CR 60(b)].” State v. Keller, 32 Wn. App. 135, 140, 647 P.2d 35 (1982). In older cases, Washington courts have stated that “[t]he extraordinary

circumstances “‘must relate to irregularities extraneous to the action of the court’.” In re Marriage of Tang, 57 Wn. App. 648, 655–56, 789 P.2d 118 (1990) (quoting In re the Marriage of Yearout, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985)).” More recently, however, Washington courts have expressed a “willingness to expand ‘extraordinary circumstances.’” In re Marriage of Hammack, 114 Wn. App. 805, 810, 60 P.3d 663, review denied, 149 Wn.2d 1033 (2003).

CR 60(b) should not be read so technically that the trial court—and a wronged party like Ms. Gideon—have no recourse. CR 60 should not be construed so technically that a trial court cannot remedy “a manifest injustice.” Hammack, 114 Wn. App. at 810. An equitable court should not be restricted from determining that vacation is warranted when the court’s statutory duty was inhibited or a party’s trust was exploited.

The issue before the trial court was whether Mr. Gideon’s continued nondisclosures deprived Ms. Gideon of a full and fair

opportunity to litigate her case at the time. See, e.g., People's State Bank, 55 Wn. App. at 372. In fact, even to this day Ms. Gideon does not know the extent of Mr. Gideon's failures to disclose assets. Likewise, the trial court did not know the extent of the assets in Mr. Gideon's possession. To state that the trial court needs to find "fraud" or "intentional misrepresentation" would only encourage "unscrupulous spouses" to do what Mr. Gideon did here: hide substantial assets and not disclose their value.

Mr. Gideon's misrepresentations and failures to disclose, prevented Ms. Gideon from being able to fully and fairly negotiate her case. This is the type of result that CR 60 is meant to remedy.

#### F. CONCLUSION

This court should accept review for the reasons indicated in Part E and reverse the Court of Appeals on these issues.

DATED this 9<sup>th</sup> day of June 2025



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### CERTIFICATE OF SERVICE

I certify that on the 6<sup>th</sup> day of June 2025, in Federal Way, Washington, I caused a true and correct copy of Appellant's Petition For Review to be served on the following by email using the Washington State Portal to:  
[iversonlaw@odssaoffic.com](mailto:iversonlaw@odssaoffic.com)

Ms. Victoria S. Iverson, AAL  
Iverson Law Office PLLC  
P.O. Box 490  
Odessa, WA 99159-0490

By:



Desmond Kolke, WSBA # 23563

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CERTIFICATION PURSUANT TO RAP 18.17(B)

I certify under penalty of perjury under the laws of the State of Washington that Appellant's Petition For Review consists of three thousand seven hundred ninety-two (3792) words as calculated by Microsoft Word and complies with the requirements of RAP 18.17 in its entirety.

Dated this 6<sup>th</sup> day of June 2025 in Federal Way, Washington.

A handwritten signature in blue ink, consisting of several overlapping loops and a final horizontal stroke.

Desmond Kolke, WSBA # 23563

# APPENDIX A

*Tristen L. Worthen*  
Clerk/Administrator

(509) 456-3082  
TDD #1-800-833-6388

*The Court of Appeals  
of the  
State of Washington  
Division III*



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May 8, 2025

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CASE # 400301

In the Matter of the Marriage of: David Eric Gideon & Brenda Elaine Gideon  
LINCOLN COUNTY SUPERIOR COURT No. 2230013422

Counsel:

Enclosed please find a copy of the opinion filed by the court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review of this decision by the Washington Supreme Court. RAP 13.3(b), 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends this court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration that merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of a decision. RAP 12.4(b). Please file the motion electronically through this court's e-filing portal. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the decision (should also be filed electronically). RAP 13.4(a). The motion for reconsideration and petition for review must be received by this court on or before the dates each is due. RAP 18.5(c).

Sincerely,

Tristen L. Worthen  
Clerk/Administrator

TLW:btb  
Attachment

c: **E-mail** Honorable Adam Walser (Judge Barkdull's case)

# APPENDIX A

**FILED**  
**MAY 8, 2025**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION THREE

In the Matter of the Marriage of:	)	
	)	No. 40030-1-III
DAVID ERIC GIDEON,	)	
	)	
Respondent,	)	
	)	UNPUBLISHED OPINION
and	)	
	)	
BRENDA ELAINE GIDEON,	)	
	)	
Appellant.	)	

FEARING, J. — In 2023, the dissolution court denied Brenda Gideon’s motion to vacate a 2022 marital dissolution decree that incorporated the property settlement agreement reached between her and her former husband, David. On appeal, Brenda contends the dissolution court, when entering the 2022 dissolution decree, failed to fulfill its duty under RCW 26.09.080 to assess the full extent and value of the parties’ property. Brenda also asserts that the dissolution court, in 2023, abused its discretion when denying her motion to vacate the 2022 decree because of David’s misrepresentations and non-disclosures leading to the signing of the 2022 agreement. Because Brenda Gideon may not directly attack the 2023 dissolution decree in a motion to vacate, absent a showing of misrepresentation, and because the dissolution court did not abuse its discretion when finding no misrepresentation or concealment, we affirm.

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*In re Marriage of Gideon*

## FACTS

Appellant Brenda Gideon seeks to vacate a marital dissolution decree that adopted a property settlement agreement entered by her and her ex-husband, David Gideon.

Before narrating the events leading to the signing of the agreement, we outline the parties' relationship. We take our facts from starkly differing declarations of Brenda and David Gideon.

Brenda and David Gideon married on May 20, 1995, in Seattle. The couple begat one child in 2002. They divorced in May 2022, when Brenda was 61 years old and David was 57 years of age.

David testifies that the couple purchased their first home in March 1995, two months before the marriage. David had worked for Boeing already for seven years. He supplied eighty percentage of the down payment for the home. During the marriage, Brenda Gideon labored as a nurse, and David worked for Boeing as a chemical engineer.

Brenda Gideon testifies that David controlled her and the activities of the family. According to Brenda, after the birth of their daughter, David's controlling mutated to verbal, emotional, and physical abuse. After instances of abuse, David apologized and purchased Brenda extravagant gifts. David precluded Brenda from financial decisions and access to financial records. According to Brenda, David physically struck their daughter.

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*In re Marriage of Gideon*

David Gideon labels much of Brenda's testimony as "absurd," "outlandish," and "hilarious." He denies ever having been abusive to Brenda. David also denies ever engaging in violence toward the daughter or Brenda.

According to David, he never controlled or structured Brenda's life. Brenda, a strong and independent woman, guided family affairs. The two maintained separate bank accounts. Brenda's earnings went into her bank account, to which she always had access. David encouraged and prompted Brenda to begin a 401k account. Brenda periodically met with her financial advisor in Seattle and her father's financial advisor in the Tri-Cities. According to David, Brenda operated her own vehicle and moved about town at her fancy. Her family visited her as she desired and she frequently visited her family in the Tri-Cities and Salem, Oregon. Brenda enjoyed frequent evening outings with female nurses, with whom she worked. David cared for the family finances because Brenda lacked interest. David answered whatever questions Brenda posed regarding the family finances.

In 2019, health care providers diagnosed Brenda Gideon with malignant peritoneal mesothelioma, an aggressive cancer that affects the membrane protecting several of the body's most critical organs. One physician advised that Brenda would die in six months. Brenda has since suffered severe physical and emotional symptoms from the cancer, although the parties dispute the extent of the suffering today. Brenda has undergone

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*In re Marriage of Gideon*

chemotherapy, surgeries, and rehabilitation. Brenda ceased employment with news of the cancer.

According to Brenda Gideon, the couple's daughter assumed household chores because of Brenda's disability. Abuse from David continued. He began on-line dating with other women.

According to David Gideon, he diligently cared for Brenda during the height of her cancer and a surgery in February 2019. He performed household chores, such as cooking dinner, walking the dogs, grocery shopping, and caring for the daughter. David complains that no one from Brenda's family assisted in her care and did not even visit her in the hospital, except her father once. David insists that the cancer ended in 2019.

The couple's daughter signed a declaration that disputed some of the testimony of her father. The daughter agrees that David performed some of the daily tasks while Brenda convalesced. Nevertheless, the daughter insists she performed most of the tasks, including laundry and washing dishes. The daughter maintained the nasogastric tube during the time that Brenda needed supplemental nutrients. According to the daughter, she provided the emotional support for her mother, during her recovery from surgery, because David grew distant during the time of convalescence.

According to David, he retired from Boeing in June 2020 due to the stress caused by long hours at work and his diligent care for Brenda because of her illness. According

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No. 40030-1-III

*In re Marriage of Gideon*

to Brenda, David retired because of massive layoffs at Boeing and employee payouts offered by the manufacturer. In 2021, David and Brenda began discussing separating.

On January 11, 2022, the parties signed a one-page, handwritten property settlement agreement. Under the agreement, David would pay Brenda \$250,000 immediately and \$100,000 per year for four years thereafter, a total of \$650,000. The \$650,000 represented one-half of the equity in the parties' Des Moines residence. The agreement awarded David sole ownership of the home. The agreement allocated to Brenda her Nissan Rogue and to David his Nissan Frontier and Altima. Each spouse received his or her investments, bank accounts, and pensions. Finally, the property agreement granted Brenda the first \$200,000 of recovery in a medical negligence claim she filed, the next \$300,000 to David, and the remainder of \$300,000 to Brenda. The agreement did not list the discrete investments, accounts, or pensions held by the parties or assign any value to these assets.

David Gideon emphasizes that the car assigned him is an older vehicle than Brenda's vehicle. David has a 2006 Nissan Frontier. Brenda has a 2016 Nissan Rogue. David insists he purchased many of his investments before the marriage. David believes that, because of major repairs and replacements needed in the Edmonds home, the home's value falls below \$1,100,000.

According to Brenda, David dictated the terms of the property settlement agreement. David took advantage of her poor health, ignorance of the couple's wealth,

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and lack of access to money. She characterizes herself as signing under “extreme distress.” Clerk’s Paper (CP) at 20. David pleaded with her then not to retain an attorney. Brenda avows that she still does not know the value of David’s pension, investments, and 401k account.

David Gideon testifies that Brenda and he discussed the terms of the settlement agreement before their signing. The couple’s daughter assisted the two reaching a resolution. Brenda knew the details of the parties’ finances then. According to David, Brenda has never suffered financial duress in her entire life in part because of a wealthy father who, in 2022, owned five properties and maintained significant savings.

On January 31, 2022, David Gideon filed a petition for marital dissolution. The parties employed a joint attorney to handle the dissolution action, who advised to file the action in Lincoln County. Brenda contends that, because of a lack of funds, she did not contest what she labels “David’s pleadings.” She did not understand the pleadings.

On February 19, 2022, David transferred an additional \$351,000 to Brenda beyond the terms of the settlement agreement.

Thus, David criticizes Brenda for asserting she lacked money for legal counsel. Brenda used some of the \$351,000 to remodel an Airbnb in Kellogg, Idaho. During this time, Brenda also garnered \$30,000 as part of the tort settlement.

In March 2022, Brenda Gideon moved to a condominium in Des Moines. According to Brenda, she moved from the family home in order to escape abuse from



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David. She borrowed \$60,000 from her father, withdrew \$40,000 from a 401k account, and \$12,000 from a 403b account to purchase a condominium in which she now lives.

She also borrowed \$100,000 from a mortgage lender. Brenda avers that she then lacked knowledge of family funds, which David controlled. According to Brenda, she also lacked money to then hire an attorney to assist her.

David Gideon suggests that Brenda paints herself as “nearly homeless in 2022,” and he ridicules this depiction. CP at 46. According to David, Brenda now lives in a two-bedroom Des Moines condominium with a view of the Puget Sound. She enjoys a private parking spot in a secured building. The community, in which Brenda lives, maintains a shared swimming pool. A marina and beach park sit one block away. David speculates that, because of a purchase price of \$550,000, Brenda may now own the home without a mortgage.

On May 2, 2022, the dissolution court signed findings of fact, conclusions of law, and a divorce decree prepared by David. The divorce decree incorporated the settlement agreement. The findings of fact and conclusions of law of law entered by the court included:

### **7. Separation Contract**

The parties signed a written agreement on 1/11/2022.

**Conclusion:** The written agreement should be enforced to the extent that it is consistent with the Final Order in this case. The written agreement is incorporated by reference but is not attached or filed herein.

### **8. Real Property**

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The spouses' real property is listed in Exhibit A, which is attached to the Final Order and incorporated by reference

**Conclusion:** The division of real property described in the Final Order is fair, just and equitable.

### **9. Community Personal Property**

Other: The spouses' community personal property is listed in Exhibit A, which is attached to the Final Order and incorporated by reference.

**Conclusion:** The division of community personal property described in the Final Order is fair, just and equitable.

### **10. Separate Personal Property**

Other: The spouses' separate personal property is listed in Exhibit A, which is attached to the Final Order and incorporated by reference.

**Conclusion:** The division of separate personal property described in the Final Order is fair, just and equitable.

CP at 6. Exhibit A to the dissolution decree listed the parties' property:

### **EXHIBIT A – ASSETS**

#### **The following assets shall be awarded to Petitioner:**

- A. Unless otherwise specified herein or in the parties' written agreement,
- 1) All assets owned by Petitioner before the date of marriage,
  - 2) All assets acquired by Petitioner after the financial separation date – 5/20/1995,
  - 3) All accounts and assets in Petitioner's name,
  - 4) All vehicles in Petitioner's name,
  - 5) All of Petitioner's employment-related and retirement-related benefits,
  - 6) All assets currently in the possession of Petitioner;

#### **The following assets shall be awarded to Respondent:**

- A. Unless otherwise specified herein or in the parties' written agreement,
- 1) All assets owned by Petitioner before the date of marriage,
  - 2) All assets acquired by Petitioner after the financial separation date – 5/20/1995,
  - 3) All accounts and assets in Petitioner's name,
  - 4) All vehicles in Petitioner's name,
  - 5) All of Petitioner's employment-related and retirement-related benefits,
  - 6) All assets currently in the possession of Petitioner.

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CP at 14. Exhibit A also awarded sole ownership of the family home in Edmonds to David Gideon and assigned him the mortgage debt on the residence. The findings of fact and conclusions of law did not list any value for any of the assets or the amount of any liabilities. The decree adjudged the division of property as just and equitable.

According to Brenda Gideon, she continues to suffer from her cancer, although she lives independently. She visits an oncologist every three months. She struggles to perform basic chores. She takes anti-depressants, thyroid medication, neuropathy medication, folic acid, and vitamin B12.

David Gideon testifies that, other than routine nausea, Brenda's health continues to improve. She has experienced an unlikely and amazing recovery. Brenda takes classes to regain her nursing license.

According to David Gideon, he receives no monthly income other than interest on savings. CP 46. Brenda, however, garners \$2,337 per month for disability and Social Security, \$349 per month through her workplace health insurance, and \$1,900 per month from a pension.

In November 2022, Brenda Gideon retained the services of a lawyer. On May 8, 2023, David sent Brenda an additional \$28,000 beyond the payments demanded under the settlement agreement.

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## PROCEDURE

On May 2, 2022, Brenda Gideon filed a motion, under CR 60(b)(9) and (11), to vacate the dissolution decree. She argued that her state of mind, impaired by cancer, affected her ability to understand the separation agreement later incorporated into the divorce decree. She asserted that David pressured her to agree to an uncontested divorce without legal representation. Brenda also alleged that David concealed financial information from both her and the court. Although she did not explicitly cite CR 60(b)(4) as a basis for relief, her narrative centered on allegations of fraud and misrepresentation.

The dissolution court denied Brenda Gideon's motion to vacate. Although Brenda cited only subsections (9) and (11) of CR 60 in her pleadings, the court found no evidence of fraud or misrepresentation under subsection (4) of the rule.

## LAW AND ANALYSIS

In assigning error to the dissolution court's denial of her motion to vacate, Brenda Gideon forwards two principal arguments. First, the trial court failed to properly discharge its statutory duty under RCW 26.09.080, when entering the May 2022 decree. Relatedly, David's misrepresentations and nondisclosures deprived the court of necessary information to fairly allocate the property. Second, the trial court employed an incorrect legal standard when denying the motion to vacate. On appeal, Brenda abandons her argument under CR 60(b)(9) and relies only on subsections (4) and (11) as grounds for vacation.

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We conclude that any error in the trial court's failure to properly assess the extent and value of the couple's property at the time of entering the marital dissolution decree brings no benefit to Brenda. This error constituted legal error. The remedy for legal error is a timely appeal, not a motion to vacate. We further conclude that evidence supports the trial court's finding that David did not impose fraud on Brenda. We must defer to this factual finding of the dissolution court. Therefore, a motion to vacate under CR 60(b)(4) fails. Finally, we rule that Brenda fails to show a basis for vacation under CR 60(b)(11).

### RCW 26.09.080

We first discuss RCW 26.09.080, which governs the allocation of property during a marital dissolution. The statute reads, in relevant part:

In a proceeding for dissolution of the marriage . . . , the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective.

Based on a reading of RCW 26.09.080, a settlement agreement or decree of dissolution must adequately identify the assets so as to permit the court to approve the agreement or make proper division. *Yeats v. Yeats' Estate*, 90 Wn.2d 201, 206, 580 P.2d

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617 (1978). At minimum, the documents must put the parties and the court upon notice that the assets exist. *Yeats v. Yeats' Estate*, 90 Wn.2d 201, 206 (1978).

Brenda Gideon agreed to the dissolution decree entered by the superior court. She thereby waived any challenge to the dissolution court's failure to review all of the statutory factors. The invited error doctrine precludes a party from seeking appellate review of an error she helped create. *State v. Mercado*, 181 Wn. App. 624, 629-30, 326 P.3d 154 (2014). Brenda argues that fraud and concealment induced her to enter the agreement. To be invited, the error must be the result of an affirmative, knowing, and voluntary act. *State v. Mercado*, 181 Wn. App. 624, 630 (2014). We address this separate argument below.

### CR 60(b)(4)

CR 60(b)(4) declares:

(b) On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons:

. . . .

(4) Fraud (whether heretofore denominate intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

To succeed under CR 60(b)(4), the moving party must establish by clear and convincing evidence that the fraudulent conduct or misrepresentation caused the entry of the judgment such that the losing party could not fully and fairly present his or her case or defense. *In re Marriage of Bresnahan*, 21 Wn. App. 2d 385, 405, 505 P.3d 1218 (2022).

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Clear and convincing evidence requires a showing that a fact is “highly probable.” *In re Vulnerable Adult Petition for Winter*, 12 Wn. App. 2d 815, 830, 460 P.3d 667 (2020).

We review a trial court’s decision under CR 60(b)(4) for abuse of discretion. *Haller v. Wallis*, 89 Wn.2d 539, 546, 573 P.2d 1302 (1978). A court abuses discretion when issuing a legally untenable or manifestly unreasonable decision. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

Brenda Gideon contends that David Gideon (1) coerced her into signing the settlement agreement, (2) pressured her into agreeing to an uncontested dissolution, (3) withheld information about their marital assets, and (4) misled the court regarding his finances. In so arguing, Brenda relies only on her own declaration. A “mere self-serving declaration” by a spouse is insufficient to meet the clear and convincing evidence standard. *In re Marriage of Schwartz*, 192 Wn. App. 180, 368 P.3d 173 (2016). We would prefer that settlement agreements separately list each asset and its value. Nevertheless, Brenda fails to identify any asset that David hid from her. She does not suggest how a fair settlement would have differed from the one entered.

In his declaration, David Gideon refuted allegations forwarded by Brenda Gideon. His testimony supports a finding of a fair settlement. His testimony could cause one to question Brenda’s credibility when claiming she lacked funds to hire a separate attorney.

When a trial court faces competing declarations by the parties, the court does not abuse its discretion when ruling in one party’s favor based on the evidence. *In re*

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*Marriage of Littlefield*, 133 Wn.2d 39, 47 (1997). Thus, the dissolution court did not abuse its discretion when denying the motion to vacate.

Brenda Gideon principally relies on *Seals v. Seals*, 22 Wn. App. 652, 590 P.2d 1301 (1979). After the entry of a dissolution decree, wife Doris Seals brought a partition action to divide property that husband Max Seals concealed during the dissolution proceeding. Max responded by blaming Doris for her lack of knowledge. According to Max, Doris should have resorted to subpoenaing records in order to discover the existence of the assets he concealed. Max failed to note that he denied the existence of the assets in an interrogatory answer. The trial court found that Max willfully and fraudulently hid the existence of two bank accounts and stock in two corporations. The trial court awarded Doris a one-half interest in all of the assets.

The dissolution court's lack of a finding of fraud on the part of David Gideon readily distinguishes this appeal from *Seals v. Seals*. Also, Brenda Gideon seeks to vacate the dissolution decree, whereas Doris Seals only wanted a half interest in hidden assets. Brenda identifies no assets hidden from her by David.

CR 60(b)(11)

Brenda Gideon also relies on CR 60(b)(11) to vacate the dissolution decree.

CR 60(b)(11) states:

(b) On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons:



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....  
(11) Any other reason justifying relief from the operation of the judgment.

Subsection (11) does not extend to errors in law. *In re Marriage of Thurston*, 92 Wn. App. 494, 499, 963 P.2d 947 (1998). This subsection's catchall provision seeks to serve the ends of justice in extreme, unexpected situations and when no other subsection of CR 60(b) applies. *Dzaman v. Gowman*, 18 Wn. App. 2d 469, 478, 491 P.3d 1012 (2021).

CR 60(b)(11) does not aid Brenda Gideon for several reasons. Brenda Gideon reargues that David failed to disclose all of his assets and the dissolution court shunned its statutory duties under RCW 26.09.080 when entering the dissolution decree without adequate information about the value of the parties' assets and liabilities, the extent of the community property, and the extent of the separate property. To the extent that Brenda complains about David's fraud, CR 60(b)(4), not (11), covers the argument. To the extent Brenda criticizes the dissolution court's failure to fully review the property settlement when entering the decree, she assigns legal error not redressable. In short, the appeal's circumstances do not present an extreme, unexpected situation.

### Reasonable Attorney Fees

Brenda Gideon seeks recovery from David for the reasonable attorney fees and costs she incurred in this appeal. She cites RAP 14.2 and RCW 26.09.140. We deny the request because Brenda has not filed an affidavit of financial need. A failure to submit an affidavit demonstrating a financial need and the opposing party's ability to pay precludes

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an ex-spouse from an award of costs and attorney fees under RCW 26.09.140. *In re Marriage of Oblizalo*, 54 Wn. App. 800, 806, 776 P.2d 166 (1989); *In re Marriage of Coons*, 53 Wn. App. 721, 770 P.2d 653 (1989); *In re Marriage of Ochsner*, 47 Wn. App. 520, 529, 736 P.2d 292 (1987). We do not address whether we would have awarded fees if Brenda had filed an affidavit.

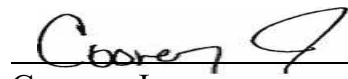
### CONCLUSION


We affirm the dissolution court's denial of Brenda Gideon's motion to vacate the dissolution decree and its property allocation. We deny Brenda reasonable attorney fees and costs on appeal.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
Fearing, J.

WE CONCUR:

  
Cooney, J.

  
Staab, A.C.J.

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