

FILED
SUPREME COURT
STATE OF WASHINGTON
10/26/2020 3:23 PM
BY SUSAN L. CARLSON
CLERK

No. 99150-2

IN THE SUPREME COURT
STATE OF WASHINGTON

SHANNON CUNNINGHAM,

Respondent,

vs.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A
ELIZABETH ANNE KARWOSKI, husband and wife and the marital
community comprised thereof,

Petitioners.

PETITION FOR REVIEW

Brian J. Waid
WSBA No. 26038
WAID LAW OFFICE, PLLC
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Attorney for Petitioners

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2. Should the Court grant review pursuant to RAP 13.4(b)(1) and (b)(2) because the decision of the Court of Appeals directly conflicts with prior decisions of the Supreme Court and Courts of Appeal?	
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I. Identity of Petitioners

Petitioners Jon and Elizabeth Anne Karwoski are neighbors of Respondent Shannon Cunningham. The Karwoskis were defendants in the trial court and appellants on appeal in Division I.

II. Introduction

On July 20, 2020, a Division I Commissioner refused to require Respondent Cunningham to segregate her attorney fees between their successful (*but unopposed*) award of fees on the merits from fees incurred to pursue Respondent's unsuccessful RAP 18.9 demand *against the Karwoskis'* appellate counsel who had taken over the Karwoski's *pro se* appeal. Respondent concedes she sought RAP 18.9 fees in an "to attempt to ensure a source¹ of payment, if possible" in the event Mr. Karwoski "would refuse to pay all fees that could be awarded." Appx. 235.

The Commissioner considered Cunningham's RAP 18.9 claim "intertwined with the merits of this appeal" and reasoned that "there is no good reason why this Court should reduce the amount of attorney fees requested. . .". Appx. 222. See discussion, *infra* at pp. 6-8.

Petitioners filed a Motion to Modify the Commissioner's ruling [Appx. 225], but Division I denied their motion. Appx. 243. The Court of Appeals thus placed the burden for segregating a party's fees on the party opposing the request rather than the party seeking to recover fees, while also encouraging litigants to run up fees with unwarranted RAP 18.9

¹ Petitioners' appellate counsel was the only other potential "source" for payment.

claims against opposing counsel, even when the Respondent is assured of recovering attorney fees if the Respondent prevails on the merits (and, therefore, could not recover fees on the RAP 18.9 demand).

This Petition thus seeks to: (a) protect litigants and their counsel from gratuitous and unwarranted RAP 18.9 claims designed to discourage attorneys from undertaking representation of *pro se* litigants in difficult cases, and; (b) encourage attorneys to maintain time records necessary to segregate fees relating to successful and unsuccessful claims whenever the attorney should reasonably anticipate (as here) a future fee request.

III. Citation to Court of Appeals Decision

Cunningham v. Karwoski, Div. I case no. 79753-1, 2020 WL 3268689; however, the Order for which review is sought does not appear in Westlaw. Appx. 220, 243.

IV. Issues Presented for Review

1. Should the Court review the decision of Division I which expressly adopts two standards for segregation of attorney fees that this Court has explicitly rejected? **Answer: Yes.**
2. Should the Court grant review pursuant to RAP 13.4(b)(1) and (b)(2) because the decision of the Court of Appeals directly conflicts with prior decisions of the Supreme Court and Courts of Appeal? **Answer: Yes.**

3. Should the Court grant review to protect litigants and their counsel from gratuitous and unwarranted RAP 18.9 demands against opposing appellate counsel? **Answer: Yes.**

V. Statement of the Case

This case arose out of a dispute between neighbors, *i.e.*, Petitioners Jon and Anne Karwoski and Respondent Shannon Cunningham. The trial court enforced a CR 2A Agreement in favor of Cunningham over the strenuous objections of the by-then *pro se* Karwoskis. Appx. 002-005. The trial court also awarded Cunningham attorney fees pursuant to both contract and RCW 4.84.185. Appx. 006-010. The Karwoskis appealed, *pro se*, including an appeal of the attorney fee award against them. Appx. 001. During their appeal, the Karwoskis retained appellate counsel who concluded that the Karwoskis' appeal was not frivolous and advised them that they needed to proceed with the appeal due to uncertainty created by recent Division I decisions on a client's ability to pursue a potential legal malpractice claim against the client's attorney in the underlying matter if the client did not pursue an appeal of the underlying case. Appx. 115-117.

The Karwoskis' Opening Brief in Division I did *not* challenge Cunningham's right to recover attorney fees from the Karwoskis' *if* Cunningham prevailed on the merits of enforcing the CR 2A Agreement. Appx. 061, 075, 109-111. Indeed, Cunningham expressly acknowledged the Karwoskis' "concession" in Respondent's Brief. Appx. 043. Moreover, the Karwoskis had posted a cash supersedeas bond during the

appeal.² Appx. 235. Cunningham thus knew that the Karwoskis had deposited adequate cash with the trial court to cover any potential recovery by Cunningham, including attorney fees on appeal. Cunningham nevertheless devoted approximately 50% of Respondent's Brief to her RAP 18.9 demand and, more specifically, to their demand that the Court award frivolous appeal damages against the Karwoskis *and their appellate counsel*. Appx. 018, 019, 029-32, 042-046.

The Kaworskis replied that they had relied upon appellate counsel's advice in making their decision to proceed with the appeal, that the appeal was *not* frivolous, and that the Court should not punish them for having relied on the advice of their appellate attorney. Appx. 109-114. Cunningham moved to strike the Karwoskis' Reply Brief because it addressed a "new issue," *i.e.*, Cunningham's demand for frivolous appeal damages. Appx. 119. The Karwoski's answered Cunningham's motion to strike. Appx. 123. Division I did not grant the motion to strike.

Division I affirmed the trial court judgments in an unpublished opinion. Appx. 127. The Court of Appeals also awarded Cunningham attorney fees based on the CR 2A Agreement enforced by the trial court. Appx. 139-141. However, the Court of Appeals did *not* award RAP 18.9 frivolous appeal damages. Appx. 141 n. 9.

Cunningham's attorneys thereafter filed fee affidavits in which they sought fees for the entirety of their work on appeal (and otherwise).

² The trial court had set bond at \$48,500, based in part on Mr. Master's testimony estimating his appellate fees at \$30,000 for this appeal. ER 201.

Appx. 142, 175. Cunningham’s attorneys also did *not* segregate their time related to Cunningham’s RAP 18.9 demands. *Id.* They also failed to offer any testimony to support a conclusion that they could *not* segregate their time between spent on their separate RAP 18.9 demands. *Id.*

The Karwoskis thus objected to Cunningham’s fee demand and requested that the Court either deny Cunningham’s fee request in whole or in part for having failed to segregate, or require Cunningham’s attorneys to segregate their time between the fees incurred to defending the appeal on the merits³ from their fees incurred in unsuccessfully seeking RAP 18.9 frivolous appeal damages. Appx. 205. The Division I Commissioner rejected the Karwoskis’ request to require Cunningham’s counsel to segregate their fees, reasoning that the merits of the appeal and Cunningham’s RAP 18.9 demands were “intertwined with the merits of this appeal” and “there is no good reason why this Court should reduce the amount of attorney fees requested.” Appx. 222.

The Karwoskis moved for modify the Commissioner’s decision. Appx. 225. In response, Cunningham admitted that she had used her RAP 18.9 as a means “to attempt to ensure a source of payment, if possible” in the event Mr. Karwoski “would refuse to pay all fees that could be awarded.” Appx. 235. The Court of Appeals denied the Karwoskis’ motion to modify on September 24, 2020. Petitioners thus seek review of the Division I order denying their Motion to Modify and the underlying

³ The Karwoski’s had *not* opposed an award of fees *if* the Court affirmed the trial court order enforcing the CR 2A Agreement. Appx. 075.

Commissioner's order which it upheld.

VI. ARGUMENT: The Court Should Grant Review Pursuant to RAP 13.4(b)(1) and/or (b)(2).

The Court of Appeals directly conflicts with this Court's long-established command that when, as here, an attorney fees recovery is authorized for only some of the claims, the attorney fees award must properly reflect a segregation of the time spent on issues for which attorney fees are authorized from time spent on other issues. *E.g.*, *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 672-673, 880 P.2d 988 (1994), *citing Gaglihari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 450, 815 P.2d 1362 (1991); *Travis v. Washington Horse Breeders Ass'n, Inc.*, 111 Wn.2d 396, 410-411, 759 P.2d 418 (1988); *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 66, 738 P.2d 665 (1987); *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 744, 733 P.2d 208 (1987); *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 106 Wn. 2d 826, 849-850, 726 P.2d 8 (1986); *Kastanis v. Educational Employees Credit Union*, 122 Wn.2d 483, 859 P.2d 26 (1993). Moreover, the *court* must separate the time spent on those theories essential to [the cause of action for which attorneys' fees are properly awarded] and the time spent on legal theories relating to the other causes of action.... This must include, on the record, a segregation of the time allowed for the [separate] legal theories....". *Id.*, *citing Travis*, 111 Wn.2d at 411.

Petitioners acknowledge that lower courts need not segregate fees if no reasonable segregation of successful and unsuccessful claims can be

made. Here, however, the Division I Commissioner applied a clearly erroneous legal standard (*i.e.*, “intertwined with the merits of this appeal”) to justify disregard of the Court’s standards governing segregation of fees. More specifically, the mere fact that that some claims “‘overlapped and were intertwined’ and that some basic facts were essential to each cause of action,” is insufficient to disregard this Court’s command that the lower courts require attorneys to segregate their fees. *Travis, supra*, 111 Wn.2d at 411. Indeed, *Travis* **explicitly rejected** the “intertwined” standard that Division I applied here. *Id.*

Division I compounded its disregard of this Court’s standards governing segregation by placing the burden on Mr. & Mrs. Karwoski to prove the feasibility of segregation, *i.e.*, “there is no good reason why this Court should reduce the amount of attorney fees requested,” despite this Court’s well-established requirement that the party seeking attorney fees must carry the burden of segregating their fees. *E.g., Kastanis v. Educ. Employees Credit Union*, 122 Wn.2d 483, 501-502, 859 P.2d 26 (1993) (“plaintiff can be required to segregate its attorney’s fees between successful and unsuccessful claims”); *Schmidt v. Cornerstone Invest., Inc.*, 115 Wn.2d 148, 171, 795 P.2d 1143 (1990)(fees denied because “the attorney fee declaration ... does not segregate”); *Reninger v. Dept. of Corrections*, 79 Wn. App. 623, 640, 901 P.2d 325 (no fees where claimants failed to segregate), *aff’d*, 134 Wn.2d 437, 951 P.2d 782

(1995).⁴ Indeed, as *Kastanis* explains, Washington courts should normally require segregation where, as here, it would not have been “unnecessarily complex” for Respondent to (unopposed) request for attorney fees related to the merits and her separate request for RAP 18.9 damages against opposing counsel. *Kastanis, supra* 122 Wn.2d at 500.

Beyond Division I’s clear disregard of this Court’s legal standards governing the need for segregation of fees, this case warrants review because Washington courts should *not* reward litigants for unsuccessful attempts to recover fees against opposing counsel pursuant to RAP 18.9 when the litigant is already assured of recovering contractual attorney fees if the litigant prevails on the merit of the appeal. (Furthermore, if the Petitioners had prevailed on the merits of the appeal, then their appeal could not have qualified as frivolous for purposes of RAP 18.9).

More specifically, Washington courts “must also segregate time spent litigating claims against codefendants. *Ewing v. Glogowski*, 198 Wn. App. 515, 523, 394 P.3d 418 (2017), *cited with approval*, Ende, 14A *Wash. Prac. Civil P.* §37.16 (3rd ed. 04/2020), *citing Loeffelholz, supra* 119 Wn. App. at 691. However, no decision of this Court has addressed the relationship between a litigant’s responsibility to segregate

⁴ Many Washington appellate decisions similarly place the burden on the party seeking fees to provide the evidence necessary for segregation. *E.g., Loeffelholz v. Citizens for Leaders with Ethics & Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 690 n. 69, 82 P.3d 1199, 1213 (2004)

fees incurred in defending litigation with the opposing party from time incurred to pursue an unsuccessful attempt to also recover fees from opposing counsel under RAP 18.9 (or, by analogy, CR 11).

Division I adopted a lax standard that conflicts with this Court's long established precedents.

VI. Conclusion

For these reasons, the Petitioners respectfully request that the Court grant review of this case pursuant to RAP 13.4(b)(1) and/or (b)(2), vacate the award of fees to Respondents and deny fees altogether, or remand the case to the Court of Appeals with instructions to require Respondent to segregate her fees between successful and unsuccessful claims, and/or grant Petitioners such other relief as the Court deems appropriate. Petitioners also request an award of attorney fees in connection with the proceedings in this Court and on remand.

DATED: October 26, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid

BRIAN J. WAID
WSBA No. 26038
Attorney for Petitioners

CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail:
None

Dated: October 26, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid

Brian J. Waid

WSBA No. 26038

Attorney for Petitioners

FILED
SUPREME COURT
STATE OF WASHINGTON
10/26/2020 3:23 PM
BY SUSAN L. CARLSON
CLERK

No.

IN THE SUPREME COURT
STATE OF WASHINGTON

SHANNON CUNNINGHAM,

Respondent,

vs.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A
ELIZABETH ANNE KARWOSKI, husband and wife and the marital
community comprised thereof,

Petitioners.

APPENDIX IN SUPPORT OF PETITION FOR REVIEW

Brian J. Waid
WSBA No. 26038
WAID LAW OFFICE, PLLC
5400 California Ave. S. W., Ste D
Seattle, Washington 98136
Telephone: 206-388-1926
Email: bjwaid@waidlawoffice.com
Attorney for Petitioners

Petitioners JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A
 ELIZABETH ANNE KARWOSKI by and through their undersigned counsel of record,
 respectfully submit the attached Appendix containing the order appealed from and parts of the
 record relevant to Petitioners’ Petition for Discretionary Review, pursuant to RAP 13.4(c)(9)

DATED: October 22, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
 BRIAN J. WAID
 WSBA No. 26038
 Attorney for Petitioners

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CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail: None

October 22, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
Brian J. Waid
WSBA No. 26038
Attorney for Petitioners

¹ Petitioner omitted the Commissioner’s Ruling appended to the Motion to Modify as duplicative.
² Petitioner omitted the attachments to Respondent’s Answer as duplicative.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SHANNON CUNNINGHAM, an unmarried individual,

Plaintiff,

-vs-

JON R KARWOSKI and ELIZABETH ANNE COLLINS A/K/A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof.

Defendants.

NO. 18-2-04648-3 KNT

AMENDED
NOTICE OF APPEAL

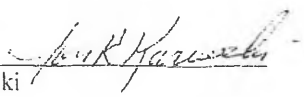
TO: Washington Court of Appeals –
Division I

(Clerks Action Required)

Defendants Jon Karwoski and Elizabeth Collins, Aka Elizabeth Karwoski seeks review by the designated appellate court of the Judgment in a Civil Case.

A copy of the Judgment and Order is attached to this notice.

Dated this 27th day of March 2019



Jon Karwoski

AMENDED NOTICE OF APPEAL
Page 1 of 1

JON AND ELIZABETH KARWOSKI
3520 SW Roxbury Street
Seattle, WA 98126
206-915-7679

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

SHANNON CUNNINGHAM, an unmarried individual,

Plaintiff,

v

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof,

Defendants.

Case No 18-2-04648-3 KNT

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT

(Approved)

(Clerk's Action Required)

I. JUDGMENT SUMMARY

A.	Judgment Creditor.	Shannon Cunningham	
B.	Judgment Debtor	Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins	
C.	Principal Judgment as of September		\$12,500.00
D.	Attorney's Fees	<i>(reserved)</i>	\$6,244.98 JS
E.	Costs		\$170.47
F.	Prejudgment Interest - (6/2/18 through 2/28/19)		\$1,113.70
G.	Total Judgment:	13,784.17	\$20,029.15 JS
H.	Total Judgment shall bear interest at the rate of 12% per annum		
I.	Attorney for Judgment Creditor.	Samuel M Meyler, WSBA No 39471 Meyler Legal, PLLC	

II. JUDGMENT AND ORDER

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT I

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE N, STE 200
SEATTLE, WASHINGTON 98109
TEL 206-876-7770 • FAX 206-876-7771

ORIGINAL

1 THIS MATTER having come on for hearing on Plaintiff's Motion to Enforce CR 2A
2 Settlement Agreement, and the Court deeming itself fully advised on the premises, having heard
3 oral argument on the matter from Plaintiff's counsel and from Defendant Jon Karwoski, and having
4 reviewed the papers and pleadings on file herein, including

- 5 1. Plaintiff's Motion to Enforce CR 2A Settlement Agreement,
- 6 2. Declaration of Shannon Cunningham In Support of Motion to Enforce CR 2A
7 Settlement Agreement,
- 8 3. Declaration of Samuel M. Meyler In Support of Plaintiff's Motion to Enforce CR
9 2A Settlement Agreement,
- 10 4. Plaintiff's Supplemental Brief Regarding Plaintiff's Right To Award of Attorney's
11 Fees,
- 12 5. Declaration of Samuel M. Meyler Regarding Attorney's Fees,
- 13 6. Respondent Jon Karwoski's Exhibits Regarding Hearing on December 14, 2018,
- 14 7. _____
- 15 8. _____
- 16 9. _____
- 17 10. _____

18
19
20 NOW, THEREFORE,

21
22 IT IS HEREBY ORDERED that judgment be entered in favor of Shannon Cunningham
23 and against Defendants Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins, in the
24 principle amount of \$12,500.00, plus pre-judgment interest of \$1,113.70, attorney's fees of
25 \$ ~~6,244.98~~ 244.98 and costs of \$ 170.47 as set forth in the Judgment Summary above
26 Carroll

(53)

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT: 2

MEYLER LEGAL, PLLC
1100 WESTLAKE AVE. N. STE 200
SEATTLE, WASHINGTON 98109

1 The Total Judgment amount shall bear interest at the rate of twelve percent (12%) per annum until
2 fully paid.

3 **IT IS FURTHER ORDERED** that Defendants are required to comply with the terms of
4 the CR 2A Agreement, the Settlement and Mutual Release Agreement and the Easement
5 Agreement and Notice of Termination and Release

6
7 **IT IS FURTHER ORDERED** that Defendants ~~Jon R. Karwoski and Elizabeth Anne~~
8 ~~Collins a/k/a Anne Collins are ordered to cooperate with Plaintiff's Counsel in executing the~~
9 ~~Settlement and Mutual Release Agreement and the Easement Agreement and Notice of~~
10 ~~Termination and Release.~~ *that the Side Yard Easement recorded under*
11 *King County Recorder's Office Recording No. 9104171054*
12 *is hereby terminated, released and extinguished,*
13 *as is the Accessory Structure Agreement, date April 8, 1991.*

14 **IT IS FURTHER ORDERED** that the Preliminary Injunction entered March 9, 2018 is
15 extinguished by operation of the issuance of the following Permanent Injunction

16 **IT IS FURTHER ORDERED** that Defendants Jon R. Karwoski and Elizabeth Anne
17 Collins a/k/a Anne Collins are hereby permanently enjoined and restrained from, directly or
18 indirectly, contacting, harassing or surveilling Cunningham and Cunningham's guests, invitees
19 and tenants. This Permanent Injunction/No Contact Order shall apply to the Defendants, as well
20 as their officers, agents, servants, employees and upon those persons in active concert or
21 participation with the Defendants who receive actual notice of this Permanent Injunction/No
22 Contact Order

23 **IT IS FURTHER ORDERED** that the bond posted by Hartford Fire Insurance Company
24 on behalf of Cunningham is hereby extinguished and released

25 **IT IS FURTHER ORDERED** that this order resolves all claims asserted in this action
26 The court retains jurisdiction for twelve (12) months from the date of entry for purposes of
enforcement motions

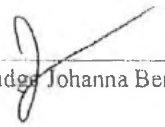
JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO
ENFORCE CR 2A SETTLEMENT AGREEMENT(S)

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE N., STE 300
SEATTLE, WASHINGTON 98109
TEL: (206) 834-7373 • FAX: (206) 834-7373

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WARNING TO DEFENDANTS: Willful disobedience of the terms of this Judgment and Order may also be contempt of court and subject Defendants to penalties under Chapter 7.21 RCW.

DONE IN OPEN COURT this 28th day of February, 2019



Judge Johanna Bender

PRESENTED BY:
MEYLER LEGAL, PLLC

/s/Samuel M. Meyler
Samuel M. Meyler, WSBA #39471
Attorney for the Plaintiff

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT-1

MEYLER LEGAL PLLC
1700 WESTLAKE AVE N, STE 200
SEATTLE WASHINGTON 98109
TEL: (206) 876 7770 • FAX: (206) 876 7771

1 FILED
 2 2019 MAR 20 09:08 AM
 3 KING COUNTY
 4 SUPERIOR COURT CLERK
 5 E-FILED
 6 CASE #: 18-2-04648-3 KNT

7 SUPERIOR COURT FOR THE STATE OF WASHINGTON
 8 IN AND FOR THE COUNTY OF KING

9 SHANNON CUNNINGHAM, an unmarried
 10 individual,

11 Plaintiff,

12 v.

13 JON R. KARWOSKI and ELIZABETH
 14 ANNE COLLINS A/K/A ELIZABETH
 15 ANNE KARWOSKI, husband and wife and
 16 the marital community comprised thereof,

17 Defendants.

Case No. 18-2-04648-3 KNT

JUDGMENT AND ORDER AWARDING
 PLAINTIFF ATTORNEY'S FEES

(Clerk's Action Required)

18 I. JUDGMENT SUMMARY

19	A. Judgment Creditor:	Shannon Cunningham
20	B. Judgment Debtor:	Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins
21	C. Principal	\$0.00
22	D. Attorney's Fees	\$6,138.00
23	E. Costs	\$0.00
24	F. Prejudgment Interest	\$0.00
25	G. Total Judgment:	\$6,138.00
26	H. Total Judgment shall bear interest at the rate of 12% per annum	
27	I. Attorney for Judgment Creditor:	Samuel M. Meyler, WSBA No. 39471 Meyler Legal, PLLC

28 II. JUDGMENT AND ORDER

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S
 FEES - I

Johanna Bender
 Judge, King County Superior Court
 401 4th Ave. North
 Kent, WA 98012

1 THIS MATTER having come on regularly for hearing before the Court, and the Court
2 deeming itself fully advised on the premises, having considered the oral arguments presented by
3 Plaintiff's counsel and Defendant Jon R. Karvoski, *pro se*, and having reviewed the papers and
4 pleadings on file herein, including:

- 5 1. Plaintiff's Motion to Enforce CR 2A Settlement Agreement (Dkt. No. 28);
- 6 2. Declaration of Shannon Cunningham In Support of Motion to Enforce CR 2A
7 Settlement Agreement (Dkt. No. 29);
- 8 3. Declaration of Samuel M. Meyler In Support of Plaintiff's Motion to Enforce CR
9 2A Settlement Agreement (Dkt. No. 30);
- 10 4. Respondent Jon Karvoski's Exhibits Regarding Hearing on December 14, 2018
11 (Dkt. No. 34);
- 12 5. Plaintiff's Supplemental Brief Regarding Plaintiff's Right to Award of Attorney's
13 Fees (Dkt. No. 36);
- 14 6. Declaration of Samuel M. Meyler Regarding Attorney's Fees (Dkt. No. 37);
- 15 7. Plaintiff's Motion for Entry of Judgment for Attorney's Fees filed March 7, 2019;
- 16 8. Declaration of Samuel M. Meyler Regarding Attorney's Fees filed March 7, 2019;

17
18
19 **BASIS FOR IMPOSITION OF ATTORNEY'S FEES**

20 The Court concludes that the arguments and defenses presented by Defendants were
21 frivolous, not supported by any rational argument and advanced without reasonable cause.
22 Attorney's fees are therefore owing pursuant to RCW 4.84.185. The Court further finds that the
23 CR 2A agreement contains the following attorney's fees provision: "The Confession of Judgment
24 shall provide for interest at 12% and attorney's fees for enforcement and collection." The
25 confession of judgment was not entered solely because Defendants violated the terms of a valid
26

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S
FEES - 2

Johanna Bender
Judge, King County Superior Court
401 4th Ave North
Kent, WA 98032

1 CR 2A agreement. Had they signed the confession, Defendants would have been liable for the
2 fees now sought for entry of certain additional orders ancillary to the judgment in this matter (to
3 extinguish a side yard easement and an accessory structure agreement). Instead, those orders were
4 entered by the Court pursuant to contested motion to enforce the CR 2A agreement. See Dkt.;
5 Sub. 43.
6

7 REASONABLENESS OF TIME SPENT AND OF BILLING RATE

8 "Courts must take an active role in assessing the reasonableness of fee awards, rather than
9 treating cost decisions as a litigation afterthought." Berryman v. Metcalf, 177 Wn.App. 644, 657
10 (Div. I 2013) (internal citations omitted, emphasis in original). The Court must begin a disputed
11 fee calculation by determining the appropriate lodestar figure, "which is the number of hours
12 reasonably expended on the litigation multiplied by a reasonable hourly rate." Id. at 660. After
13 calculating the lodestar, the Court must then evaluate whether any deviation is warranted. Id. at
14 665-66. Having reviewed the billing records submitted by Plaintiff's counsel, the Court finds that
15 the amount of time billed in this matter was reasonable in light of the nature of the work performed.
16 The Court notes that considerable time was recorded in counsel's timesheets but not billed. It
17 appears that Plaintiff was charged a significantly reduced amount for the work performed in this
18 matter, and it is that reduced amount that is now being imposed upon Defendants.
19

20 Counsel bills at a rate of \$310 per hour. Defendants have not disputed the reasonableness
21 of this billing rate. The Court concludes that this rate is reasonable in light of counsel's experience
22 and the nature of this litigation.
23

24 LODESTAR

25 The lodestar in this matter is \$6,138.00. Neither party has sought a departure from
26 the lodestar, and the Court finds no basis for such a departure.

JUDGMENT AND ORDER AWARDED PLAINTIFF ATTORNEY'S
FEES - 3

Johanna Bender
Judge, King County Superior Court
401 4th Ave North
Kent, WA 98032

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IT IS HEREBY ORDERED that judgment be entered in favor of Shannon Cunningham and against Defendants Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins for reasonable attorney's fees of \$6,138.00 as set forth in the Judgment Summary above. The Total Judgment amount shall bear interest at the rate of twelve percent (12%) per annum until fully paid.

DONE IN OPEN COURT this 20th day of March, 2019.

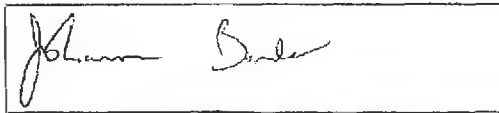
Electronically signed and filed
Judge Johanna Bender

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S
FEES - 4

Johanna Bender
Judge King County Superior Court
401 4th Ave North
Kent, WA 98032

King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-04648-3
Case Title: CUNNINGHAM VS KARWOSKI ET ANO
Document Title: ORDER ORDER ON ATTORNEY'S FEES
Signed by: Johanna Bender
Date: 3/20/2019 9:08:23 AM

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'Johanna Bender' written in a cursive style.

Judge/Commissioner: Johanna Bender

This document is signed in accordance with the provisions in GR 30.
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FILED
Court of Appeals
Division I
State of Washington
11/15/2019 4:00 PM

No. 79753-1

IN THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION I

SHANNON CUNNINGHAM,

Respondent,

v.

JON R. KARWOSKI and ELIZABETH COLLINS a/k/a ELIZABETH
ANNE KARWOSKI, husband and wife and the marital community
comprised thereof,

Appellants.

BRIEF OF RESPONDENT

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C. In February 2018, Cunningham sued the Karwoskis, obtaining temporary and preliminary injunctions against them entering and damaging her property, and the City of Seattle filed criminal charges against Karwoski. 5

D. In May 2018, the parties settled. 6

E. For months, the Karwoskis failed to comply with the settlement terms to which they had agreed. 8

F. In August 2018, the parties filed a Notice of Settlement of All Claims Against All Parties, signed by their counsel. 8

G. In November 2018, Cunningham sought to enforce the settlement, with which she had fully complied. 10

H. The trial court enforced the Settlement Agreement. 11

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INTRODUCTION

This is a frivolous appeal filed by an attorney. The appellants literally presented no admissible evidence in the trial court. They literally presented no legal arguments in the trial court. They literally present this Court with no record supporting any of their arguments raised for the first time here. They waived any possible appeal. But that did not stop their appellate lawyer from filing this appeal anyway.

Wasting this Court's time in this fashion is unconscionable. But it is particularly egregious where, as here, the appellants fail to tell the Court that they raised no arguments and proffered no admissible evidence in the trial court. Their candor is abysmal.

The only conceivable purpose for filing such an appeal is delay. And indeed, the appellants have delayed at every opportunity. They failed to file their record on time. They failed for months and months to file their opening brief – without even bothering to ask for an extension of time. They flout this Court's rules. It borders on contempt. It is certainly contemptable misconduct.

This Court should award Cunningham attorney fees and costs for this frivolous appeal against the appellants and their counsel. If this Court fails to find this appeal frivolous, then it should affirm and award Cunningham fees and costs under the Settlement Agreement.

RESTATEMENT OF ISSUES

Where parties responding to a summary judgment motion supported by affidavits, and seeking to enforce a written and signed Settlement Agreement, file no admissible evidence and no responsive pleadings, and then on appeal file no record showing that any legally cognizable issues were raised in the trial court, is their appeal necessarily frivolous because no issues were preserved?

Is this particularly true where, as here, the appellants delay the appeal process for many, many months, and then fail in their duty of candor to the tribunal by not disclosing the state of the record in their opening brief, much less raising RAP 2.5(a)?

Is this even more true where, as here, the unpreserved new arguments they now raise are frivolous in and of themselves?

In such circumstances, should this Court award attorney fees and costs against the appellants and their appellate counsel?

Is such an award even more justified where, as here, the appellants repeatedly flout this Court's rules – just as they flouted the trial court's rules – including repeatedly citing an unpublished decision in violation of GR 14.1?

RESTATEMENT OF CASE

- A. Respondent Shannon Cunningham’s predecessor in interest gave Appellant Karwoski a five-foot easement in 1991, but Karwoski never used it.**

Respondent Shannon Cunningham owns a home and property at 3516 SW Roxbury Street, in Seattle, WA. CP 111.¹ In 1985, Appellant Karwoski purchased nearby property, including a single-family home, at 9446 36th Ave. SW (“North Property”). *Id.* In April 1991, Cunningham’s predecessor in interest granted Karwoski a “Single Family Side Yard Easement” (the “Easement”). CP 111, 121. On its face, the Easement is intended to comply with Seattle City Land Use Code § 23.44.140(2), which “provides an exception from the five foot side yard requirement if an easement is provided along the side lot line of the abutting lot, sufficient to leave a ten foot separation between the two principal structures of the adjoining lots.” CP 121. Karwoski never pursued development on his North Property to take advantage of the Easement. CP 112.²

¹ This cite is to Cunningham’s Verified Complaint (CP 119), as attached to her declaration in support of her motion to enforce her Settlement Agreement with the Karwoskis. CP 110-19. In her Declaration, Cunningham again verified that her allegations in this attached complaint are true and correct. CP 106. Thus, these are sworn facts (not just unsworn allegations) that provide the necessary background for this appeal.

² Attached as Appendix A is a topographic boundary survey of Cunningham’s property that identifies the Easement, and Cunningham’s Northern Fence, rockwall/rockery, and garage, all discussed *infra*. CP 124.

Cunningham's garage in the northeast corner of her property encroaches on the Easement. CP 112, 124 (App. A). It has been there for more than ten years. CP 113. Also within the Easement are Cunningham's "Northern fence" and rock wall/rockery. *Id.* These extend the entire length of Cunningham's northern boundary line, creating a barrier to accessing her property from the north. *Id.* South of the Northern Fence, and within the Easement, Cunningham and her predecessors also installed a patio and landscaping. *Id.*

In 1992, Karwoski also purchased the property to the west of the Cunningham Property at 3520 SW Roxbury Street ("West Property"). CP 111-12.

B. In 2017, Karwoski repeatedly threatened to kill Cunningham and her domestic partner, and damaged her property, and Cunningham obtained a protection order.

Since at least 2017, Karwoski has sorely vexed Cunningham:

He threatened to kill Cunningham and her domestic partner;

he otherwise threatened to physically harm them;

he yelled and screamed at them;

he surveilled and monitored them;

he made slicing gestures with his finger across his throat, implying he would cut Cunningham's throat;

he trespassed on her property; and

he attempted to ram her car with his truck.

CP 113-15. Perhaps needless to say, Karwoski has caused Cunningham and her partner severe emotional distress. *Id.*

Cunningham called the police for help and protection against Karwoski numerous times. CP 114. She twice petitioned the King County District Court for orders of protection. CP 114, 126-61. She obtained an Order of Protection against Karwoski. CP 114, 163-65.

Despite the protection order, Karwoski dismantled portions of Cunningham's fence and trespassed on her property. CP 114. He nailed materials to the side of her garage. *Id.* He asserted "ownership" over the Easement and threatened further damage to her fence and garage. *Id.* He threatened to build a stairwell from an elevated deck on his West Property into the Easement. *Id.* He trespassed to dig holes for fenceposts and to deposit concrete and construction materials onto her property. CP 114-15.

C. In February 2018, Cunningham sued the Karwoskis, obtaining temporary and preliminary injunctions against them entering and damaging her property, and the City of Seattle filed criminal charges against Karwoski.

In February 2018, Cunningham sued Karwoski and his wife, Elizabeth Anne Collins ("Karwoskis"), asserting Trespass/Waste, Outrage, Assault, Declaratory Relief, Adverse Possession, Estoppel, and Quiet Title. CP 110-19. She sought and obtained a Temporary

Restraining Order and Order to Show Cause. CP 59-79. Two days later, attorney Ryan Yoke appeared for the Karwoskis. CP 82-83.

Also in February 2018, the City of Seattle filed criminal charges against Karwoski due to his continuing harassment and violation of Cunningham's protection orders. CP 107, 167-69.

In early March 2018, the parties stipulated to an agreed Preliminary Injunction. CP 88-92. Under the Injunction, the Karwoskis were restrained from entering Cunningham's property, including the Easement, and from damaging, destroying, moving, or altering her fence or other property. CP 90. They were specifically warned that any violation would subject them to arrest. CP 91.

D. In May 2018, the parties settled.

In May 2018, the parties mediated with Sherman Knight. CP 107, 180. All parties were present, represented by counsel. *Id.* Cunningham presented a summary of the harassment she has suffered. CP 107, 171-72 (attached as Appendix B). Simply put, she had to call 911 over 20 times in one year; her son is suffering such severe anxiety and fear for his mother's life that he had to seek help from a child psychologist; and she has spent countless hours and large sums combatting Karwoski's harassment. App. B (CP 171-72).

The parties settled. CP 108, 174-75 (agreement attached as Appendix C); CP 180. They agreed to the following (App. C):

- Permanent injunction/No Contact Order preventing Karwoskis from direct or indirect contact/harassment/surveillance of Cunningham and her guests, invitees and tenants.
- Dismissal of all claims and counterclaims.
- Full mutual releases.
- Cunningham and her partner will advise the prosecutor that they are no longer interested in prosecuting Karwoski; they will not be restricted, however, from responding to any legal subpoena.
- Karwoskis release/extinguish the Easement.
- Karwoskis release/extinguish Accessory Structure Agreement.
- Karwoskis acknowledge and accept Cunningham's surveyed property boundaries, including her ownership of the rock wall/rockery and fence.
- The parties shall not enter each other's properties without express prior consent.
- All adverse possession claims are waived.
- Cunningham's fence will remain and may be repaired.
- Karwoskis pay Cunningham \$12,500 within 30 days.
- The parties agree to execute all necessary documents.
- Sherman Knight will arbitrate any disputes over the final language of the settlement or other documents.
- Cunningham and her partner (Brelinski) stipulate to vacating the protection orders against Karwoski.

E. For months, the Karwoskis failed to comply with the settlement terms to which they had agreed.

In late May 2018, the Karwoskis promised to deliver the settlement check (\$12,500) to counsel (Yoke) during the week of June 4, 2018. CP 181, 185-86. They failed to do so. CP 181.

On June 8, 2018, Yoke advised Cunningham's counsel that the Karwoskis were mailing a check that day. CP 181, 188. No check ever arrived. CP 181.

On June 19, 2018, Yoke advised Cunningham's counsel that the Karwoskis were working on getting the settlement payment together. CP 181, 191. That never happened either. CP 181.

F. In August 2018, the parties filed a Notice of Settlement of All Claims Against All Parties, signed by their counsel.

In August 2018, the parties filed an LCR 41 Notice of Settlement of All Claims Against All Parties, signed by their attorneys of record. CP 93-94 (copy attached as Appendix D); CP 181, 207-08 (attorney Yoke gives permission to file Notice of Settlement). This Notice acknowledges that the parties entered into a settlement agreement on May 3, 2018, subject to finalizing settlement documents and carrying out settlement terms. App. D (CP 93). The parties even stipulated that the trial court could dismiss the case under LCR 41(b)(2)(B) if the parties did not file a written notice of

settlement or certificate of settlement without dismissal within 45 days. *Id.*

Despite expressly acknowledging their settlement to the trial court, by October 1, 2018, it was clear that the Karwoskis did not intend to honor their word. CP 181, 196. Cunningham's counsel informed the Karwoskis' attorney Yoke that she would enforce the Settlement Agreement. *Id.* Not coincidentally (and long after the 45 days had passed) Yoke filed a Notice of Intent to Withdraw (dated October 1) on October 11, effective October 18, 2018. CP 95-96.³

On October 9 (prior to Yoke's withdrawal becoming effective) Cunningham's counsel again sent Yoke the settlement documents, giving the Karwoskis until October 19 to raise any disputes regarding those documents. CP 181-82, 201-02, 224-53. On October 22, 2018, Yoke confirmed that he had communicated with the Karwoskis, but they never complied with the settlement. CP 181, 210. No one ever raised any disputes regarding the settlement documents with Cunningham, her counsel, the arbitrator, or the trial court. CP 182.

³ The opening brief falsely asserts that the withdraw was effective the same day it was filed. *Compare* BA 5 & n.2 (effective October 11) *with* CP 95 (effective October 18). Nobody objected. *See* CR 71(c)(3).

G. In November 2018, Cunningham sought to enforce the settlement, with which she had fully complied.

In November 2018, Cunningham filed a motion to enforce the Settlement Agreement. CP 97-105. Cunningham offered the trial court a video of Karwoski trespassing on her property and dismantling her fence. CP 107. She also offered her above-noted summary and the Settlement Agreement. CP 107-08, 171-72 (App. B), 174-75 (App. C).

Cunningham also explained that she had satisfied the key term of the Settlement Agreement – seeing that the criminal charges against Karwoski were dismissed (CP 108):

Following the mediation, and in accordance with Section 4 of the CR 2A Agreement, Mr. Brelinski and I stopped cooperating with the prosecutor pursuing the criminal charges against Mr. Karwoski. As a result, the criminal charges against Mr. Karwoski were dismissed. Attached hereto as **Exhibit 5** are true and accurate copies of the Order of Dismissal entered in each of the criminal cases.

See *also* CP 177-79 (Orders dismissing criminal cases). Yet despite Cunningham's performance of this key settlement term, the Karwoskis refused to execute the necessary documents – as they promised to do – or to pay the \$12,500. CP 108. Cunningham thus requested enforcement of the Settlement Agreement. *Id.*

H. The trial court enforced the Settlement Agreement.

On December 14, 2018, the hearing on Cunningham's motion was (at Karwoski's request) continued to February 8, 2019. CP 254-55. That hearing was subsequently continued to February 28, 2019. CP 288-90.

Karwoski filed nothing.⁴

On February 28, 2019, the trial court enforced the Settlement Agreement, entering a Judgment and Order Granting Plaintiffs Motion to Enforce CR 2A Settlement Agreement, totaling \$13,784.17. CP 293-96. The trial court also entered a Judgment and Order Awarding Plaintiff Attorney's Fees of \$6,138, on March 20, 2019. CP 310-14. The trial court found the Karwoskis' arguments and defenses frivolous. CP 311. They were unsupported by "any rational argument" and "advanced without reasonable cause." *Id.*

The Karwoskis appealed on March 22, 2019. CP 315-24. They filed an Amended Notice of Appeal on March 28, 2019. CP 325-34.

⁴ The opening brief repeatedly refers to emails between Karwoski and his attorney Yoke that Karwoski apparently filed in trial court during the December 14 hearing. *Compare* BA 3-5 & n.1 *with* CP 256-74. As discussed *infra*, those unsworn, inadmissible emails prove nothing.

ARGUMENT

A. Review is *de novo*.

This Court reviews a trial court's decision to enforce a settlement agreement *de novo*. **Lavigne v. Green**, 106 Wn. App. 12, 16, 23 P.3d 515 (2001). "The trial court follows summary judgment procedures when a moving party relies on affidavits or declarations to show that a settlement agreement is not genuinely disputed." **Condon v. Condon**, 177 Wn.2d 150, 161, 298 P.3d 86 (2013). The trial court must view the evidence in the light most favorable to the nonmoving party and determine whether reasonable minds could reach but one conclusion. **Cruz v. Chavez**, 186 Wn. App. 913, 920, 347 P.3d 912 (2015).

B. This appeal is frivolous.

The trial court found the Karwoskis' arguments and defenses – whatever they might have been – frivolous. CP 311. Indeed, it found them unsupported by "any rational argument" and "advanced without reasonable cause." *Id.* They have not improved with age.

An appeal is frivolous when, considering the entire record, this Court is convinced that the appeal does not present any debatable issues upon which reasonable minds might differ and that it is so without merit that there is no possibility of reversal. **Ames v. Ames**,

184 Wn. App. 826, 857, 340 P.3d 232 (2014), *rev. denied*, 352 P.3d 187 (2015). This Court resolves all doubts about frivolity in an appellant's favor. **Ames**, 184 Wn. App. at 857.

But the Karwoskis present no reasonably debatable issues. Indeed, they have not even challenged the trial court's finding that their claims and defenses were frivolous, unsupported by "any rational argument," and "advanced without reasonable cause." *Compare* CP 311 with BA 1-2. They raised no issues and presented no evidence in the trial court, much less debatable issues or admissible evidence. They may not raise them for the first time here.⁵

⁵ See, e.g., RAP 9.12 (in reviewing summary judgment, this Court will consider only evidence and issues called to the trial court's attention); **Kofmehl v. Baseline Lake, LLC**, 177 Wn.2d 584, 594, 305 P.3d 230 (2013) ("the appellate court may consider only the evidence and issues called to the attention of the trial court" on summary judgment); **Doe v. Puget Sound Blood Ctr.**, 117 Wn.2d 772, 780, 819 P.2d 370 (1991) (reviewing court generally will not consider theories not presented to the trial court); **Smith v. Shannon**, 100 Wn.2d 26, 37, 666 P.2d 351 (1983) (same; this rule affords trial court an opportunity to correct any error, avoiding unnecessary appeals and retrials); see also **Bldg. Indus. Ass'n of Wash. v. McCarthy**, 152 Wn. App. 720, 743, 218 P.3d 196 (2009) ("Where a continuance is not clearly requested, the trial court does not err in deciding a summary judgment motion based on the evidence before it") (citing, e.g., **Turner v. Kohler**, 54 Wn. App. 688, 695, 775 P.2d 474 (1989) (trial court acted properly in hearing motion on record before it); **Guile v. Ballard Cmty. Hosp.**, 70 Wn. App. 18, 24-25, 851 P.2d 689 (1993) (if plaintiff "needed additional time, the proper remedy . . . [was] to request another continuance from the trial court"; "she failed to do this [so] is precluded from raising this issue on appeal"; to "hold otherwise would constitute an unwarranted encroachment on the trial court's discretion to dismiss cases which fail to raise genuine issues for trial"))).

Any arguments the Karwoskis might have made were waived due to their failure to proffer any admissible evidence or any legally supported arguments to the trial court. See, e.g., RAP 2.5(a); **Roberson v. Perez**, 156 Wn.2d 33, 39, 123 P.3d 844 (2005) (appellate court “may refuse to review any claim of error which was not raised in the trial court”). While RAP 2.5(a) contains three express exceptions (“(1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right”), the Karwoskis have not cited or discussed RAP 2.5(a), nor made any argument as to why their wholly unpreserved issues based on inadmissible and irrelevant evidence may be raised here. They may not do so for the first time in reply, as such sandbagging would be wholly unfair to Cunningham. See, e.g., **Cowiche Canyon Conserv. v. Bosley**, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (citing **Marriage of Sacco**, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990)).

The *only* thing in this record from Karwoski is some emails between he and his lawyer, or between the lawyers and the trial court, attached to a cover sheet. CP 256-74. These emails were not and are not admissible: they are not attached to a declaration or otherwise authenticated or verified, so they may not be considered

on summary judgment. *See, e.g.*, CR 56(e) (requiring admissible evidence attached to sworn affidavit authenticating it).

The communications with the trial court are purely procedural. Karwoski appears to have handwritten notes on them, but these cryptic notes are unsworn, inadmissible, irrelevant, and unsupported by any citation to legal authority. They cannot establish anything.

Moreover, communications between Karwoski and his lawyer are obviously improper and irrelevant: Cunningham had no access to or knowledge of those (previously) privileged communications.

Nor do the previously privileged emails counter or contradict the Karwoskis' signatures on their Settlement Agreement. At most, those inadmissible emails confirm the Karwoskis' settlers' remorse *after* they settled. *See, e.g.*, CP 265-69 (emails in July and August 2018, which are after May 3, 2018 settlement).

Even the previously privileged emails Karwoski exchanged with his lawyer before the Settlement Agreement do not explain away the Karwoskis' signatures on that Agreement. CP 269-74. These inadmissible and unauthenticated emails show nothing more than failed posturing, but are irrelevant in any event.

The Karwoskis filed nothing admissible regarding the summary judgment at issue. Their appeal is frivolous.

C. The trial court properly enforced the Settlement Agreement against the Karwoskis, who signed it.

As explained above, this Court need not – and should not – reach the merits. The Karwoskis simply gave the trial court no reasonable opportunity to consider any legitimate argument or admissible evidence. This Court should go no further. Rather, it should affirm and award attorney fees and costs to Cunningham. This appeal is utterly meritless.

Nonetheless, this court applies general principles of contract law to settlement agreements. **Cruz**, 186 Wn. App. at 920. A valid contract requires a meeting of the minds on essential terms. **Evans & Son, Inc. v. City of Yakima**, 136 Wn. App. 471, 477, 149 P.3d 691 (2006). Washington follows the “objective manifestation” test for contracts. **Keystone Land & Dev. Co. v. Xerox Corp.**, 152 Wn.2d 171, 177, 94 P.3d 945 (2004). The parties must objectively manifest mutual assent. *Id.* at 177-78.

But this Court imputes intentions corresponding to the reasonable meaning of a person’s words and acts. **Multicare Med. Ctr. v. Dep’t of Soc. & Health Servs.**, 114 Wn.2d 572, 587, 790 P.2d 124 (1990), *overruled in part on other grounds by Neah Bay Chamber of Commerce v. Dep’t of Fisheries*, 119 Wn.2d 464, 832

P.2d 1310 (1992). "Acceptance" is communication by word, sign, or writing, of an intention to be bound by the offer's terms. *Veith v. Xterra Wetsuits, LLC*, 144 Wn. App. 362, 366, 183 P.3d 334 (2008). A party also may accept by performance, where the offer invites performance. RESTATEMENT (SECOND) OF CONTRACTS § 53 (Am. Law Inst. 1981). Ultimately, a contract exists when the intention of the parties is plain and the terms of a contract are agreed upon, even if one or both parties contemplated the later execution of a writing – or of additional writings. *Veith*, 144 Wn. App. at 366.

Cunningham had the burden of identifying the acceptance of the contract. *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000) ("party moving to enforce a settlement agreement carries the burden of proving that there is no genuine dispute over the existence and material terms of the agreement."). Here, the Karwoskis manifested their assent to the plain terms of the Settlement Agreement by signing it. CP 174-75 (App. C.). There is nothing more to analyze, which is why the Karwoskis could raise no legitimate arguments in the trial court.

Nor do they raise any here. They begin by improperly citing an unpublished opinion contrary to GR 14.1. See BA 1, 6, 7, 10, 11 (citing *Goebel Design Group, LLC v. Clear NRG, LLC*, 2018 Wn.

App. LEXIS 1783 (Aug. 6, 2018), without noting that is a nonbinding unpublished opinion). The Karwoskis and their counsel should be sanctioned for this blatant and repeated violation.

1. Under RCW 2.44.010, the Settlement Agreement binds the Karwoskis.

The Karwoskis first argue that RCW 2.44.010 does not apply because Yoke did not sign the Settlement Agreement, they did. BA 7-8. They ignore the record and misread the statute to reach an incorrect result. They cite no case supporting their misreadings.

As relevant here, RCW 2.44.010 provides:

An attorney or counselor has authority:

(1) To bind his or her client . . . by his or her agreement duly made . . . ; but the court shall disregard all agreements . . . in relation to . . . any of the proceedings in, an action . . . **unless** such agreement . . . be . . . signed by the party against whom the same is alleged, **or** his or her attorney. [Emphases added.]

Here, the Karwoskis' attorney Yoke *did* sign the Notice of Settlement to the trial court and Cunningham, asserting on behalf of his clients their agreement to settle the case. CP 93-94. The Karwoskis' Notice of Settlement is in writing and signed by their attorney. Thus, it is binding upon the Karwoskis under RCW 2.44.010.

As for the Settlement Agreement itself, the Karwoskis signed it, so they are bound by it. Yoke did not purport to bind them under that Agreement, so RCW 2.44.010 does not apply to that Agreement

alone. But construing the Settlement Agreement and the Notice of Settlement together, the Karwoskis are bound under RCW 2.44.010. See, e.g., *Pelly v. Panasyuk*, 2 Wn. App. 2d 848, 868, 413 P.3d 619 (2018) (multiple documents that are part of the same transaction are interpreted together) (citing *Kelley v. Tonda*, 198 Wn. App. 303, 311, 393 P.3d 824 (2017)). At the very least, the Notice of Settlement is unrebutted and strong evidence that the Karwoskis intended to settle. See, e.g., *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 502, 115 P.3d 262 (2005) (parties' subsequent acts and conduct is admissible evidence of their contractual intent) (citing *Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222 (1990)). The trial court properly enforced the Settlement Agreement.

2. The Karwoskis failed to raise any legitimate issues under CR 2A, and they are bound in any event.

The Karwoskis' second new (and frivolous) claim raised for the first time on appeal (so it should not be reached) is that the Settlement Agreement they signed cannot be enforced because their attorney did not sign it. BA 8-10. This is absurd. Where, as here, the parties sign a contract to settle their claims, it is binding on them, regardless of whether their attorney signs it. See, e.g., *Colvin v. Schrader*, 1996 Wn. App. LEXIS 455, at *7 (Sep. 30, 1996) ("when

the parties have written their settlement agreement, courts enforce it, resolving disputes with reference to the writing”) (citing *Morris v. Maks*, 69 Wn. App. 865, 871-72, 850 P.2d 1357 (1993)).⁶ “The moment both parties signed the agreement at the mediation, it was final – only performance of the mutual promises remained.” *Id.* at *8. In short, “because the written agreement was signed by both parties, it does not violate CR 2A.” *Id.* at *7.

A great deal of legal authority supports this analysis, e.g.,:

CR 2A supplements but does not supplant the common law of contracts. *Morris*[,] 69 Wn. App. [at] 868 . . .; *Stottlemyre v. Reed*, 35 Wn. App. 169, 171, 665 P.2d 1383, *review denied*, 100 Wn.2d 1015 (1983); see *Gaskill v. Mercer Island*, 19 Wn. App. 307, 316, 576 P.2d 1318, *review denied*, 90 Wn.2d 1015 (1978).

It precludes enforcement of a disputed **settlement agreement not made in writing** or put on the record, whether or not common law requirements are met. *Eddleman v. McGhan*, 45 Wn.2d [430,] 432[, 275 P.2d 729 (1954) (predecessor rule); *Bryant v. Palmer Coking Coal Co.*, 67 Wn. App. [176,] 834 P.2d 662 (1992)]; *Gaskill*[,] 19 Wn. App. at 316.

However, **it does not affect an agreement made in writing**, *Morris*[,] *supra*, . . . *Snyder v. Tompkins*, 20 Wn. App. 167, 579 P.2d 994, *review denied*, 91 Wn.2d 1001 (1978); *Baird v. Baird*, 6 Wn. App. 587, 494 P.2d 1387 (1972).

⁶*Colvin* is a nonbinding, unpublished decision, cited for its persuasive value only. See GR 14.1. The cases it cites, like *Morris* and *Ferree*, directly support both its analysis and Cunningham’s arguments here.

In re Ferree, 71 Wn. App. 35, 39-40, 856 P.2d 706 (1993) (emphases added, including altered paragraphing). The Karwoskis' failures even to cite this authority lacks candor, to say the least.

Moreover, the Karwoskis failed to challenge the purport of any term of the Settlement Agreement in the trial court, as required for a challenge under CR 2A ("No agreement . . . the purport of which is disputed, will be regarded . . ."). This specific claim is also waived.

The law on this issue is also ample and clear, *e.g.*:

At least two criteria govern whether an agreement is disputed within the meaning of CR 2A. First, there must be a dispute over the existence or material terms of the agreement, as opposed to a dispute over its immaterial terms.

On its face, CR 2A says that the "purport" of the agreement must be disputed. According to BLACK'S LAW DICTIONARY, the "purport" of something is its meaning, import, substantial meaning, substance, legal effect. BLACK'S LAW DICTIONARY 1236 (6th ed. 1990). According to WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, the "purport" of something is the meaning it conveys, professes or implies, or its substance or gist. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1847 (1969).

The substance, gist, or legal effect of an agreement is found in its existence and material terms, and it follows that **the "purport" of an agreement is disputed only when its existence or material terms are disputed.**

Second, **the dispute must be a genuine one.** The purpose of CR 2A is not to impede without reason the enforcement of agreements intended to settle or narrow a cause of action; indeed, the compromise of litigation is to be encouraged. *Eddleman*[,] 45 Wn.2d at 432; *Bryant*[,] 67 Wn. App. at 179; *Snyder*[,] 20 Wn. App. at 173. Rather, the purpose of CR 2A

is to insure that negotiations undertaken to avert or simplify trial do not propagate additional disputes that then must be tried along with the original one. This purpose is served by barring enforcement of an alleged settlement agreement that is genuinely disputed, for such a dispute adds to the issues that must be tried. **It is not served by barring enforcement of an alleged settlement agreement that is not genuinely disputed, for a nongenuine dispute can be, and should be, summarily resolved without trial.**

Ferree, 71 Wn. App. at 40-41 (emphases added, including altered paragraphing). The Karwoskis challenged nothing in the trial court. They have no CR 2A claim.

The same was true in *Ferree*. There, the “issue for the court was not whether the agreement was disputed in the sense that [the husband] did not wish to abide by it, but rather whether the agreement was disputed in the sense that [the husband] had controverted its existence or material terms in such a way as to raise a genuine issue of fact.” 71 Wn. App. at 45. Analogous to Cunningham’s putting forth affidavits stating that a settlement had been reached and that its material terms were incorporated in the Settlement Agreement, the wife in *Ferree* “carried her burden by producing affidavits” stating “an agreement had been reached, and that its material terms were incorporated in [her counsel’s] proposed findings and decree.” *Id.* And like the Karwoskis, the husband in *Ferree* “failed to carry his burden,” producing “no testimony by

affidavit, declaration or any other means, and the assertions of his knew counsel lacked any foundation in personal knowledge or the record." *Id.* Thus, the trial court properly enforced the Agreement.

The Karwoskis do not even seriously challenge the purport of any term of the agreement on appeal. BA 8-10. Their third new, frivolous, and unpreserved claim seems to be that some unspecified necessary aspect of the Settlement Agreement is missing. See BA 9-10. We cannot respond to an argument that has not been made.

As they did below, the Karwoskis utterly fail to specify any term of the contract whose purport they challenge. BA 8-10. The Karwoskis' other wholly inadequate, inaccurate, frivolous, and unpreserved claim under CR 2A appears to be that the Agreement "merely sets forth a laundry list of tasks which each party agreed to perform without any reference to consideration." BA 9. Of course, they cite no authority holding that a contract must specifically mention the word "consideration," as there is no such authority.⁷

⁷ The Karwoskis cite WASH. PRAC., as cited in *Marriage of Obaidi & Qayoum*, 154 Wn. App. 609, 616, 226 P.3d 787 (2010). BA 10. *Obaidi* involved a "mahr," which the husband was told he would have to sign during a ceremony in the next 15 minutes, and which had only two terms: "Short term marriage portion: One hundred Canadian dollars"; "Long term marriage portion: 20,000.00 Dollars." *Id.* That obviously is not a contract. Nor is it anything like the Settlement Agreement the Karwoskis signed of their own free will, with advice of counsel, at the end of a lengthy, professional mediation.

The Settlement Agreement unambiguously provides detailed terms that evidence both sides' consideration (App. C): in return for the Karwoskis' various agreements to permanent injunction/no contact orders; to dismiss and release all claims; to extinguish the Easement and Accessory Structure Agreement; to acknowledge Cunningham's boundaries; and to pay \$12,500; Cunningham (and Breliniski) agreed in return to dismiss and release various claims; stay off the Karwoskis' property; vacate the existing antiharassment protection orders; and, most importantly, advise the prosecutor in Karwoski's criminal case that they no longer wish to prosecute him. Consideration is obvious. The terms are clear. The Settlement Agreement is binding. This appeal is frivolous.

3. **The Karwoskis did not ask the trial court to hold a hearing, nor did they raise any legitimate legal or factual dispute, so no "evidentiary hearing" was called for or necessary.**

The Karwoskis' next frivolous and unfounded new issue on appeal, which is also waived, is that the trial court had to hold an "evidentiary hearing" because – incredibly – they seem to claim there was a genuine issue of material fact. BA 10-11. Where, as here, the defendant presents *no admissible evidence*, there simply cannot be a genuine issue of material fact. See, e.g., ***Key v. Cascade Packing***

Co., 19 Wn. App. 579, 583-84, 576 P.2d 929 (1978) (defendant “must [but did not] allege some evidentiary fact sufficient to raise a genuine issue for trial,” so summary judgment was required). Countless cases so hold.

In any event, there is no evidence in this record that the Karwoskis asked for an evidentiary hearing. Another waiver. Frivolous.

D. This Court should award Cunningham attorney fees and costs on appeal.

The trial court awarded Cunningham attorney fees and costs based upon RCW 4.84.185 (frivolity) and under Settlement Agreement ¶ 12. CP 174, 311-12. Cunningham requests attorney fees and costs on appeal on the same grounds.⁸

RAP 18.9(a) allows this Court to order any party or counsel who files a frivolous appeal to pay “terms or compensatory damages” to any other party. RCW 4.84.185 allows a court in any civil action to require a party to pay reasonable attorney fees and expenses incurred in defending a frivolous claim. *See, e.g., Clarke v. Equinox*

⁸ The Karwoskis claim this Court should vacate the fee award to Cunningham and award them fees, if they prevail. They cannot prevail on their frivolous appeal, so they are wrong. But they do *concede that the Settlement Agreement provides for an attorney fee award, regardless of whether the Agreement is enforceable.* BA 11-12. **Cunningham accepts the concession** and thus requests a fee award under the Agreement.

Holdings, Ltd., 56 Wn. App. 125, 783 P.2d 82 (1989) (summary judgment fees affirmed; fee award for frivolous appeal).

As explained *supra*, the Karwoskis' appeal is frivolous. This Court should award Cunningham fees and costs on appeal. It should make both the Karwoskis and their counsel responsible for fees and costs.

Cunningham also requests fees and costs on appeal under RAP 18.1 (Court may award attorney fees and costs when authorized by applicable law); RAP 14.1 (costs to prevailing party); Settlement Agreement ¶ 12; and RCW 4.84.330 (contractual fees). See CP 275-84. Settlement Agreement ¶ 12 says:

Karwoskis pay Cunningham \$12,500 with thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham's counsel and filed in the event that payment is not made. The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection.

App. C (emphasis added). As noted, Cunningham accepts the Karwoskis concession that this provision is reciprocal under RCW 4.84.330, permitting a fee award to Cunningham. BA 11-12.

And indeed, RCW 4.84.330 permits an award of fees and costs where, as here, the contract provides that attorney fees and costs incurred to enforce the contract shall be awarded to the

prevailing party. This statute allows the prevailing party to move for attorney's fees after an order on summary judgment. *Clarke*, 56 Wn. App. 125. As noted *supra*, a motion to enforce a settlement agreement is treated as a motion for summary judgment where, as here, the moving party relied on declarations to show that the settlement agreement is not genuinely disputed. See *Lavigne*, 106 Wn. App. at 16; *Ferree*, 71 Wn. App. at 43-44.

Moreover, our "law allows the enforcement of unsigned contracts, even where a signature is required, when it is clear from the parties' actions that such a contract existed." *Shelcon Const. Group, LLC v. Haymond*, 187 Wn. App. 878, 895, 351 P.3d 895 (2015). There, Haymond contracted with Shelcon to perform certain construction work. *Shelcon*, 187 Wn. App. at 883. Subsequently, Shelcon sent a letter and a contract to Haymond amending their scope and contract price. *Id.* at 885. The amendment stated "that Shelcon would be entitled to attorney fees and costs for any future enforcement actions." *Id.* at 886. "Neither party signed this contract." *Id.* But the Court awarded fees under it. *Id.* at 907. It should do the same here.

The Karwoskis freely and voluntarily negotiated and executed the Settlement Agreement. As a part of the Agreement, they agreed

that if a dispute arose over the terms of the Agreement, it would be submitted to Sherman Knight for arbitration. On October 9, 2018, they were expressly asked to raise any dispute that they had regarding the Agreement, the Confession of Judgment, or the Easement Agreement. To this day they have never done so.

Thus, no dispute exists as to the material terms of the Settlement Agreement. Under that Agreement, the parties expressly contemplated executing additional documents, including expressly mentioning fees and costs for enforcement actions in ¶ 12. And the parties performed: 1) Cunningham and Brelinski discontinued cooperating with Karwoski's criminal prosecution, resulting in the criminal charges against him being dismissed; 2) the parties jointly advised the Court through their respective counsel that, "pursuant to a CR 2A Agreement dated May 3, 2018, all claims against all parties in this action have been resolved, subject to finalizing the settlement documents and carrying out the terms of the settlement"; and 3) the parties prepared and exchanged, through counsel, the additional documents contemplated by the CR 2A Settlement Agreement, including the contractually agreed fee provision.

This Court should award Cunningham fees and costs on appeal. She will timely comply with RAP 18.1.

CONCLUSION

The Court should find this appeal frivolous and award Cunningham fees and costs, payable by the Karwoskis and their counsel, jointly and severally. If the Court does not find this appeal frivolous, it should affirm, and award fees and costs against the Karwoskis under their Settlement Agreement.

RESPECTFULLY SUBMITTED this 15th day of November
2019.

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APPENDIX

App. No.	Date	Description	CPs
A	11/16/17	Topographic & Boundary Survey	124
B	Undated	Summary Provided by Shannon Cunningham	171-72
C	5/3/18	CR 2A Agreement	174-75
D	8/1/18	Notice of Settlement of All Claims Against All Parties – LCR 41	93-94

APPENDIX A

Topographic & Boundary Survey

CP 124

APPENDIX B

Summary Provided
by Shannon Cunningham
CP 171-72

SUMMARY PROVIDED BY SHANNON CUNNINGHAM

Jon Karwoski's actions over the last year of this harassment have made me fearful for my, my partner and my son's life. From verbal death threats to physical acts of damage to my property, my home is no longer a sanctuary to retreat to at the end of each day. I've felt increasing levels of stress every time I've had to call 911 to report another violation of the harassment order or knowing whether the police are going to arrive before he comes after us with a gun. I've left my residence at times and found other places to stay when I've come home and he's out in front of my house walking the perimeter of my property watching for an opportunity to engage me or my partner. I've had to endure months of finding additional money to purchase home security cameras to capture indisputable evidence of his harassment for the police. I've had to hire an attorney at considerable cost and incur lost wages because of the multiple court dates required to complete the order of protection, all the while trying to keep my professional and personal life on track.

My domestic partner and I have spent hours arguing about the best way to combat his increasingly aggressive behavior and neighborhood slander to mutual friends on the block. I've taken days off work to spend time at the City of Seattle permit and inspection office to respond to his fraudulent claims of property damage as a result of my basement remodel and to ensure I clearly understood his and my rights based on the side yard easement from 1991. I've stood in silence as he's told the police one lie after the other about myself and my partner ranging from accusations of breaking into and damaging his cars and trucks to his alleged "ownership" of my backyard. I've had to spend \$3000 for a professional surveyor to combat his claims of property possession and then endure the surveyor's stakes being moved and thrown over the fence into my back yard. I've been woken up early on a weekend morning by my son screaming that Jon is going to shoot us after spotting the poster of a handgun pointed at our house in the window with the phrase "We Don't Call 911. This picture greets me every morning now as I head to the kitchen to make us breakfast.

I've spent hours of my weekends talking with Police at my residence, driving down to the Southwest precinct to ensure the police have evidence and working with my lawyer to ensure his ongoing violations are appropriately enforced. I've missed countless days during the weekdays and weekend documenting his actions rather than spending quality time connecting with my son. I've had to endure multiple questions from neighbors and businesses nearby on the ongoing police presence, his wife screaming threats in my face and hear him verbally threaten me every step of my property improvement as retaliation. My Memorial Day weekend was cut short when he trespassed onto my property and tried to drag my contractor out of my house to move his car in front of my house to continue the harassment and surveillance by parking his own vehicle there instead. I've had to stop every interference he's made trying to talk to my general contractor, plumber, electrician and city inspector to get information to file multiple City of Seattle construction complaints despite all permits and codes being followed to date.

I've lost time with my family and friends and turned down their invitations to deal with his actions or anticipating something is going to happen if I'm not at my house to keep an eye on things. I've hired a plumber to video my pipes to stave off his accusations of flooding his property to the north of me in the dead of summer (no rain) to the tune of \$500. I am frightened of the

additional property damage he may do while I'm away and how much it's going to cost to put this nightmare to rest.

Every time I leave the house, I make sure all of my cars are locked with the emergency brake on so he can't push my car into the alleyway as he did during the summer when I visited my family for a long weekend. I've had to pay additional money (\$500) for a construction parking permit in front of my house to ensure the contractors have reasonable access as he and his wife repeatedly parked both of their cars there for months despite complaints to parking attendants who won't enforce the 72-hour parking rules because they're scared of him. When I obtained the construction parking permit, he repeatedly moved or threw the signs in the street, parked his vehicles in front of my house and I was forced to call the police again and provide proof of his theft and damage. I've tried to avoid any interaction with him by ignoring his tirades and not going in my backyard to mitigate opportunities for harassment and continued surveillance.

I feel trapped in my house most of the time and feel dread every time I have to go outside wondering if this is going to be when he pulls out a gun and kills me or my son. On the day my temporary anti-harassment order expired, he walked right up to me in the front yard and made the statement "Guess I'll be seeing you around." I've made more than 20 calls to 911 over the last year due to his harassment and my son has developed severe anxiety issues and fear for my life to the extent that he is seeing a child psychologist. I'm missing precious time with my son and I fear what is being jeopardized due to this unnecessary aggressive behavior from Jon Karwoski and the long-term effect on both of our mental health. I've suffered months of financial distress, depression, anxiety, crying, hopelessness, anger and complete bewilderment while trying to figure out strategies to avoid selling my house versus standing up to his increasing verbal and physical harassment. I've had to endure harassing notes and dog feces on my car, his interference with my contractors and fraudulent claims to the city. I've had to leave work or take time off work at the last minute to make sure I'm doing everything I can to combat this situation and feeling helpless when I don't feel protected by the legal court order I was granted while his harassment escalates.

I want the harassment to stop. I want someone to protect me and my son. I want to feel safe in my home. I want to enjoy gardening and yard work again. I want privacy. I want to know when I leave my home, I won't come back to a torn down fence and garage. I want to live my life free of Jon Karwoski and his physical threats and bullying. I want to stop dreading coming home. I want to pursue my professional career without the constant interruptions of my personal life due to his actions. I want to be happy again.

APPENDIX C

CR 2A Agreement

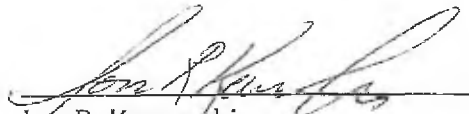
CP 174-75

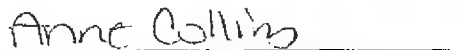
CR 2A AGREEMENT

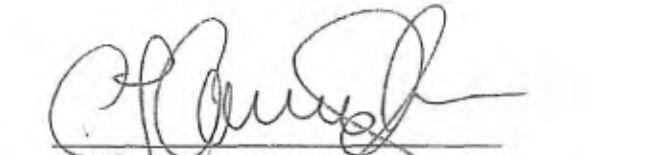
- 1) Permanent Injunction/No Contact Order to be entered preventing Karwoskis from, direct or indirect, contact/harassment/surveillance of Cunningham and her guests, invitees and tenants.
- 2) All claims and counterclaims by all parties asserted in Case No. 18-2-04648-3 KNT to be dismissed with prejudice, subject to entry of Order specified above.
- 3) Full mutual release for all claims and causes of action between all parties to the pending litigation up to the date of this CR 2A Agreement, including claims of adverse possession.
- 4) Cunningham and Brelinski to advise prosecutor in criminal prosecution of Karwoski that they are no longer interested in pursuing the matter. Cunningham and Brelinski shall not be restricted from responding to any lawfully served subpoenas and shall not be liable to Karwoskis in any way for responding to subpoenas.
- 5) Karwoskis release/extinguish Single Family Side Yard Easement – to be recorded with King County Recorder's Office.
- 6) Karwoskis release/extinguish Accessory Structure Agreement.
- 7) Karwoskis acknowledge surveyed lines of Cunningham property as the boundary lines, that Cunningham owns the rock wall bordering properties, laurel hedge bordering properties and fence.
- 8) Karwoskis shall not enter Cunningham's property at any time in the future for any reason without prior express consent.
- 9) Cunningham shall not enter Karwoskis' property at any time in the future for any reason without prior express consent.
- 10) Both parties release and waive any present or future claim of adverse possession.
- 11) Cunningham's fence to remain in place in perpetuity with the right to repair and replace as necessary.
- 12) Karwoskis pay Cunningham \$12,500 with thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham's counsel and filed in the event that payment is not made. The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection.

- 13) Other standard terms of settlement agreements.
- 14) Parties shall execute such other documents as may be necessary to effectuate the terms of this CR 2A Agreement.
- 15) Sherman Knight vested with authority to arbitrate any disputes over final language of settlement agreement and other documents required by this matter at his regular hourly rate.
- 16) Cunningham and Brelinski shall stipulate to vacating antiharassment protection orders currently in place, noting that it is stipulated as part of the resolution of their civil case.
- 17) Karwoskis waives any claims for malicious prosecution against Cunningham and/or Brelinski.
- 18) Reference to "Karwoskis" herein refers to Jon R. Karwoski and Anne Collins.
- 19) Cunningham and/or her agents to have access to Karwoski property for purposes of repairing/replacing fence.

DATED May 3, 2018.


Jon R. Karwoski


Anne Collins


Shannon Cunningham


Thomas Brelinski

APPENDIX D

Notice of Settlement of All Claims
Against All Parties – LCR 41

CP 93-94

FILED
18 AUG 01 AM 9:00

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 18-2-04648-3 KNT

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

SHANNON CUNNINGHAM, an unmarried individual,

Plaintiff,

v.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof,

Defendants

Case No. 18-2-04648-3 KNT

NOTICE OF SETTLEMENT OF ALL CLAIMS AGAINST ALL PARTIES – LCR 41

(Clerk’s Action Required)

TO: THE CLERK OF THE COURT

Notice is hereby given that, pursuant to a CR 2A Agreement dated May 3, 2018, all claims against all parties in this action have been resolved, subject to finalizing the settlement documents and carrying out the terms of the settlement. Any trials or other hearings in this matter may be stricken from the Court calendar. This notice is being filed with the consent of all parties.

If an order dismissing all claims against all parties is not entered within 45 days after the written notice of settlement is filed, or within 45 days after the scheduled trial date, whichever is earlier, and if a certificate of settlement without dismissal is not filed as provided in LCR 41(e)(3), the case may be dismissed on the Clerk's motion pursuant to LCR 41(b)(2)(B).

DATED this ____ day of _____, 2018.

NOTICE OF SETTLEMENT OF ALL CLAIMS AGAINST ALL PARTIES – LCR 41 - 1

MEYLER LEGAL, PLLC
221 1ST AVE. WEST, SUITE 320
SEATTLE, WASHINGTON 98119
TEL: (206) 876-7770 • FAX: (206) 876-7771

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MEYLER LEGAL, PLLC
/s/Samuel M. Meyler
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NOTICE OF SETTLEMENT OF ALL CLAIMS AGAINST ALL
PARTIES – LCR 41 - 2

MEYLER LEGAL, PLLC
221 1ST AVE. WEST, SUITE 320
SEATTLE, WASHINGTON 98119
TEL: (206) 876-7770 • FAX: (206) 876-7771

CERTIFICATE OF SERVICE

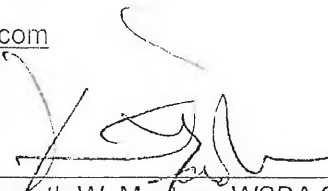
I certify that I caused to be filed and served a copy of the foregoing **BRIEF OF RESPONDENT** on the 15th day of November 2019 as follows:

Co-counsel for Respondent

Meyler Legal, P.L.L.C.	<input type="checkbox"/>	U.S. Mail
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Counsel for Appellants

Waid Law Office, P.L.L.C.	<input type="checkbox"/>	U.S. Mail
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bjwaid@waidlawoffice.com		



Kenneth W. Masters, WSBA 22278
Attorney for Respondent

MASTERS LAW GROUP

November 15, 2019 - 4:00 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 79753-1
Appellate Court Case Title: Shannon Cunningham, Respondent v. Jon Karwoski, Appellant

The following documents have been uploaded:

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This File Contains:
Briefs - Respondents
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A copy of the uploaded files will be sent to:

- bjwaid@waidlawoffice.com
- meyler.legal@gmail.com
- samuel@meylerlegal.com

Comments:

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Note: The Filing Id is 20191115155939D1815617

No. 79753-1-1

COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

SHANNON CUNNINGHAM,

Respondent,

vs.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A
ELIZABETH ANNE KARWOSKI, husband and wife and the marital
community comprised thereof,

Appellants.

APPELLANTS' OPENING BRIEF

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RCW 2.44.010 7, 8, 9
RCW 4.84.330 11

Other Authorities Cited:

DeWolf, Allen & Caruso, *25 Wash. Prac., Contract Law
And Practice* § 2:2 (3d ed.) 10

I. INTRODUCTION

Jon and Elizabeth Karwoski appeal enforcement of a purported CR 2A Agreement, entered after the Karwoski's attorney had withdrawn, leaving them *pro se*. Even though the Karwoski's expressed their objections to the CR 2A Agreement, the trial court summarily ordered the CR 2A Agreement enforced, without having conducted an evidentiary hearing as is required under *Eddleman v. McGhan*, 45 Wn.2d 430, 432, 275 P.2d 729 (1954), *quoted with approval*, *Goebel Design Group, LLC v. Clear NRG, LLC*, 2018 WL 3738201 *3 (Div. I 08/06/18). The Court should therefore reverse and vacate the decision of the trial court, and remand this case for further proceedings. Upon reversing the trial court order, the Court should also vacate the attorney fee judgment in favor of Cunningham and instead award attorney fees to Mr. and Mrs. Karwoski pursuant to RCW 4.84.330.

II. ASSIGNMENTS OF ERROR

1. The trial court erred, as a matter of law, when it upheld the CR 2A Agreement as valid and enforceable.
2. The trial court err by enforcing the CR 2A Agreement without conducting an evidentiary hearing.
3. Upon vacating the trial court judgment enforcing the CR 2A Agreement, this Court must also vacate the attorney fee judgment in favor of Cunningham.

4. Upon vacating the trial court judgment enforcing the CR 2A Agreement, this Court should award attorney fees to Appellants pursuant to RCW 4.84.330.

III. STATEMENT OF THE CASE

Appellants Jon and Elizabeth Karwoski, and Respondent Shannon Cunningham, are neighbors in Seattle. CP 001. This litigation arises out of a dispute over a boundary line, which Cunningham filed against the Karwoski's on February 20, 2018. *Id.* On February 23, 2018, attorney Ryan M. Yoke of the Vander Wel, Jacobson & Kim law firm entered his appearance on behalf of the Karwoski's. CP 083. On March 9, 2018, Mr. Yoke stipulated to entry of a preliminary injunction. CP 088.

On May 3, 2018, the parties mediated with mediator Sherman Knight. CP 180. Ryan Yoke participate in the mediation on behalf of Mr. and Mrs. Karwoski. *Id.* ¶3. The parties signed a document entitled "CR 2A Agreement" which simply includes a list of tasks to be completed, including: (1) entry of a permanent injunction against Mr. and Mrs. Karwoski; (2) mutual dismissal of all claims and counterclaims in this case; (3) mutual releases between all parties; (4) agreement by Cunningham and Brelinski that they are no longer interested in pursuing the allegations of criminal conduct against the Karwoskis; (5) release of a Single Family Side Yard Easement by the Karwoskis; (6) release of an Accessory Structure Agreement by the Karwoskis; (7) Karwoskis'

acknowledgement of boundary lines; (8) prohibition against Karwoskis' entry onto the property of Cunningham; (9) prohibition against entry onto the property of the Karwoskis; (10) release and waiver of any present or future claim of adverse possession; (11) Cunningham's fence to remain in place; (12) Karwoskis pay Cunningham \$12,500 within 30 days; (13) "Other standard terms of settlement agreement;" (14) agreement to execute such other documents as may be necessary. . ."; (15) authorization for mediator to arbitrate any disputes over the final language of the settlement agreement and other document; (16) Cunningham and Brelinski to vacate any antiharassment orders against the Karwoskis; (17) Karwoskis waive any malicious prosecution claims against Cunningham and Brelinski, and; (19) Cunningham can enter Karwoski's property to repair or replace her fence. CP 174-175. The "CR 2A Agreement" does *not* recite that either side's listed tasks are in consideration for the task assigned to the other side.

However, when Yoke contacted Mr. Karwoski on July 30, 2018, he responded that "I never agreed to an agreement." CP 265.¹ On August 1, 2018, a Notice of Settlement bearing Mr. Yoke's e-signature was filed into the trial court record. CP 093. The Notice of Settlement did not

¹ Mr. Karwoski filed the documents identified as CP 256-274 on December 14, 2018, and they were considered by the Court during that hearing. CP 255. However, they do not appear to have been considered by the Court during the February 28, 2019 hearing. CP 291.

recite the terms of the purported settlement. Yoke later advised Karwoski that “[w]hen I didn’t hear from you last week, I agreed to entry of the notice of settlement. CP 268. Jon Karwoski responded that “[y]ou always said the two lawsuits were separate and needed separate Attny. The dismissal was not on the condition there was a civil arrangement. If I had done something I would have been charged for it.” *Id.* That same day, August 6, 2018, Karwoski told Yoke that he objected to the settlement “No way!!! You could have called or text me. This is extortion Ryan the cr 2 is simply proof and verification of what she was after.” CP 266.

On August 12, 2018, Mr. Karwoski informed his attorney, Yoke, that “I will not have a gun out to my head!! You got me into this mess you get me out of it! I repeat, I am not going to be extorted of my easement land use and money.” CP 269.

On September 7, 2018, Cunningham’s attorney sent proposed settlement documents to Mr. Yoke and proposed to send a proposed Quit Claim, Easement and Release Agreement. CP 206. Cunningham’s attorney prepared a Settlement and Mutual Release Agreement [CP 224-231], Confession of Judgment [CP 233-241], an Easement Agreement and Notice of Termination and Release [CP 244-248], and two (2) Stipulated Orders Vacating Order for Protection--Harassment [CP 250-253]. The proposed Release referred to and incorporated the CR 2A Agreement,

“except to the extent that it is modified and/or amended by this Agreement.” CP 226.

On September 18, 2018, Cunningham’s attorney advised the Court “the matter was settled pursuant to a CR 2A Stipulation that required some additional steps by the parties.” CP 213 (09/18/18 email @ 3:48 p.m.). Those “additional steps” were never agreed upon or completed.

On October 11, 2018, Mr. Yoke and his law firm filed a Notice of Intent to Withdraw, dated October 1, 2018, with the withdrawal effective the same day as its filing, October 11, 2018. CP 095.² The Notice does not establish compliance with CR 71(c).

On November 18, 2018, Cunningham filed a Motion to Enforce CR 2A Settlement Agreement against the Karwoskis. CP 097. On December 14, 2018, Mr. Karwoski filed “Respondent’s Exhibit #A re: Hearing on 12/14/18.” CP 256-274. He also appeared at the hearing that same day and disputed whether he had been properly served with notice. CP 255. The trial court continued the hearing to February 8, 2019. *Id.*³

On February 28, 2019, the trial court granted Cunningham’s motion and entered judgment against the Karwoskis, only; the judgment

² The Notice of Withdrawal is dated October 1, 2018.

³ The trial court continued the February 8, 2019 hearing to February 28 due to a severe snow event on February 8. CP 290.

did not incorporate the terms of the Settlement Agreement that imposed obligations on Cunningham. CP 293-296.

On March 20, 2019, the Court entered a second judgment against the Karwoskis, awarding Cunningham \$6,138 in attorney fees. CP 310. The Karwoskis timely appealed both judgments. CP 315-324, 325-334.

IV. ARGUMENT

1. The Court Reviews Enforcement of a Settlement Agreement *De Novo*, Applying Summary Judgment Standards and Procedures.

The Court reviews a trial court order enforcing a settlement agreement *de novo*. *E.g., P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012)(interpretation of court rules); accord, *Goebel Design Group, LLC v. Clear NRG, LLC*, 2018 WL 3738201 *3 (Div. I 08/06/18), *citing, Lavigne v. Green*, 106 Wn. App. 12, 16, 23 P.3d 515 (2001). Thus, as in the trial court, Respondents have the burden to establish that no genuine issue of material fact⁴ remains in dispute as to each essential element of a binding CR 2A Agreement. *Id., citing, Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696-697, 994 P.2d 911 (2000). “The purport of an agreement is disputed within the meaning of CR 2A if there is a genuine dispute over the existence or material terms of the

⁴ “A material fact is one upon which the outcome of the litigation depends in whole or in part.” *E.g., Boguch v. The Landover Corp.*, 153 Wn. App. 595, 608, 224 P.3d 795 (2009), *quoting, Atherton Condo Apartment-Owners Ass'n Bd. of Dirs v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 491 (1990).

agreement.” *Cruz v. Chavez*, 186 Wn. App. 913, 919-920, 347 P.3d 912 (2015).

Moreover, the Court “must view the evidence in the light most favorable to the nonmoving party and determine whether reasonable minds could reach but one conclusion.” *Id.*, 186 Wn. App. at 920, *cited with approval, Goebel, supra* at *3. Accordingly, the Court must draw all reasonable inferences in the light most favorable to the non-moving party and, “[w]here competing inferences may be drawn from the evidence, the issue must be resolved by the trier of fact.” *Versuslaw, Inc. v. Stoel Rives, LLP*, 127 Wn. App. 309, 328-329, 111 P.3d 866 (2005).

A trial court thus abuses its discretion if the non-moving party (*i.e.*, Karwoski) raises a genuine issue of material fact and then “enforces the agreement without first holding an evidentiary hearing to resolve the disputed issues of fact.” *Cruz, supra*, 186 Wn. App. at 920, *citing Brinkerhoff, supra*, 99 Wn. App. at 697.

2. RCW 2.44.010 Does Not Apply.

Civil Rule 2A and RCW 2.44.010 generally authorize enforcement of settlement agreements. RCW 2.44.010 authorizes an attorney to enter into a valid and enforceable settlement agreement, but imposes similar limits on such agreements, as follows:

An attorney and counselor has **authority**:

(1) **To bind his or her client** in any of the proceedings in an action or special proceeding **by his or her agreement duly made**, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him or her, or signed by the party against whom the same is alleged, or his or her attorney. [Emphasis added].

“[W]here it is disputed that a settlement agreement was reached, noncompliance with the statute and court rule governing settlements dictates that the agreement is unenforceable.” *Eddleman v. McGhan*, 45 Wn.2d 430, 275 P.2d 729 (1954), *quoted with approval in Bryant v. Palmer Coking Coal Co.*, 67 Wn. App. 176, 179, 858 P.2d 1110 (1992).⁵

Here, the Karwoskis signed the “CR 2A Agreement.” The Karwoskis’ attorney, Ryan Yoke, did *not* sign the “CR 2A Agreement.” Therefore, RCW 2.44.010 does *not* apply.

3. The “CR 2A Agreement” Did Not Meet the Essential Requirements of CR 2A Or an Enforceable Settlement Agreement.

CR 2A *prohibits* enforcement of a settlement agreement unless its requirements are met:

RULE 2A. Stipulations

No agreement of consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall

⁵ As in this case, *Bryant* arose out of a purported settlement of a quiet title action.

have been made and assented to in open court on the record or entered in the minutes, or **unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.** [Emphasis added].

Relative to CR 2A, *Eddleman v. McGhan*, 45 Wn.2d 430, 432, 275

P.2d 729 (1954) held that:

The purpose of the cited rule and statute⁶ is to avoid such disputes and to give certainty and finality to settlements and compromises, if they are made. While the compromise of litigation is to be encouraged, negotiations toward a compromise are not binding upon the negotiators. **Where, as here, it is disputed that the negotiations culminated in an agreement, noncompliance with the rule and statute leaves the court with no alternative.** It must disregard the conflicting evidence as they direct. [Emphasis added].

Eddleman thus rejected the purported settlement agreement,

“because it is not in the form required by the rule.” *Id.*

Here, the CR 2A Agreement was not signed by Mr. Yoke and is, therefore, not “subscribed by the attorney[.]” who negotiated it. The CR 2A Agreement is therefore “not in the form required by the rule” and thus fails to strictly comply with CR 2A requirements.

Furthermore, the CR 2A Agreement itself merely sets forth a laundry list of tasks which each party agreed to perform without any reference to consideration. In that regard, general principles of contract law govern enforcement of purported settlement agreements. *E.g., Cruz v.*

⁶ Referring to RCW 2.44.010. The requirement that the attorney representing the party to the CR 2A also subscribe to the agreement is presumably designed to “avoid such disputes” of the type present in this appeal.

Chavez, supra, 186 Wn. App. at 920; accord, *Goebel Design Group, supra* at *3. A valid, binding, and completed contract between the parties requires (1) competent parties; (2) a legal subject matter; (3) mutual assent; (4) a proper and unrevoked offer; (5) an acceptance of such offer; and; (6) valuable consideration.⁷ *E.g.*, *DeWolf, Allen & Caruso, 25 Wash. Prac., Contract Law And Practice* § 2:2 (3d ed.), *quoted with approval, Marriage of Obaidi & Qayoum*, 154 Wn. App. 609, 616, 226 P.3d 787 (2010).

The CR 2A Agreement thus fails to meet the requirements for enforcement. The Court should therefore reverse the judgments of the trial court and remand this case for further proceedings.

4. The Trial Court Erred When It Failed to Conduct an Evidentiary Hearing.

Nevertheless, the Karwoskis also established that serious disputes existed relative to the terms of the CR 2A Agreement. “Civil Rule 2A precludes enforcement of a settlement agreement where there is a genuine dispute of material fact regarding the existence of the agreement.” *Cruz, supra*, 186 Wn. App. at 915. When that occurs, the trial court must

⁷ Consideration is a bargained-for exchange of promises. *Labriola v. Pollard Grp., Inc.*, 152 Wn.2d 828, 833, 100 P.3d 791 (2004).

conduct an evidentiary hearing to determine whether to enforce the settlement agreement. *Id.* at 920, citing *Brinkerhoff, supra*, 99 Wn. App. at 697.

The trial court thus erred when it summarily enforced the judgment without first conducting an evidentiary hearing.

5. The Court Should Vacate the Attorney Fee Judgment Against Appellants.

The trial court awarded Cunningham judgment in the amount of \$6,138 in attorney fees pursuant to the terms of the CR 2A Agreement. If the Court vacates the order enforcing the CR 2A Agreement, the Court should also vacate the judgment awarding attorney fees to Cunningham. *See, e.g., Goebel Design Group, supra* at *4.

6. The Court Should Award Appellants Their Attorney Fees for Prevailing on this Appeal.

The CR 2A Agreement provides for “attorney fees for enforcement and collection.” CP 174. Such an attorney fee clause applies reciprocally in favor of the Karwoskis pursuant to RCW 4.84.330, regardless of whether the CR 2A Agreement is enforceable. *Stryken v. Panell*, 66 Wn. App. 566, 572, 832 P.2d 890 (1992), quoting *Herzog Alum., Inc. v. General Amer. Window Corp.*, 39 Wn. App. 188, 197, 692 P.2d 867 (1984); accord, *Goebel, supra* at *4. Thus, upon vacating the order enforcing judgment, the Court should also award the Karwoskis their

reasonable attorney fees for prevailing in this appeal as authorized by
RAP 18.1.

V. CONCLUSION

The trial court erred, as a matter of law, when it entered judgment enforcing the “CR 2A Agreement” against the Karwoskis. Appellants therefore request that the Court vacate both judgments against them and, instead, award them their reasonable attorney fees for having prevailed on this appeal.

DATED: August 20, 2019.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
Attorney for Appellant

CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail:
None

August 20, 2019.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
Brian J. Waid
WSBA No. 26038
Attorney for Appellants

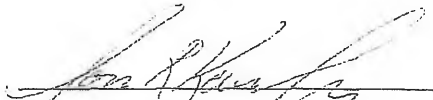
APPENDIX A

CR 2A AGREEMENT

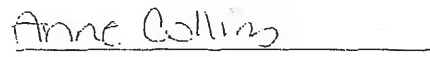
- 1) Permanent Injunction/No Contact Order to be entered preventing Karwoskis from, direct or indirect, contact/harassment/surveillance of Cunningham and her guests, invitees and tenants.
- 2) All claims and counterclaims by all parties asserted in Case No. 18-2-04648-3 KNT to be dismissed with prejudice, subject to entry of Order specified above.
- 3) Full mutual release for all claims and causes of action between all parties to the pending litigation up to the date of this CR 2A Agreement, including claims of adverse possession.
- 4) Cunningham and Brelinski to advise prosecutor in criminal prosecution of Karwoski that they are no longer interested in pursuing the matter. Cunningham and Brelinski shall not be restricted from responding to any lawfully served subpoenas and shall not be liable to Karwoskis in any way for responding to subpoenas.
- 5) Karwoskis release/extinguish Single Family Side Yard Easement – to be recorded with King County Recorder’s Office.
- 6) Karwoskis release/extinguish Accessory Structure Agreement.
- 7) Karwoskis acknowledge surveyed lines of Cunningham property as the boundary lines, that Cunningham owns the rock wall bordering properties, laurel hedge bordering properties and fence.
- 8) Karwoskis shall not enter Cunningham’s property at any time in the future for any reason without prior express consent.
- 9) Cunningham shall not enter Karwoskis’ property at any time in the future for any reason without prior express consent.
- 10) Both parties release and waive any present or future claim of adverse possession.
- 11) Cunningham’s fence to remain in place in perpetuity with the right to repair and replace as necessary.
- 12) Karwoskis pay Cunningham \$12,500 with thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham’s counsel and filed in the event that payment is not made. The Confession of Judgment shall provide for interest at 12% and attorney’s fees for enforcement and collection.

- 13) Other standard terms of settlement agreements.
- 14) Parties shall execute such other documents as may be necessary to effectuate the terms of this CR 2A Agreement.
- 15) Sherman Knight vested with authority to arbitrate any disputes over final language of settlement agreement and other documents required by this matter at his regular hourly rate.
- 16) Cunningham and Brelinski shall stipulate to vacating antiharassment protection orders currently in place, noting that it is stipulated as part of the resolution of their civil case.
- 17) Karwoskis waives any claims for malicious prosecution against Cunningham and/or Brelinski.
- 18) Reference to "Karwoskis" herein refers to Jon R. Karwoski and Anne Collins.
- 19) Cunningham and/or her agents to have access to Karwoski property for purposes of repairing/replacing fence.

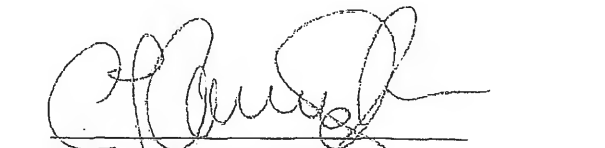
DATED May 3, 2018.



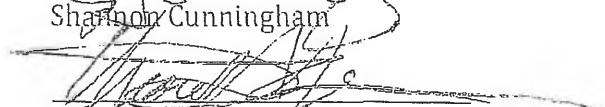
Jon R. Karwoski



Anne Collins



Shannon Cunningham



Thomas Brelinski

APPENDIX B

FILED

FEB 28 2018

SUPERIOR COURT CLERK
BY Jackie Antich
DEPUTY

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

SHANNON CUNNINGHAM, an unmarried individual,

Plaintiff,

Case No. 18-2-04648-3 KNT

JUDGMENT AND ORDER GRANTING
PLAINTIFF'S MOTION TO ENFORCE
CR 2A SETTLEMENT AGREEMENT

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A.K.A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof,

Defendants

[Signature]

(Clerk's Action Required)

I. JUDGMENT SUMMARY

A	Judgment Creditor	Shannon Cunningham
B	Judgment Debtor	Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins
C	Principal Judgment as of September	\$12,500.00
D	Attorney's Fees	(reserved) \$6,244.98 JS
E	Costs	\$170.47
F	Prejudgment Interest - (6-2-18 through 2-28-19)	\$1,113.70
G	Total Judgment	13,784.17 \$20,029.15 JS
H	Total Judgment shall bear interest at the rate of 12% per annum	
I	Attorney for Judgment Creditor	Samuel M. Meyler, WSBA No. 39471 Meyler Legal, PLLC

II. JUDGMENT AND ORDER

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT-1

MEYLER LEGAL, PLLC
1700 WEST AVE. SUITE 200
SEATTLE, WASHINGTON 98109
TEL: 206-877-7770 • FAX: 206-876-7771

ORIGINAL

1 THIS MATTER having come on for hearing on Plaintiff's Motion to Enforce CR 2A
2 Settlement Agreement, and the Court deeming itself fully advised on the premises, having heard
3 oral argument on the matter from Plaintiff's counsel and from Defendant Jon Karvoski, and having
4 reviewed the papers and pleadings on file herein, including

- 5 1 Plaintiff's Motion to Enforce CR 2A Settlement Agreement.
- 6 2 Declaration of Shannon Cunningham In Support of Motion to Enforce CR 2A
- 7 Settlement Agreement.
- 8 3 Declaration of Samuel M. Meyler In Support of Plaintiff's Motion to Enforce CR
- 9 2A Settlement Agreement.
- 10 4 Plaintiff's Supplemental Brief Regarding Plaintiff's Right To Award of Attorney's
- 11 Fees.
- 12 5 Declaration of Samuel M. Meyler Regarding Attorney's Fees.
- 13 6 Respondent Jon Karvoski's Exhibits Regarding Hearing on December 14, 2018.
- 14 7 _____
- 15 8 _____
- 16 9 _____
- 17 10. _____

18
19
20 NOW, THEREFORE,

21
22 IT IS HEREBY ORDERED that judgment be entered in favor of Shannon Cunningham
23 and against Defendants Jon R. Karvoski and Elizabeth Anne Collins a.k/a Anne Collins, in the
24 principle amount of \$12,500.00, plus pre-judgment interest of \$1,113.70, attorney's fees of
25 \$ 6,244.48 and costs of \$ 170.47 as set forth in the Judgment Summary above
26 no order

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT 2
MEYLER LEGAL, PLLC
170 WESTBARK AVE. SUITE 200
SEATTLE, WASHINGTON 98109
TEL: 206.876.7770 • FAX: 206.876.7771

1 The Total Judgment amount shall bear interest at the rate of twelve percent (12%) per annum until
2 fully paid

3 IT IS FURTHER ORDERED that Defendants are required to comply with the terms of
4 the CR 2A Agreement, the Settlement and Mutual Release Agreement and the Easement
5 Agreement and Notice of Termination and Release

6
7 IT IS FURTHER ORDERED ~~that Defendants Jon R. Karvoski and Elizabeth Anne~~
8 ~~Collins a/k/a Anne Collins are ordered to cooperate with Plaintiff's Counsel in executing the~~
9 ~~Settlement and Mutual Release Agreement and the Easement Agreement and Notice of~~
10 ~~Termination and Release.~~
11 *that the Side Yard Easement recorded under*
King County Recorder's Office Recording No. 9104171054
is hereby terminated, released and extinguished,
as is the Accessory Structure Agreement, date April 8, 1991.

12 IT IS FURTHER ORDERED that the Preliminary Injunction entered March 9, 2018 is
13 extinguished by operation of the issuance of the following Permanent Injunction

14 IT IS FURTHER ORDERED that Defendants Jon R. Karvoski and Elizabeth Anne
15 Collins a/k/a Anne Collins are hereby permanently enjoined and restrained from, directly or
16 indirectly, contacting, harassing or surveilling Cunningham and Cunningham's guests, invitees
17 and tenants. This Permanent Injunction/No Contact Order shall apply to the Defendants, as well
18 as their officers, agents, servants, employees and upon those persons in active concert or
19 participation with the Defendants who receive actual notice of this Permanent Injunction/No
20 Contact Order

21
22 IT IS FURTHER ORDERED that the bond posted by Hartford Fire Insurance Company
23 on behalf of Cunningham is hereby extinguished and released

24 IT IS FURTHER ORDERED that this order resolves all claims asserted in this action
25 The court retains jurisdiction for twelve (12) months from the date of entry for purposes of
26 enforcement motions

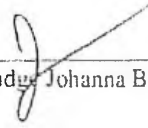
JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO
ENFORCE CR 2A SETTLEMENT AGREEMENT

MEYLER LEGAL, PLLC
170 WEST ALKI AVENUE, SUITE 200
SEATTLE, WASHINGTON, 98109
TEL: 206.876.7770 • FAX: 206.876.7771

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WARNING TO DEFENDANTS: Willful disobedience of the terms of this Judgment and Order may also be contempt of court and subject Defendants to penalties under Chapter 7.21 RCW.

DONE IN OPEN COURT this 28th day of February, 2019



Judge Johanna Bender

PRESENTED BY:
MEYLER LEGAL, PLLC

/s/ Samuel M. Meyler
Samuel M. Meyler, WSBA #39471
Attorney for the Plaintiff

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT-4

MEYLER LEGAL, PLLC
1700 WESTLAKE AVENUE, SUITE 200
SEATTLE, WASHINGTON, 98109
TEL: 206.876.7770 • FAX: 206.876.7771

APPENDIX C

1 FILED
2 2019 MAR 20 09:08 AM
3 KING COUNTY
4 SUPERIOR COURT CLERK
5 E-FILED
6 CASE #: 18-2-04648-3 KNT

7 SUPERIOR COURT FOR THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KING

9 SHANNON CUNNINGHAM, an unmarried
10 individual,

11 Plaintiff,

12 v.

13 JON R. KARWOSKI and ELIZABETH
14 ANNE COLLINS A/K/A ELIZABETH
15 ANNE KARWOSKI, husband and wife and
16 the marital community comprised thereof,

17 Defendants.

Case No. 18-2-04648-3 KNT

JUDGMENT AND ORDER AWARDING
PLAINTIFF ATTORNEY'S FEES

(Clerk's Action Required)

18 I. JUDGMENT SUMMARY

19	A.	Judgment Creditor:	Shannon Cunningham
20	B.	Judgment Debtor:	Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins
21	C.	Principal	\$0.00
22	D.	Attorney's Fees	\$6,138.00
23	E.	Costs	\$0.00
24	F.	Prejudgment Interest	\$0.00
25	G.	Total Judgment:	\$6,138.00
26	H.	Total Judgment shall bear interest at the rate of 12% per annum	
	I.	Attorney for Judgment Creditor:	Samuel M. Meyler, WSBA No. 39471 Meyler Legal, PLLC

II. JUDGMENT AND ORDER

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S
FEES - I

Johanna Bender
Judge, King County Superior Court
401 4th Ave North
Kent, WA 98032

1 THIS MATTER having come on regularly for hearing before the Court, and the Court
2 deeming itself fully advised on the premises, having considered the oral arguments presented by
3 Plaintiff's counsel and Defendant Jon R. Karwoski, *pro se*, and having reviewed the papers and
4 pleadings on file herein, including:

- 5 1. Plaintiff's Motion to Enforce CR 2A Settlement Agreement (Dkt. No. 28);
- 6 2. Declaration of Shannon Cunningham In Support of Motion to Enforce CR 2A
7 Settlement Agreement (Dkt. No. 29);
- 8 3. Declaration of Samuel M. Meyler In Support of Plaintiff's Motion to Enforce CR
9 2A Settlement Agreement (Dkt. No. 30);
- 10 4. Respondent Jon Karwoski's Exhibits Regarding Hearing on December 14, 2018
11 (Dkt. No. 34);
- 12 5. Plaintiff's Supplemental Brief Regarding Plaintiff's Right to Award of Attorney's
13 Fees (Dkt. No. 36);
- 14 6. Declaration of Samuel M. Meyler Regarding Attorney's Fees (Dkt. No. 37);
- 15 7. Plaintiff's Motion for Entry of Judgment for Attorney's Fees filed March 7, 2019;
- 16 8. Declaration of Samuel M. Meyler Regarding Attorney's Fees filed March 7, 2019;

17
18
19 **BASIS FOR IMPOSITION OF ATTORNEY'S FEES**

20 The Court concludes that the arguments and defenses presented by Defendants were
21 frivolous, not supported by any rational argument and advanced without reasonable cause.
22 Attorney's fees are therefore owing pursuant to RCW 4.84.185. The Court further finds that the
23 CR 2A agreement contains the following attorney's fees provision: "The Confession of Judgment
24 shall provide for interest at 12% and attorney's fees for enforcement and collection." The
25 confession of judgment was not entered solely because Defendants violated the terms of a valid
26

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S
FEES - 2

Johanna Bender
Judge, King County Superior Court
401 4th Ave North
Kent, WA 98032

1 CR 2A agreement. Had they signed the confession, Defendants would have been liable for the
2 fees now sought for entry of certain additional orders ancillary to the judgment in this matter (to
3 extinguish a side yard easement and an accessory structure agreement). Instead, those orders were
4 entered by the Court pursuant to contested motion to enforce the CR 2A agreement. See Dkt.,
5 Sub. 43.

6
7 **REASONABLENESS OF TIME SPENT AND OF BILLING RATE**

8 "Courts must take an active role in assessing the reasonableness of fee awards, rather than
9 treating cost decisions as a litigation afterthought." Berryman v. Metcalf, 177 Wn.App. 644, 657
10 (Div. 1 2013) (internal citations omitted, emphasis in original). The Court must begin a disputed
11 fee calculation by determining the appropriate lodestar figure, "which is the number of hours
12 reasonably expended on the litigation multiplied by a reasonable hourly rate." Id. at 660. After
13 calculating the lodestar, the Court must then evaluate whether any deviation is warranted. Id. at
14 665-66. Having reviewed the billing records submitted by Plaintiff's counsel, the Court finds that
15 the amount of time billed in this matter was reasonable in light of the nature of the work performed.
16 The Court notes that considerable time was recorded in counsel's timesheets but not billed. It
17 appears that Plaintiff was charged a significantly reduced amount for the work performed in this
18 matter, and it is that reduced amount that is now being imposed upon Defendants.

19
20 Counsel bills at a rate of \$310 per hour. Defendants have not disputed the reasonableness
21 of this billing rate. The Court concludes that this rate is reasonable in light of counsel's experience
22 and the nature of this litigation.

23
24 **LODESTAR**

25 The lodestar in this matter is \$6,138.00. Neither party has sought a departure from
26 the lodestar, and the Court finds no basis for such a departure.

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S
FEES - 3

Johanna Bander
Judge, King County Superior Court
401 4th Ave North
Kent, WA 98032

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IT IS HEREBY ORDERED that judgment be entered in favor of Shamon Cunningham and against Defendants Jon R. Karvoski and Elizabeth Anne Collins a/k/a Anne Collins for reasonable attorney's fees of \$6,138.00 as set forth in the Judgment Summary above. The Total Judgment amount shall bear interest at the rate of twelve percent (12%) per annum until fully paid.

DONE IN OPEN COURT this 20th day of March, 2019.

Electronically signed and filed
Judge Johanna Bender

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S FEES - 4

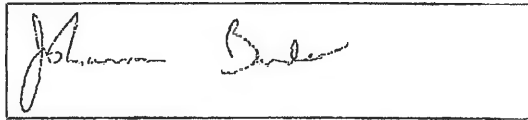
Johanna Bender
Judge, King County Superior Court
401 4th Ave North
Kent, WA 98032

King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-04648-3
Case Title: CUNNINGHAM VS KARWOSKI ET ANO

Document Title: ORDER ORDER ON ATTORNEY'S FEES

Signed by: Johanna Bender
Date: 3/20/2019 9:08:23 AM

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'Johanna Bender' written in a cursive style.

Judge/Commissioner: Johanna Bender

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: E5720770198CA7B4D1F1D01943C8FCDF9116D37F
Certificate effective date: 11/25/2015 10:13:53 AM
Certificate expiry date: 11/25/2020 10:13:53 AM
Certificate Issued by: C=US, E=kcscefling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Johanna Bender:
YrhMO6nx4xGehAAAH11GsA=="

Page 5 of 5

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FILED
2019 MAR 22
KING COUNTY
SUPERIOR COURT CLERK

CASE #: 18-2-04648-3 KNT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SHANNON CUNNINGHAM, an unmarried individual,

Plaintiff,

-vs-

JON R KARWOSKI and ELIZABETH ANNE COLLINS A/K/A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof.

Defendants.

NO. 18-2-04648-3 KNT

NOTICE OF APPEAL

Defendants Jon Karwoski and Elizabeth Collins, Aka Elizabeth Karwoski seeks review by the designated appellate court of the Judgment in a Civil Case.

A copy of the Judgment and Order is attached to this notice.

Dated this 11th day of March 2019

Jon Karwoski *Jon R Karwoski*

NOTICE OF APPEAL

JON AND ELIZABETH KARWOSKI
3520 SW Roxbury Street
Seattle, WA 98126
206-915-7679

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

SHANNON CUNNINGHAM, an unmarried individual,

Plaintiff,

v.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof,

Defendants.

Case No. 18-2-04648-3 KNT

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT

[Signature]

(Clerk's Action Required)

I. JUDGMENT SUMMARY

A.	Judgment Creditor:	Shannon Cunningham
B.	Judgment Debtor:	Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins
C.	Principal Judgment as of September	\$12,500.00
D.	Attorney's Fees	(reserved) \$6,244.98
E.	Costs	\$170.47
F.	Prejudgment Interest - (6/2/18 through 2/28/19)	\$1,113.70
G.	Total Judgment:	13,784.17 \$20,029.15
H.	Total Judgment shall bear interest at the rate of 12% per annum	
I.	Attorney for Judgment Creditor:	Samuel M. Meyler, WSBA No. 39471 Meyler Legal, PLLC

JS
JS

II. JUDGMENT AND ORDER

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT - 1

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE. N., STE. 200
SEATTLE, WASHINGTON 98109
TEL. (206) 876-7770 • FAX. (206) 876-7771

ORIGINAL

1 THIS MATTER having come on for hearing on Plaintiff's Motion to Enforce CR 2A
2 Settlement Agreement, and the Court deeming itself fully advised on the premises, having heard
3 oral argument on the matter from Plaintiff's counsel and from Defendant Jon Karwoski, and having
4 reviewed the papers and pleadings on file herein, including:

- 5 1. Plaintiff's Motion to Enforce CR 2A Settlement Agreement;
- 6 2. Declaration of Shannon Cunningham In Support of Motion to Enforce CR 2A
7 Settlement Agreement;
- 8 3. Declaration of Samuel M. Meyler In Support of Plaintiff's Motion to Enforce CR
9 2A Settlement Agreement,
- 10 4. Plaintiff's Supplemental Brief Regarding Plaintiff's Right To Award of Attorney's
11 Fees;
- 12 5. Declaration of Samuel M. Meyler Regarding Attorney's Fees;
- 13 6. Respondent Jon Karwoski's Exhibits Regarding Hearing on December 14, 2018;
- 14 7. _____
- 15 8. _____
- 16 9. _____
- 17 10. _____

18
19
20 **NOW, THEREFORE,**

21
22 **IT IS HEREBY ORDERED** that judgment be entered in favor of Shannon Cunningham
23 and against Defendants Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins, in the
24 principle amount of \$12,500.00, plus pre-judgment interest of \$1,113.70, attorney's fees of
25 \$ 6,244.98 and costs of \$ 170.47 as set forth in the Judgment Summary above.
26 *Carroll*

(33)
JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO
ENFORCE CR 2A SETTLEMENT AGREEMENT - 2

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE. N., STE 200
SEATTLE, WASHINGTON 98109
TEL: (206) 876-7770 • FAX: (206) 876-7771

1 The Total Judgment amount shall bear interest at the rate of twelve percent (12%) per annum until
2 fully paid

3 **IT IS FURTHER ORDERED** that Defendants are required to comply with the terms of
4 the CR 2A Agreement, the Settlement and Mutual Release Agreement and the Easement
5 Agreement and Notice of Termination and Release.

6
7 **IT IS FURTHER ORDERED** ~~that Defendants Jon R. Karwoski and Elizabeth Anne~~
8 ~~Collins a/k/a Anne Collins are ordered to cooperate with Plaintiff's Counsel in executing the~~
9 ~~Settlement and Mutual Release Agreement and the Easement Agreement and Notice of~~
10 ~~Termination and Release.~~
11 *that the Side Yard Easement recorded under*
King County Recorder's Office Recording No. 9104171054
is hereby terminated, released and extinguished,
as is the Accessory Structure Agreement, date April 8, 1991.

12 **IT IS FURTHER ORDERED** that the Preliminary Injunction entered March 9, 2018 is
13 extinguished by operation of the issuance of the following Permanent Injunction.

14 **IT IS FURTHER ORDERED** that Defendants Jon R. Karwoski and Elizabeth Anne
15 Collins a/k/a Anne Collins are hereby permanently enjoined and restrained from, directly or
16 indirectly, contacting, harassing or surveilling Cunningham and Cunningham's guests, invitees
17 and tenants. This Permanent Injunction/No Contact Order shall apply to the Defendants, as well
18 as their officers, agents, servants, employees and upon those persons in active concert or
19 participation with the Defendants who receive actual notice of this Permanent Injunction/No
20 Contact Order.

21
22 **IT IS FURTHER ORDERED** that the bond posted by Hartford Fire Insurance Company
23 on behalf of Cunningham is hereby extinguished and released

24 **IT IS FURTHER ORDERED** that this order resolves all claims asserted in this action.
25 The court retains jurisdiction for twelve (12) months from the date of entry for purposes of
26 enforcement motions.

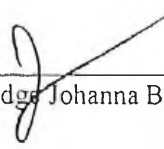
JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO
ENFORCE CR 2A SETTLEMENT AGREEMENT- 3

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE. N., STE 200
SEATTLE, WASHINGTON 98109
TEL: (206) 876-7770 • FAX: (206) 876-7771

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WARNING TO DEFENDANTS: Willful disobedience of the terms of this Judgment and Order may also be contempt of court and subject Defendants to penalties under Chapter 7.21 RCW.

DONE IN OPEN COURT this 28th day of February, 2019



Judge Johanna Bender

PRESENTED BY:
MEYLER LEGAL, PLLC

/s/Samuel M. Meyler
Samuel M. Meyler, WSBA #39471
Attorney for the Plaintiff

JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION TO ENFORCE CR 2A SETTLEMENT AGREEMENT- 4

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE. N., STE. 200
SEATTLE, WASHINGTON 98109
TEL: (206) 876-7770 • FAX: (206) 876-7771

FILED
 2019 MAR 20 09:08 AM
 KING COUNTY
 SUPERIOR COURT CLERK
 E-FILED
 CASE #: 18-2-04648-3 KNT

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

SHANNON CUNNINGHAM, an unmarried individual,

Plaintiff,

v.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof,

Defendants.

Case No. 18-2-04648-3 KNT

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S FEES

(Clerk's Action Required)

I. JUDGMENT SUMMARY

A.	Judgment Creditor:	Shannon Cunningham
B.	Judgment Debtor:	Jon R. Karwoski and Elizabeth Anne Collins a/k/a Anne Collins
C.	Principal	\$0.00
D.	Attorney's Fees	\$6,138.00
E.	Costs	\$0.00
F.	Prejudgment Interest	\$0.00
G.	Total Judgment:	\$6,138.00
H.	Total Judgment shall bear interest at the rate of 12% per annum	
I.	Attorney for Judgment Creditor:	Samuel M. Meyler, WSBA No. 39471 Meyler Legal, PLLC

II. JUDGMENT AND ORDER

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S FEES - 1

Johanna Bender
 Judge, King County Superior Court
 401 4th Ave. North
 Kent, WA 98032

1 THIS MATTER having come on regularly for hearing before the Court, and the Court
2 deeming itself fully advised on the premises, having considered the oral arguments presented by
3 Plaintiff's counsel and Defendant Jon R. Karvoski, *pro se*, and having reviewed the papers and
4 pleadings on file herein, including:

- 5 1. Plaintiff's Motion to Enforce CR 2A Settlement Agreement (Dkt. No. 28);
- 6 2. Declaration of Shannon Cunningham In Support of Motion to Enforce CR 2A
7 Settlement Agreement (Dkt. No. 29);
- 8 3. Declaration of Samuel M. Meyler In Support of Plaintiff's Motion to Enforce CR
9 2A Settlement Agreement (Dkt. No. 30);
- 10 4. Respondent Jon Karvoski's Exhibits Regarding Hearing on December 14, 2018
11 (Dkt. No. 34);
- 12 5. Plaintiff's Supplemental Brief Regarding Plaintiff's Right to Award of Attorney's
13 Fees (Dkt. No. 36);
- 14 6. Declaration of Samuel M. Meyler Regarding Attorney's Fees (Dkt. No. 37);
- 15 7. Plaintiff's Motion for Entry of Judgment for Attorney's Fees filed March 7, 2019;
- 16 8. Declaration of Samuel M. Meyler Regarding Attorney's Fees filed March 7, 2019;

17 **BASIS FOR IMPOSITION OF ATTORNEY'S FEES**

18 The Court concludes that the arguments and defenses presented by Defendants were
19 frivolous, not supported by any rational argument and advanced without reasonable cause.
20 Attorney's fees are therefore owing pursuant to RCW 4.84.185. The Court further finds that the
21 CR 2A agreement contains the following attorney's fees provision: "The Confession of Judgment
22 shall provide for interest at 12% and attorney's fees for enforcement and collection." The
23 confession of judgment was not entered solely because Defendants violated the terms of a valid

24 JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY'S
25 FEES - 2

Johanna Bender
Judge, King County Superior Court
401 4th Ave. North
Kent, WA 98032

1 CR 2A agreement. Had they signed the confession, Defendants would have been liable for the
2 fees now sought for entry of certain additional orders ancillary to the judgment in this matter (to
3 extinguish a side yard easement and an accessory structure agreement). Instead, those orders were
4 entered by the Court pursuant to contested motion to enforce the CR 2A agreement. See Dkt.;
5 Sub. 43.
6

7 REASONABLENESS OF TIME SPENT AND OF BILLING RATE

8 “Courts must take an active role in assessing the reasonableness of fee awards, rather than
9 treating cost decisions as a litigation afterthought.” Berryman v. Metcalf, 177 Wn.App. 644, 657
10 (Div. 1 2013) (internal citations omitted, emphasis in original). The Court must begin a disputed
11 fee calculation by determining the appropriate lodestar figure, “which is the number of hours
12 reasonably expended on the litigation multiplied by a reasonable hourly rate.” Id. at 660. After
13 calculating the lodestar, the Court must then evaluate whether any deviation is warranted. Id. at
14 665-66. Having reviewed the billing records submitted by Plaintiff’s counsel, the Court finds that
15 the amount of time billed in this matter was reasonable in light of the nature of the work performed.
16 The Court notes that considerable time was recorded in counsel’s timesheets but not billed. It
17 appears that Plaintiff was charged a significantly reduced amount for the work performed in this
18 matter, and it is that reduced amount that is now being imposed upon Defendants.
19

20 Counsel bills at a rate of \$310 per hour. Defendants have not disputed the reasonableness
21 of this billing rate. The Court concludes that this rate is reasonable in light of counsel’s experience
22 and the nature of this litigation.
23

24 LODESTAR

25 The lodestar in this matter is \$6,138.00. Neither party has sought a departure from
26 the lodestar, and the Court finds no basis for such a departure.

JUDGMENT AND ORDER AWARDING PLAINTIFF ATTORNEY’S
FEES - 3

Johanna Bender
Judge, King County Superior Court
401 4th Ave North
Kent, WA 98032

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IT IS HEREBY ORDERED that judgment be entered in favor of Shannon Cunningham and against Defendants Jon R. Karvoski and Elizabeth Anne Collins a/k/a Anne Collins for reasonable attorney's fees of \$6,138.00 as set forth in the Judgment Summary above. The Total Judgment amount shall bear interest at the rate of twelve percent (12%) per annum until fully paid.

DONE IN OPEN COURT this 20th day of March, 2019.

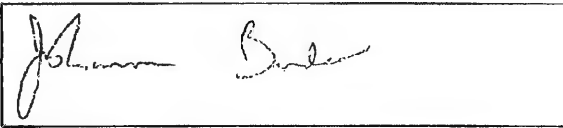
Electronically signed and filed
Judge Johanna Bender

King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-04648-3
Case Title: CUNNINGHAM VS KARWOSKI ET ANO

Document Title: ORDER ORDER ON ATTORNEY'S FEES

Signed by: Johanna Bender
Date: 3/20/2019 9:08:23 AM

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'Johanna Bender' written in a cursive style.

Judge/Commissioner: Johanna Bender

This document is signed in accordance with the provisions in GR 30.

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Page 5 of 5

No. 79753-1-1

COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

SHANNON CUNNINGHAM,

Respondent,

vs.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A
ELIZABETH ANNE KARWOSKI, husband and wife and the marital
community comprised thereof,

Appellants.

APPELLANTS' AMENDED REPLY BRIEF WITH SUBJOINED
DECLARATION OF BRIAN J. WAID

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I. INTRODUCTION

Appellants address the following issues in this Reply:

A. The Court should reject Respondent's petty and hypocritical demand for sanctions for an alleged but non-existent violation of GR 14.1(a) and instead sanction Respondent and her counsel for their own violation of GR 14.1(a) in a manner designed to discourage such petty and hypocritical sanctions demands in the future. [pp. 2-4].

B. The trial court accepted and considered the documents submitted to it by Mr. Karwoski in Open Court, without objection by Respondent. Respondent (and not Appellants) thus waived their objection to consideration of those documents for purposes of this *de novo* review. [pp. 4-5].

C. Respondent's demand for RAP 18.9 frivolous appeal damages highlights the Hobson's Choice this Court's prior decisions have created for victims of legal malpractice who must decide whether they must appeal an underlying decision to preserve an allegation of proximate cause in a follow-on legal malpractice claim.¹ If the victim of attorney

¹ Here, for example, significant issues exist relative to whether trial court counsel for the Kaworskis had proper authority to enter into a CR 2A Agreements. See, RPC 1.2(a).

negligence fails to appeal the adverse decision in the underlying matter, then this Court has held that the client cannot prove proximate cause in the legal malpractice case.²

Conversely, if the client appeals so as to preserve the legal malpractice claim, then the client risks RAP 18.9 frivolous appeal claims. Clients faced with this Hobson's Choice, particularly clients who are *pro se* in the underlying case, should not be punished if they choose to pursue the appeal in the underlying matter. [pp. 5-7].

D. The Kaworski's appeal is not frivolous; indeed, Respondent's arguments violate fundamental rules of statutory construction. Respondent also failed to establish that waiver applies to the requirement for an evidentiary hearing under *Cruz*, or the essential elements of such a waiver. [pp. 7-10].

II. ARGUMENT

² See, e.g., *Joudeh v. Pfau Cochran Vertitis Amala, PLLC*, 2015 WI 5923961 *4-5 (Div. I); *Butler v. Thomsen*, 2018 WL 6918832 *5 (Div. I). For the benefit of Respondent's counsel, Washington Court of Appeal opinions which do not include a "Wn. App." or "Wn. App.2d" reference are "unpublished." See, GR 14.1(a).

A. Appellants Properly Cited an Unpublished 2018 Decision of This Court; Conversely, Respondents Improperly Cited an Unpublished 1996 Decision in Violation of GR 14.1.

GR 14.1(a) authorizes parties to cite unpublished decisions of the Court of Appeals, provided that the unpublished opinion was issued “on or after March 1, 2013.” In their opening brief, Appellants cited *Goebel Design Group, LLC v. Clear NRG, LLC*, 2018 WL 3738201 *3 (Div. I 08/06/18), quite obviously an unpublished decision.³ Appellants thus did *not* violate GR 14.1. Respondent nevertheless asserts that Appellants “should be sanctioned for this blatant and repeated⁴ violation.” No such violation occurred. The Court should therefore reject Respondents’ petty demand for sanctions.

Respondents, in contrast, rely (as primary authority) on an

³ Appendix GR 14(5) requires that citations to published Washington Court of Appeals decisions refer to “Wn. App.” or “Wn. App.2d.” The absence of such a reference unambiguously indicates that the decision is indeed “unpublished.”

⁴ Although Appellants cited *Goebel* multiple times (App. Br., pp. 1, 6, 7, 10, 11) all but one (p. 11) of those citations supported citations of other published decisions, rather than as primary authority. The lone citation of *Goebel* without reference to a published decision, on page 11, supports the indisputable assertion that a reversal of the trial court decision on the merits would similarly require a reversal of the trial court fee award. Appellants’ citation of *Goebel* thus merely reflected this Court’s most recent pronouncement on the issues discussed in other, published and properly cited decisions, rather than the primary, persuasive authority. See further, no showing that this was prejudicial either to MacConnel or this court. See, e.g., *In re Estate of Perthou-Taylor*, 2014 WL 4347655 *10 (Div. I)(denying sanctions, despite actual GR 14.1(a) violation of GR 14.1(a), due to lack of prejudice).

unpublished 1996 Court of Appeals decision⁵ in direct violation of the GR 14.1 prohibition against citing unpublished cases issued *prior to March 1, 2013*. Respondents thus brazenly violated of GR 14.1 while hypocritically projecting their own violation onto Appellants.

The Court should therefore deny Respondent's *ad terrorem* demand for sanctions against Appellants (and their counsel) for having properly cited a 2018 unpublished decision of this Court and instead impose sanctions against Respondent and her counsel designed to discourage such petty and hypocritical assertions in the future.

B. Respondent Waived Any Objection to Consideration of Documents Entered into the Trial Court Record by the Trial Court, Without Objection by Respondent.

Respondent relies on rhetoric, without citation to any supporting authority, that Appellants' trial court filings in Open Court are "purely procedural. . . have handwritten notes on them. . . and are unsworn, inadmissible, irrelevant, and unsupported by any legal authority." Resp. Br., p. 15. Respondent further asserts, also without supporting citation, that the trial court consideration of "communications between Karwoski

⁵ Respondents cite *Colvin v. Schrader*, 1996 WL 1094868 at Respondent's Br., p. 19-20.

and his lawyer are obviously improper and irrelevant.”⁶ *Id.* Both assertions are themselves frivolous.

Instead, “[i]f a party fails to object or bring a motion to strike deficiencies in affidavits or other documents in support of a motion for summary judgment, the party waives any defects.” *Welch v. Boardman*, 2018 WL 5250205 *2 n. 1 (Div. I),⁷ citing *Smith v. Showalter*, 47 Wn. App. 245, 248, 734 P.2d 928 (1987); accord, e.g., *Bonneville v. Pierce Cty.*, 148 Wn. App. 500, 509, 202 P.3d 309 (2008).

Respondent thus waived any objection to the consideration of the disputed documents, which were included in the record considered by the trial court and which are, therefore, properly considered on *de novo* review by this Court. The Court should therefore also strike and disregard the Respondent’s arguments based on the asserted inadmissibility of portions of the trial court record.

C. The Court Should Not Punish Appellants for the Decision by Their Appellate (Only) Counsel to Continue This Appeal to Preserve the Clients’ Potential Legal Malpractice Claim Against Their Underlying Trial Counsel.

The Korwaskis initiated this appeal *pro se*. Their appellate counsel did not represent the Korwaskis in the trial court nor in connection

⁶ The client, however, can waive the privilege. See, e.g., *Pappas v. Holloway*, 114 Wn.2d 198, 208-209, 787 P.2d 30 (1990). Thus, there is nothing “improper” about a client’s waiver of privilege when necessary to protect the client’s own interests.

⁷ See n. 2, above.

with the initial filing of the appeal. Waid Decl. (12/16/19) ¶3. The Korwaski's appellate counsel had previously represented the losing parties in the *Joudeh* and *Butler* cases⁸ in which this Court had held that a victim of legal malpractice cannot establish proximate cause in a legal malpractice claim against their trial attorney *if* the client did *not* pursue an appeal of underlying matter. Based on those authorities, the United States District Court for the Western District of Washington had similarly dismissed a legal malpractice client's claim against her replacement Counsel because the client had neither sought reconsideration nor appealed the adverse decision in the trial court. *Setterquist v. Law Offices of Ted D. Billbe, PLLC*, 2018 WL 4566050 (W.D. Wash. 2018). The Setterquist case was pending on appeal in the Ninth Circuit at the time of briefing in this appeal. The Ninth Circuit eventually reversed. *Id.* 2019 WL 5842764 (9th Cir. 11/07/19).

The Korwaski's appellate counsel thereafter reviewed the trial court record and concluded that the appeal has sufficient merit to proceed, for the reasons expressed in Appellants' Opening Brief. Waid Decl. (12/16/19) ¶3. Their appellate counsel also considered the uncertainty

⁸ Citations set forth in n. 2, above.

created by this Court's prior decision on the proximate cause issue and whether, based on those prior decisions, the Washington courts would summarily dismiss their potential legal malpractice claims if they failed to pursue their already pending appeal. *Id.* at ¶4-6.

Accordingly, the Court should not punish the Korwaski's for following the recommendation of their appellate counsel. The Court should also decline to punish the decision of appellate counsel confronted with the Hobson's Choice presented by this Court's prior precedents.

D. Respondent's RAP 18.9 Argument Depends on Ignoring Fundamental Rules of Statutory Construction.

The Kaworskis established that RCW 2.44.010 does *not* apply to this case. App. Br., pp. 15-16 and 9 n. 6. Respondents dispute that conclusion [Resp. Br., pp. 18-19] by omitting the critical limitation contained in the introductory phrase to RCW 2.44.010, *i.e.*, “[a]n attorney or counselor has authority. . .”. However, “[u]nder the rule of *eiusdem generis*, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent.” *Feenix Parkside LLC v. Berkley N. Pac.*, 8 Wn. App.2d 381, 397, 438 P.3d 597, 606 (Div. I 2019).

Therefore, RCW 2.44.010 does *not* apply unless one allows Respondent to ignore the specific limitation of the statute, in violation of the fundamental rules of statutory construction. Respondent's assertion to the contrary, in Respondent's own terminology thus "lacks candor."

Respondent also did *not* distinguish *Eddleman v. McGhan*, 5 Wn.2d 430, 432, 275 P.2d 729 (1954),⁹ *quoted with approval*, *Goebel Design Group, LLC v. Clear NRG, LLC*, 2018 WL 3738201 *3 (Div. I 08/06/18); instead conflating a "Notice of Settlement" with a CR 2A Agreement in an effort to finesse non-compliance with the specific requirements of CR 2A. Again, in Respondent's terminology, Respondent's assertion again "lacks candor."

Indeed, Respondent apparently overlooked the substance of their own quoted authority [Resp. Br., p. 20], which states:

"It [*i.e.*, CR2A] precludes enforcement of a disputed settlement agreement not made in writing or put on the record, whether or not the common law requirements are met." [Emphases added].

Morris v. Maks, 69 Wn. App. 865, 869, 850 P.2d 1357 (1993).

⁹ See, App. Br., pp. 8-9.

relied upon by Respondent further explained that “in light of the underlying purpose of CR 2A and RCW 2.44.010, which is to avoid disputes regarding the existence and terms of settlement agreements, **the settlement agreement was unenforceable because the procedures set forth in CR 2A and RCW 2.44.010 were not followed.**” [Emphasis added]. Respondent’s arguments to the contrary are therefore mistaken.

And finally, “Civil Rule 2A precludes enforcement of a settlement agreement where there is a genuine dispute of material fact regarding **the existence of the agreement.**” *Cruz v. Chavez*, 186 Wn. App. 913, 915, 347 P.3d 912 (2015)(emphasis added). When that occurs, **the trial court must conduct an evidentiary hearing** to determine whether to enforce the settlement agreement. *Id.* at 920. See, App. Br., p. 7.

Respondent does *not* dispute the requirement of an evidentiary hearing; nor does Respondent distinguish *Cruz*. Respondent instead maintains that the Kaworski’s “waived” the requirement of an evidentiary hearing. However, a “waiver must be knowing and voluntary” and the party asserting waiver must carry the burden of proving the essential elements of waiver. *E.g., Brady v. Autozone Stores, Inc.*, 188 Wn.2d 576,

582, 397 P.3d 120 (2017).

First, *Cruz* does not appear to authorize a “waiver” of an evidentiary hearing, nor should it. Moreover, here, the record is also devoid of *any* indication that Kaworskis (or the trial court or Respondent, for that matter), recognized that Washington law required such a hearing.

Respondent has therefore failed to establish the essential elements of a waiver. The Court should so hold.

CONCLUSION

The trial court erred, as a matter of law, when it entered judgment enforcing the “CR 2A Agreement” against the Karwoskis. Appellants therefore request that the Court vacate both judgments against them and, instead, award them their reasonable attorney fees for having prevailed on this appeal. Appellants further request that the Court deny Respondent’s request for imposition of sanctions based on the alleged violation of GR 14.1 and instead impose sanctions against Respondent’s counsel for having hypocritically violated GR 14.1 while accusing Appellants’ attorney of such a violation. Finally, Appellants also request that the Court deny Respondent’s request for RAP 18.9 sanctions; however, the Court should not punish the Karwoskis, in any event, because they relied upon the advice of counsel to continue with their pending *pro se* appeal.

DATED: January 7, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
Attorney for Appellants

SUBJOINED DECLARATION OF BRIAN J. WAID IN SUPPORT OF
APPELLANTS' ANSWER TO RESPONDENT'S DEMAND FOR
FRIVOLOUS APPEAL DAMAGES

Brian J. Waid, under penalty of perjury, testifies as follows:

1. I am the attorney of record for Appellants Jon. R. Karwoski and Elizabeth Anne Collins in this appeal and make this Declaration based on my own personal knowledge and as authorized by RPC 3.7. The limited purpose of this Declaration is to respond to the Respondent's demand for RAP 18.9 sanctions against the Korwaski's and, to a lesser extent, against me.

2. Mr. and Mrs. Karwoski filed the original Notice of Appeal on March 11, 2019, *pro se*. I had not been involved in the trial court portion of the case and was not retained by them for any purpose until April 22, 2019, when I was initially retained for a limited purpose of helping them perfect their appeal.

3. After my retention, I reviewed the trial court record and concluded that the Karwoskis had (and continue to have) a

legitimate and non-frivolous basis for their appeal in this case, due to what appear to have been unauthorized actions by their trial court counsel of record. I thus recommended to the Karwoskis that they proceed with the appeal. I have no doubt that they relied upon my recommendation when they authorized me to pursue the appeal. I thus request that the Court should not penalize the Karwoski's for having followed my recommendation.

4. Nevertheless, I was also aware at the time of my retention of this Court's prior decisions in *Joudeh v. Pfau Cochran Vertitis Amala, PLLC*, 2015 WI 5923961 *4-5 (Div. I) and *Butler v. Thomsen*, 6918832 *5 (Div. I). I had personally represented the clients in both legal malpractice claims in which the clients unsuccessfully asserted legal malpractice claims based on this Court's proximate cause analysis. I also represented (and continue to represent) the legal malpractice claimant in the United States District Court for the Western District of Washington case entitled *Setterquist v. Law Offices of Ted D. Billbe, PLLC*, 2018 WL 4566050 (W.D. Wash. 2018), *reversed*, 2019 WL 5842764 (9th Cir. 11/07/19). The Court's prior decisions thus create a Hobson's Choice for the victims (or potential victims) of legal malpractice because they must pursue an appeal.

5. In addition, I was and remain aware that clients generally have a viable cause of action against their former attorneys for having entered into an unauthorized settlement or for having coerced the client into a settlement. See, 4 Mallen, *Legal Malpractice* §§33:95-33:96, pp. 991-999 (2019 ed.). It thus appeared (and continues to appear) that the Karwoskis more probably than not have a viable legal malpractice claim against their attorney in the underlying trial court matter, in the event that this Court affirms enforcement of the settlement agreement.

6. Based on the state of the law as reflected in those prior decisions, I concluded that Mr. and Mrs. Korwaski had no realistic choice but to pursue their pending appeal in this case because they would otherwise risk the summary dismissal of any claim they may have against their trial attorney based on the allegation that he had breached the standard of care and/or his fiduciary duties in connection with the settlement of the underlying case with Respondent.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: December 16, 2019.

/s/ Brian J. Waid
BRIAN J. WAID, WSBA No. 26038

CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail:
None

Dated: January 7, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
Brian J. Waid
WSBA No. 26038
Attorney for Appellants

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

SHANNON CUNNINGHAM,

Respondent,

v.

JOHN R. KARWOSKI and
ELIZABETH COLLINS a/k/a
ELIZABETH ANNE KARWOSKI,
husband and wife and the marital
community comprised thereof,

Appellants.

No. 79753-1

OBJECTION TO
CONSIDERATION OF NEW
FACTS & ARGUMENTS
RAISED FOR THE FIRST
TIME IN A DECLARATION
SUBJOINED TO AN
AMENDED REPLY BRIEF
RAISING NEW ARGUMENTS

I. Identity of Objecting Party & Relief Requested

Respondent Shannon Cunningham asks this Court to disregard the new facts Appellant Karwoski raises for the first time in a declaration subjoined to his Amended Reply Brief, and to the new arguments raised for the first time in his Reply.

II. Facts Relevant to Motion

Karwoski never argued in his opening brief that he brought this appeal to preserve an alleged right to sue his former attorney. See BA. Seeing no meritorious issue in the opening brief, Cunningham sought frivolous appeal sanctions in response. See BR.

For the first time in reply, Karwoski claimed he appealed to preserve his claims against his former attorney. See Amended Reply Brief.

III. Argument

Arguments raised for the first time in a reply brief are too late. See, e.g., *Davis v. Blumenstein*, 7 Wn. App. 2d 103, 118 n.7, 432 P.3d 1251 (2019) (“We do not consider arguments raised for the first time in a reply brief”) (citing *Cowiche Canyon Conserv. v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992)). It is unfair for a court to consider new issues – and indeed, a new declaration containing new factual allegations – first raised in a reply. Had these claims been raised in the opening brief – they were certainly known to Karwoski, and unknown to Cunningham – she could have objected (they obviously were not raised below) and responded to them.

IV. Conclusion

The Court should disregard new matter first raised in a reply.

Respectfully submitted this 7th day of January 2020.

MASTERS LAW GROUP, P.L.L.C.



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CERTIFICATE OF SERVICE

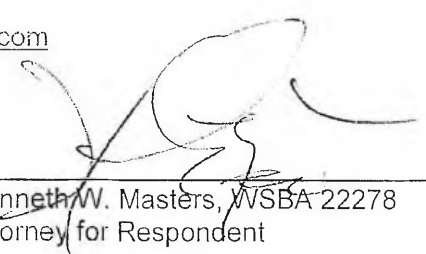
I certify that I caused to be filed and served a copy of the foregoing **OBJECTION TO CONSIDERATION OF NEW FACTS & ARGUMENTS RAISED FOR THE FIRST TIME IN A DECLARATION SUBJOINED TO AN AMENDED REPLY BRIEF RAISING NEW ARGUMENTS** on the 7th day of January 2020 as follows:

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MASTERS LAW GROUP PLLC

January 07, 2020 - 12:16 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 79753-1
Appellate Court Case Title: Shannon Cunningham, Respondent v. Jon Karwoski, Appellant

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No. 79753-1-1

DIVISION I COURT OF APPEALS

STATE OF WASHINGTON

SHANNON CUNNINGHAM, an unmarried
person

Respondent,

vs.

JON R. KARWOSKI and ELIZABETH
ANNE COLLINS A/K/A ELIZABETH
ANNE KARWOSKI, husband and wife and
the marital community comprised thereof,

Appellants.

APPELLANTS' RAP 17(4)(e) ANSWER
TO RESPONDENT'S MOTION TO
STRIKE AND FOR SANCTIONS
PURSUANT TO RAP 18.9(a)

Respondent filed a motion to strike misleadingly entitled "Objection to Consideration of New Facts & Arguments Raised for the First Time in a Declaration Subjoined to an Amended Reply Brief Raising New Arguments."¹ Appellants file this Answer to Respondent's motion as authorized by RAP 17.4(e) and request that the Court award sanctions to Appellants and against Respondent, pursuant to RAP 18.9(a), for having filed a frivolous and misleading motion.

More specifically, Respondent and *not* Appellants, first raised the issue of

¹ Appellants filed their Reply Brief on December 16, 2019, along with the supporting Declaration. However, at the instance of this Court's Case Manager, Appellants re-filed the identical Reply Brief and Declaration on December 7, 2020 in which the declaration in conformity with the Case Manager's instructions. Appellants' counsel had notified Respondent's counsel of this fact *prior to* filing the Amended Reply. Respondent had not objected to Appellants' December 16, 2019 filing prior to the January 7, 2020 filing of the Amended Reply.

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1 whether this appeal is frivolous in **Respondent’s Brief**, pp. 12-14, 2-28. Appellants
2 thus had no reason to address that issue in their Opening Brief—and did *not*.

3 Significantly, RAP 10.3(c) explicitly authorizes reply “to the issues in the brief
4 to which the reply is directed.” Because Respondent raised the RAP 18.9(a) frivolous
5 appeal issue for the first time in Respondent’s Brief, Appellants had every right to reply
6 to Respondent’s argument in their Reply to the brief in which Respondent raised the
7 issue in the first instance. **Indeed, if Respondent were correct, then no Appellant**
8 **could ever respond to a RAP 18.9(a) demand for sanctions by any respondent.**

9 Respondent thus seeks to deny *Appellants* Due Process by prohibiting Appellants from
10 having a fair opportunity to respond to Respondent’s RAP 18.9(a) argument. See,
11 *Griffith v. Centex Real Estate Corp.*, 93 Wn. App. 202, 218, 969 P.2d 486, 494
12 (1998), *as amended on reconsideration* (Dec. 14, 1998)(agreeing that Respondent’s
13 motion to strike Reply Brief was no more than an improper attempt to respond to the
14 reply brief which. . . is sanctionable under RAP 10.1 and RAP 10.7).

15 Respondent also cannot demonstrate any potential prejudice resulting from
16 Appellants’ Amended Reply Brief with subjoined declaration because Appellants can
17 assert those same facts and arguments just as readily during oral argument. Thus, both
18 the Court and Respondent are better served by having those issues discussed in writing
19 prior to oral argument.

20 Appellants also request that the Court sanction Respondent for having filed such
21 a hypocritical motion. Denying Respondent attorney fees in this appeal, even if
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Respondent were to prevail in this appeal, would provide an appropriate sanction.

DATED: January 7, 2020.

WAID LAW OFFICE, PLLC

BY: /s/Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
Attorney for Appellants

CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail: None

January 7, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
Brian J. Waid
WSBA No. 26038
Attorney for Appellants

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WAID LAW OFFICE

January 07, 2020 - 3:20 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 79753-1
Appellate Court Case Title: Shannon Cunningham, Respondent v. Jon Karwoski, Appellant

The following documents have been uploaded:

- 797531_Answer_Reply_to_Motion_20200107151732D1785964_4580.pdf
This File Contains:
Answer/Reply to Motion - Answer
The Original File Name was Kaworski.Answer to Respondent Objection.OCR.pdf

A copy of the uploaded files will be sent to:

- ken@appeal-law.com
- meyer.legal@gmail.com
- paralegal@appeal-law.com
- samuel@meyerlegal.com

Comments:

Sender Name: Kristin Henson - Email: khenson@waidlawoffice.com
Filing on Behalf of: Brian J Waid - Email: bjwaid@waidlawoffice.com (Alternate Email:)

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Seattle, WA, 98136
Phone: (206) 388-1926

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHANNON CUNNINGHAM, an
unmarried individual,

Respondent,

v.

JON R. KARWOSKI and ELIZABETH
ANNE COLLINS a/k/a ELIZABETH
ANNE KARWOSKI, husband and wife
and the marital community comprised
thereof,

Appellants.

No. 79753-1-1

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — The Karwoskis appeal the enforcement of a settlement agreement between them and Cunningham. They argue that the trial court erred in failing to hold an evidentiary hearing because a genuine dispute existed as to the agreement's terms. They further contend that CR 2A required their attorney to sign the agreement. Last, they assert that the agreement is unenforceable because it lacks consideration. We affirm.

FACTS

This appeal arises out of a dispute over a boundary line between neighbors Shannon Cunningham and Jon and Elizabeth Karwoski. In 1991, Cunningham's predecessor in interest granted Jon¹ a "Single Family Side Yard Easement."

¹ For clarity, we refer to Jon and Elizabeth individually by their first names. We refer to them collectively as "the Karwoskis."

Citations and pin cites are based on the Westlaw online version of the cited material.

Cunningham's garage is located within a portion of the easement area. It has stood in that location for over 10 years. Cunningham also has a fence and rock wall located within the easement area.

In October 2017, Cunningham filed a petition for an order of protection against Jon. She alleged in part that Jon had threatened to kill her and her domestic partner, Thomas Breliniski, had surveilled her as she was leaving her home, and had parked his vehicles in a way that blocked her vehicle and delayed construction work on her home. The district court granted Cunningham's petition in November 2017. It restrained Jon from contacting her, surveilling her, entering her property, or interfering with signs related to construction outside her home for one year.²

A few months later, in February 2018, Cunningham sued the Karwoskis, asserting claims for trespass, outrage, assault, declaratory relief, adverse possession, estoppel, and quiet title. She alleged in part that, despite the order for protection, Jon had continued to harass her, dismantled portions of her fence, entered her property without permission, and nailed material to the side of her garage. She further alleged that Jon had asserted his ownership over the easement on her property and had threatened to cause further damage to her fence and garage. In her prayer for relief, she sought a declaratory judgment that the Karwoskis had abandoned the easement and had no further right, title, or interest with respect to the easement. She also sought an injunction restricting the

² Breliniski also sought and was granted an order of protection against Jon.

Karwoskis' actions with respect to the trial court's ruling on the parties' rights under the easement, damages, and attorney fees and costs.

The day after she filed her complaint, Cunningham filed a motion for a temporary restraining order and an order to show cause. She specifically asked the trial court to enjoin the Karwoskis from entering her property, including the easement area, while the matter was being litigated. The trial court granted her motion the same day. Two days later, attorney Ryan Yoke filed a notice of appearance on behalf of the Karwoskis.³

In early March 2018, the parties stipulated to an agreed order for a preliminary injunction. The injunction restrained the Karwoskis from entering Cunningham's property, including the easement area, during the pendency of the action. The Karwoskis also agreed not to damage, move, or alter Cunningham's fence or any other personal property located on Cunningham's property or belonging to her.

On May 3, 2018, the parties participated in mediation. Counsel for Cunningham, Samuel Meyler, and counsel for the Karwoskis, Yoke, were both present. After several hours of mediation, the parties reached a settlement and executed a "CR 2A Settlement Agreement." The agreement included the following provisions:

- 1) Permanent Injunction/No Contact Order to be entered preventing Karwoskis from, direct or indirect, contact/harassment/surveillance of Cunningham and her guests, invitees and tenants.

³ The City of Seattle filed criminal charges against Jon based on his alleged continuing harassment and violation of the order protecting Breliniski.

- 2) All claims and counterclaims by all parties asserted in [this case] to be dismissed with prejudice, subject to entry of Order specified above.
- 3) Full mutual release for all claims and causes of action between all parties to the pending litigation up to the date of this CR 2A Agreement, including claims of adverse possession.
- 4) Cunningham and Breliniski to advise prosecutor in criminal prosecution of Karowski that they are no longer interested in pursuing the matter. Cunningham and Breliniski shall not be restricted from responding to any lawfully served subpoenas and shall not be liable to Karwoskis in any way for responding to subpoenas.
- 5) Karwoskis release/extinguish Single Family Side Yard Easement – to be recorded with King County Recorder's Office.
- 6) Karwoskis release/extinguish Accessory Structure Agreement.
- 7) Karwoskis acknowledge surveyed lines of Cunningham property as the boundary lines, that Cunningham owns the rock wall bordering properties, laurel hedge bordering properties and fence.
- 8) Karwoskis shall not enter Cunningham's property at any time in the future for any reason without prior express consent.
- 9) Cunningham shall not enter Karwoskis' property at any time in the future for any reason without express prior consent.
- 10) Both parties release and waive any present or future claim of adverse possession.
- 11) Cunningham's fence to remain in place in perpetuity with the right to repair and replace as necessary.
- 12) Karwoskis to pay Cunningham \$12,500 with[in] thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham's counsel and filed in the event that payment is not made. The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection.

....

- 16) Cunningham and Breliniski shall stipulate to vacating antiharassment protection orders currently in place, noting that it is stipulated as part of the resolution of their civil case.
- 17) Karwoskis waive[] any claims for malicious prosecution against Cunningham and/or Breliniski.

Cunningham, Breliniski, and the Karwoskis all signed their names at the bottom of the agreement.

In late May 2018, Meyler inquired with Yoke as to the status of the Karwoskis' \$12,500.00 payment to Cunningham under the CR 2A settlement agreement. Yoke advised Meyler that the Karwoskis would deliver the check to his office the week of June 4, 2018. On June 4, Meyler again inquired as to the status of the payment. On June 8, Yoke advised Meyler that the Karwoskis were mailing a check to his office that same day. The Karwoskis failed to mail the check. On June 15, Meyler inquired a third time as to the payment's status. On June 19, Yoke advised Meyler that Jon was working on getting the payment together, and that he would let him know once that was done. This never occurred.

On July 30, 2018, Yoke sent Jon an e-mail asking him to confirm that he was okay with Yoke agreeing to the entry of a notice of settlement. On August 1, before Yoke received a response from Jon, the parties filed a notice of settlement of all claims against all parties, signed by their attorneys. The notice acknowledged the CR 2A settlement agreement. It stated that "all claims against all parties in this action have been resolved, subject to finalizing the settlement documents and carrying out the terms of the settlement." It also stated that the trial court could dismiss the case under King County Local Civil Rule 41(b)(2)(B) if the parties failed to file an order dismissing all claims within 45 days and failed to

file a certificate of settlement without dismissal. On August 6, Yoke sent Jon another e-mail explaining that when he did not hear back from him, he agreed to the entry of the notice of settlement. In response, Jon told Yoke that he could have called or texted him. He also stated, "This is extortion."

On October 1, 2018, Meyler sent Yoke an e-mail regarding the Karwoskis' failure to adhere to the terms of the CR 2A settlement agreement. He stated that if Yoke did not make progress in contacting the Karwoskis and getting them to cooperate, Cunningham would be forced to file a motion to enforce the agreement. On October 9, Meyler sent Yoke a letter stating that if the Karwoskis did not return the fully executed settlement documents by October 19, Cunningham would file a motion to enforce the agreement and seek attorney fees and costs.⁴ Two days later, Yoke filed a notice of intent to withdraw as counsel for the Karwoskis effective October 18, 2018. On October 22, Yoke informed Meyler that he had exchanged several e-mails with Jon, but that Jon never signed the settlement documents.

On November 13, 2018, Cunningham filed a motion to enforce the CR 2A settlement agreement. In doing so, she offered a copy of the agreement signed by all the parties. She explained that, in accordance with the agreement, she had stopped cooperating with the prosecutor pursuing criminal charges against Jon, and that those charges had been dismissed. Despite her satisfaction of that term,

⁴ The settlement documents included (1) the "Confession of Judgment, Agreed Permanent Injunction/No Contact Order and Final Order Releasing Bond and Terminating Case," (2) the "Easement Agreement and Notice of Termination and Release," and (3) the "Stipulated Orders Vacating Protection Orders." (Formatting omitted.)

she stated that the Karwoskis had failed to pay her the agreed \$12,500.00 and refused to execute the settlement documents required by the agreement.

A hearing on the motion to enforce the agreement initially took place on December 14, 2018. At the hearing, Jon appeared pro se and moved for a continuance. He presented copies of several e-mails from October and December 2018 between Meyler, Yoke, and the trial court regarding the motion and a hearing date. Jon was not a party to any of the e-mails, except for a December 10 e-mail from Meyler sending him a proposed copy of a judgment and order for the December 14 hearing. Handwritten notes on the e-mails indicated that the Karwoskis lacked notice of the hearing. Jon failed to identify who wrote the notes on the e-mails. However, notes such as "Mr. Meyler knows Mr. Yoke is withdrawn and I am not represented" indicate that one of the Karwoskis wrote the notes. Jon also presented copies of several e-mails from July and August 2018 between him and Yoke. In those e-mails, Jon took issue with Yoke's decision to agree to the entry of the notice of settlement. One of the e-mails included a handwritten note that stated, "I never agreed to an agreement."⁵ The trial court granted Jon's motion and continued the hearing to February 2019.⁶

At the second hearing, the trial court granted Cunningham's motion and enforced the CR 2A settlement agreement. It awarded Cunningham a total

⁵ Last, Jon presented copies of e-mails from March 2018 between him and Yoke, and a copy of a June 2018 e-mail from an attorney named Brooks de Peyster. The e-mails between Jon and Yoke involved scheduling for the May 2018 mediation. The e-mail from de Peyster addressed a June 2018 court date. It is unclear from the e-mail what that court date was for.

⁶ The trial court subsequently continued the hearing to a later date in February due to inclement weather.

judgment of \$13,784.17. This amount included the \$12,500.00 provided for in the agreement, \$1,113.70 in prejudgment interest, and \$170.47 in costs.

Cunningham then filed a motion seeking \$6,138.00 in attorney fees. She specifically sought fees under the CR 2A settlement agreement, the settlement and mutual release agreement, and the easement agreement. She also sought fees under RCW 4.84.185, arguing that Jon raised only frivolous arguments as to why he should not be held to the terms of the settlement agreement. The trial court granted Cunningham's motion and awarded her \$6,138.00 in attorney fees. It explained,

[T]he arguments and defenses presented by [the Karwoskis] were frivolous, not supported by any rational argument and advanced without reasonable cause. Attorney's fees are therefore owing pursuant to RCW 4.84.185. The Court further finds that the CR 2A agreement contains the following attorney's fees provision: "The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection." The confession of judgment was not entered solely because [the Karwoskis] violated the terms of a valid CR 2A agreement. Had they signed the confession, [the Karwoskis] would have been liable for the fees now sought for entry of certain additional orders ancillary to the judgment in this matter (to extinguish a side yard easement and an accessory structure agreement). Instead, those orders were entered by the Court pursuant to contested motion to enforce the CR 2A agreement.

The Karwoskis appeal.

DISCUSSION

The Karwoskis assert that the trial court erred in enforcing the CR 2A settlement agreement. First, they argue that the trial court erred in failing to hold an evidentiary hearing because they "established that serious disputes existed relative to the terms" of the agreement. Second, they argue that CR 2A required

their attorney to sign the agreement. Last, they argue that the agreement is unenforceable because it lacks “any reference to consideration.”

CR 2A governs the enforcement of stipulations in court proceedings. It provides,

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR 2A.

Under RCW 2.44.010, an attorney and counselor has authority:

(1) To bind his or her client in any of the proceedings in an action or special proceeding by his or her agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings, in an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him or her, or signed by the party against whom the same is alleged, or his or her attorney.

The Washington Supreme Court has noted that “[t]he purpose of the cited rule and statute is to . . . give certainty and finality to settlements and compromises, if they are made.” Eddleman v. McGhan, 45 Wn.2d 430, 432, 275 P.2d 729 (1954) (discussing the predecessor of CR 2A, former Rule of the Superior Courts 10 (1951), which used substantively identical language).

CR 2A applies when (1) a settlement agreement is made by parties or attorneys in respect to the proceedings in a cause and (2) the purport of the agreement is disputed. In re Marriage of Ferree, 71 Wn. App. 35, 39, 856 P.2d 706 (1993). An agreement is disputed within the meaning of CR 2A if there is a

genuine dispute over the existence or material terms of the agreement. In re Patterson, 93 Wn. App. 579, 583-84, 969 P.2d 1106 (1999). The party moving to enforce a settlement agreement carries the burden of proving there is no genuine dispute as to the agreement's existence or material terms. Brinkerhoff v. Campbell, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000). If the moving party meets its burden, "the nonmoving party must respond with affidavits, declarations, or other evidence to show there is a genuine issue of material fact." Patterson, 93 Wn. App. at 584.

We review a decision regarding the enforcement of a settlement agreement de novo. Lavigne v. Green, 106 Wn. App. 12, 16, 23 P.3d 515 (2001). "The trial court follows summary judgment procedures when a moving party relies on affidavits or declarations to show that a settlement agreement is not genuinely disputed." Condon v. Condon, 177 Wn.2d 150, 161-62, 298 P.3d 86 (2013). The trial court must view the evidence in the light most favorable to the nonmoving party and determine whether reasonable minds could reach but one conclusion. Cruz v. Chavez, 186 Wn. App. 913, 920, 347 P.3d 912 (2015).

We apply general principles of contract law to settlement agreements. Id. A valid contract requires a meeting of the minds on the essential terms. Evans & Son, Inc. v. City of Yakima, 136 Wn. App. 471, 477, 149 P.3d 691 (2006). Washington follows the objective manifestation test for contracts. Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 177, 94 P.3d 945 (2004). Thus, for a contract to form, the parties must objectively manifest their mutual assent. Id. at 177-78. To determine whether a party has manifested an intent to enter into a

contract, we impute an intention corresponding to the reasonable meaning of a person's words and acts. Multicare Med. Ctr. v. Dep't of Soc. & Health Servs., 114 Wn.2d 572, 587, 790 P.2d 124 (1990), overruled in part on other grounds by Neah Bay Chamber of Commerce v. Dep't of Fisheries, 119 Wn.2d 464, 832 P.2d 1319 (1992). "Acceptance" is an expression, communicated by word, sign, or writing to the offeror, of the intention to be bound by the offer's terms. Veith v. Xterra Wetsuits, LLC, 144 Wn. App. 362, 366, 183 P.3d 334 (2008).

I. Waiver

As an initial matter, Cunningham argues that the Karwoskis waived all of their arguments on appeal "due to their failure to proffer any admissible evidence or any legally supported arguments to the trial court." She relies on RAP 2.5(a).

Under RAP 2.5(a), we may refuse to review any claim of error not raised in the trial court. But, a party may raise the following claimed errors for the first time on appeal: "(1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right." RAP 2.5(a).

The only documents that the Karwoskis filed in response to Cunningham's motion to enforce the settlement agreement were the e-mail copies discussed above.⁷ One of the printed copies of the e-mails between Jon and Yoke included

⁷ Cunningham argues that these e-mails were not admissible because they were not attached to a declaration or otherwise authenticated. But, she failed to raise this argument below. In its order granting Cunningham's motion, the trial court included these e-mails in the list of "papers and pleadings" it reviewed in reaching its decision. Cunningham does not appeal any portion of that order. Therefore, we decline to reach her admissibility argument.

a handwritten note that stated, "I never agreed to an agreement." We liberally construe this handwritten statement as the Karwoskis' evidence disputing the existence of an agreement. This evidence alone is not enough to overcome the fact that he and his wife both signed the mediated settlement agreement.

The Karwoskis did not raise in the trial court the arguments they make here regarding (1) a requirement that their attorney sign the agreement and (2) a lack of consideration in the agreement. The Karwoskis fail to demonstrate that these arguments fall under one of the exceptions in RAP 2.5(a). As a result, they have waived both arguments on appeal.

Even if they had not waived both arguments, the Karwoskis' attorney did not need to sign the agreement in order to bind them under CR 2A. We have previously held that when a party "undertakes a settlement directly with the other party, reduces it to writing, and signs it . . . the requirements of CR 2A are met just as if the attorney had participated." Patterson, 93 Wn. App. at 585. And, the agreement was clearly supported by consideration. Both parties made a number of promises in the agreement, including a promise to waive any present or future claims of adverse possession. "[F]orbearance to prosecute a valid claim or assert a legal right constitutes sufficient consideration for a contract." State v. Brown, 92 Wn. App. 586, 594, 965 P.2d 1102 (1998). Accordingly, both of the Karwoskis' arguments would fail.

II. Failure to Hold an Evidentiary Hearing

The Karwoskis argue that the trial court erred in failing to hold an evidentiary hearing because they "established that serious disputes existed relative to the

terms" of the settlement agreement. They do not detail what those disputes were. Instead, they imply that they generally disputed the existence of an agreement.

In moving to enforce the settlement agreement, Cunningham had the initial burden of proving there was no genuine dispute as to the existence of an agreement or its material terms. See Brinkerhoff, 99 Wn. App. at 696-97. She met that burden when she filed a copy of the agreement signed by all of the parties, including the Karwoskis. At that point, the burden shifted to the Karwoskis to disprove the existence of the agreement or to show there was a genuine dispute of a material term. See Patterson, 93 Wn. App. at 584. All that the Karwoskis provided in response were the e-mail copies discussed above. The only relevant information in those e-mails was a handwritten note that stated, "I never agreed to an agreement." That self-serving after the fact annotation of an e-mail was insufficient to show a genuine dispute as to the agreement's existence. Accordingly, the trial court did not err in granting Cunningham's motion to enforce the agreement.⁸

III. Attorney Fees

Cunningham and the Karwoskis both request attorney fees on appeal under the settlement agreement. Cunningham also requests attorney fees on the basis that the Karwoskis' appeal is frivolous.

⁸ The Karwoskis also argue that if this court vacates the order enforcing the agreement, it should vacate the judgment awarding attorney fees to Cunningham. Because we affirm the order, we decline to vacate the attorney fee judgment below.

To support their attorney fee requests under the settlement agreement, Cunningham and the Karwoskis cite RAP 18.1, RCW 4.84.330, and a fee provision in the agreement.

RAP 18.1(a) allows a reviewing court to award a party reasonable attorney fees if applicable law grants a party the right to recover them and the party requests them in compliance with RAP 18.1. Under RCW 4.84.330,

where [a] contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

The settlement agreement includes the following fee provision:

Karwoskis pay Cunningham \$12,500 with[in] thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham's counsel and filed in the event that payment is not made. The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection.

(Emphasis added.) The confession of judgment was never entered because the Karwoskis violated the terms of the settlement agreement. However, the agreement clearly contemplates an attorney fee award in the event that Cunningham has to enforce collection of the \$12,500.00. And, Cunningham and the Karwoskis agree that the provision applies to the prevailing party on appeal. Because Cunningham prevails on appeal, we award her attorney fees under the

No. 79753-1-I/15

fee provision in the settlement agreement, subject to her compliance with RAP 18.1.⁹

We affirm.

Appelwick, J.

WE CONCUR:

Seach, J.

Dugan, J.

⁹ Thus, we decline to consider Cunningham's alternate request for fees based on a frivolous appeal. We also deny each party's motion to impose sanctions for citation to unpublished opinions in violation of GR 14.1(a).

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

SHANNON CUNNINGHAM,

Respondent,

v.

JOHN R. KARWOSKI and
ELIZABETH COLLINS a/k/a
ELIZABETH ANNE KARWOSKI,
husband and wife and the marital
community comprised thereof,

Appellants.

No. 79753-1

RAP 18.1 DECLARATION OF
KENNETH W. MASTERS IN
SUPPORT OF AWARD OF
ATTORNEY FEES AND
COSTS

KENNETH W. MASTERS declares and states under penalty
of perjury:

1. I am filing this declaration in support of Respondent Shannon Cunningham's request for an award of attorney fees and costs on appeal. My firm was retained to represent Cunningham in response to Appellants Karwoskis' appeal. I am competent to testify to the matters stated in this declaration.

2. I have practiced law for over 28 years. Most of that time has been spent on appellate work. I also served as clerk for the Honorable Elaine Houghton, ret. I am admitted to practice in the United States Supreme Court, the Washington State Supreme

Court, the United States Court of Appeals for the Ninth Circuit, and the United States District Court for the Western District of Washington. A copy of my curriculum vitae is attached as Appendix A. I spent reasonable, necessary, and non-duplicative time on this appeal.

3. My paralegal, Tamra J. Cole, is an attorney who has been admitted to practice law in Washington since 2009 (inactive) and in California from 2004-2013 (voluntarily resigned). She worked as an attorney from 2004-2010 and as a paralegal for the Seattle City Attorney's Office from 2010-2017. She came to my firm in April 2017. A copy of her curriculum vitae is attached as Appendix B. She spent reasonable, necessary, and non-duplicative time on this appeal.

4. My firm does not charge one single hourly rate. Instead, we have a basic rate in cases for which we bill and receive payment monthly, an hourly consulting rate, different rates for cases taken on a flat-fee basis, and different rates for the rare case in which our fee is contingent upon the outcome of the appeal, either entirely or in part. This is a case in which we billed and received payment monthly. I billed at \$380 per hour and my paralegal billed at \$130 per hour.

5. A printout of our time records, exclusive of time to prepare this fee declaration, is attached as Appendix C. We keep track of our time contemporaneously, by the minute. Thus, the first entry in our time records is by KWM on May 14, 2019 and shows a time of 0:09 which means zero hours and nine minutes. These entries are taken directly from our computerized time records. In my opinion, based on my years of experience and knowledge of the rates charged in this community for appellate matters, the rate charged was reasonable.

6. As further outlined in Appendix C, I researched and drafted the Brief of Respondent and would have presented oral argument had there been one. My paralegal gathered and summarized the record and confirmed the citations in the briefs. In my opinion, based on my years of experience and knowledge of the time incurred in this community for appellate matters, our time was reasonable, necessary, and non-duplicative.

7. My firm spent the following time on this appeal, exclusive of the time to prepare this fee declaration:

Name	Hours: Minutes	Hourly Rate	Fee
Kenneth W. Masters	31:09	\$380	\$11,837.00
Tamra J. Cole	14:55	\$130	\$1,939.17
SUBTOTAL FEES			\$13,776.17

8. My firm incurred the following costs for this appeal, which represent the statutorily allowed charge or the actual charge by the service provider, *i.e.* our out-of-pocket expense:

Cost	Amount
Preparing Brief of Respondent, at \$2.00 per page: 1 page for cover, 6 pages of tables, 29 pages of text, and 13 pages of appendix for a total of 49 pages	\$98.00
TOTAL COSTS	\$98.00

9. In addition to the time listed above, my firm spent the following time to prepare this fee declaration:

Name	Hours: Minutes	Hourly Rate	Fee
Kenneth W. Masters	1:00	\$380	\$380.00
Tamra J. Cole	4:48	\$130	\$624.00
SUBTOTAL FEES			\$1,004.00

10. I ask for a fee award to Respondent Cunningham for time and costs incurred by my firm as follows:

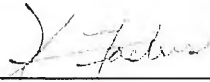
Item	Amount
Masters Law Group fees, exclusive of preparing fee declaration	\$13,776.17
Masters Law Group costs incurred	\$98.00
Masters Law Group fees, preparing fee declaration	\$1,004.00
TOTAL FEES AND COSTS	\$14,878.17

11. I ask the Court to award the fees and costs requested in the accompanying Fee Declaration of Samuel M. Meyler, which were reasonable and necessary to obtain supersedeas protection for Cunningham and to prosecute this appeal.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 25th day of June 2020.

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters, WSBA 22278
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com
Attorneys for Respondent

APPENDIX

Table of Contents

Appendix	Description	Pages
A	CV of Kenneth W. Masters	A-1 to A-7
B	CV of Tamra J. Cole	B-1 to B-1
C	Time Records for Masters Law Group	C-1 to C-14

APPENDIX A

KENNETH W. MASTERS

Attorney at Law

MASTERS LAW GROUP, P.L.L.C.
241 Madison Avenue North
Bainbridge Island, Washington 98110
(206) 780-5033
ken@appeal-law.com

Employment History

Founder, Masters Law Group, P.L.L.C., 2011 - present
Owner, Wiggins & Masters, P.L.L.C., 1998 - 2010
Attorney, Edwards, Sieh, Smith & Goodfriend, P.S., 1995 - 1998
Judicial Clerk, The Honorable Elaine Houghton, ret., Washington State
Court of Appeals, Division II, 1994 - 1995
Attorney, Burgess, Fitzer, Leighton & Phillips, 1993 - 1994
Attorney, Albertson & Smith, 1992 - 1993
Professional Musician & Music Instructor, 1979 - 1989

Admissions to Practice

United States Supreme Court
Washington State Supreme Court
United States Court of Appeals for the Ninth Circuit
United States District Court, Western District of Washington

Professional Affiliations/Committees

Trustee, Washington State Bar Foundation, 2016 – March 2019
- President, October 2018 – March 2019
Washington State Bar Association, 1992 – present
- Chair, ECCL Rules Task Force, 2016 – 2018
- Treasurer, WSBA Board of Governors, 2014 – 2015
- Member, Budget & Audit Committee, 2012 – 2015
- Governor, 1st Dist., WSBA Board of Governors, 2012 – 2015
- Chair, Disciplinary Selection Committee, 2012 – 2015
- Personnel Committee, 2012 – 2015
- Chair, 2013 – 2014
- Liaison, Court Rules & Procedures Committee, 2012 – 2015
- Liaison, Escalating Costs of Civil Litigation Task Force,
2012 – 2015
- Court Rules & Procedures Committee, 2004 – 2012
- Chair, 2009 - 2012
- RAP Subcommittee, 2004 - 2005, 2008 - 2009
- Chair, 2008 - 2009
- Subcommittee X, 2006 - 2008
- Chair, 2007 – 2008
- Amicus Committee, 2000 - 2003
- Chair, 2001 – 2003

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Kenneth W. Masters
Page 2

American Bar Association, 2001 – present

- Life Fellow, American Bar Foundation, 2014 – present
- Member, Council of Appellate Lawyers

King County Bar Association, 1995 - present

- Judicial Evaluation Committee, 2002 - 2009, 2011 - present
 - Co-Chair, 2005 - 2006
- Appellate Law Section, 2005 - present
 - President, 2008 - 2009
 - Executive Committee Member, 2006 - 2010
 - Charter Member, 2005 - present
- Judicial Conferencing Committee, 2011, 2013 - 2015
- Awards Committee, 2010 - 2012
- CLE Advisory Committee, 2010 - 2012
- Amicus Committee Chair, 2007 – 2009
- Co-director & Volunteer, Fremont Legal Clinic, 1995 - 1996

Kitsap County Bar Association, 1998 – present

- Member, Kitsap (Volunteer) Legal Services, 1999 - present

American Academy of Appellate Lawyers

- Fellow, 2010 - present

Washington Appellate Lawyers Association, 2003 - present

- President, 2007- 2012

Washington State Association for Justice, 1998 - present

- Eagle, 1999 - present

American Judicature Society, 2001 - present

- Member, Judicial Selection Committee

Litigation Counsel of America,

- Fellow, Order of Certus (appeals), 2012 – 2015

Pro Bono & Community Volunteer Activities

Washington State Supreme Court

- Pro Bono Publico* Service Commendation, 2004 – present

WSBA Special Disciplinary Counsel, 2002 - 2003, 2008, 2018 - present

Earshot Jazz, Seattle, Board of Directors, 2009 – 2012, 2019 - present

- President, 2011 – 2012

- Emeritus Board Member, 2013 – 2018

Moot Court Judge, approaching 100 law school competitions, 1993 - present

Volunteer Judge, *We the People* Constitutional Law Competition, 2004 - present

Bainbridge Island Music Center, Board of Advisors, 2009 - 2011

Board of Directors, Bainbridge Island Arts & Humanities Council, 2006 - 2009

Professional Recognitions & Peer Reviews

- Top 10 Washington Super Lawyers® Honoree, 2017, 2018 ("ranked #2"), 2019 ("ranked #1")
- Fellow, American Academy of Appellate Lawyers, 2010 – present
- Life Fellow, American Bar Foundation, 2014 – present
- "The Best Lawyers in America," Appellate Practice, 2010 – present
- "Top Tier" Appellate, 2013 – present
- Martindale-Hubble
 - "AV Preeminent"® – Judicial Edition, 2019
 - "AV Preeminent"® rating, 1998 – present
- Various publications (e.g., Super Lawyers®)
 - Top 100 Lawyers in Washington Honoree, 2008, 2012 – present
 - Top 10 Appellate Lawyers Honoree, 2009
 - Super Lawyers® Honoree, 2000 – present
- Recipient, America's Top 100 Attorneys® – Lifetime Achievement Award

Education

- J.D., *cum laude*, University of Puget Sound (now Seattle University) School of Law, 1992
 - Merit Scholar at entry
 - Dean's List
 - Law review, Lead Articles Editor
 - Am. Jur. Awards in Contracts, Civil Procedure, and Legal Writing II (Appellate Advocacy)
 - Highest Grade: A+, Jurisprudence
- B.A., Behavioral Science, Metropolitan State College, Denver, CO, 1984

Publications

- Author, Cover Story: *The Death of Capital Punishment in Washington*, NORTHWEST LAWYER (WSBA May 2019)
- Co-Author, *Evidence Rule 413: Unpacking Washington's New Procedural Protections for Immigrants*, NORTHWEST LAWYER (WSBA July 2018)
- Contributing Editor, *Briefs on the Merits; Acceptance of Review & Authority on Review*; WASHINGTON APPELLATE PRACTICE DESKBOOK, 4th Ed. (WSBA 2016)
- Co-Author (with the Honorable Ann Schindler) *Outstanding Judge: Ron Cox* (KCBA Bar Bulletin, June 2012)
- Co-Author, *Discovery Abuse: Our Supreme Court Holds the Line*, WSBA LITIGATION NEWS (Vol. 23, No. 2, Summer 2011)
- Author, *Profile/Charlie Wiggins: A Tireless Life of Service* (KCBA Feb. 2011)

Kenneth W. Masters
Page 4

Contributing Editor, WASHINGTON APPELLATE PRACTICE DESKBOOK, 3rd Ed. (WSBA 2005 & Supp. 2010)

Co-Author, *Basics of Appellate Practice*, 15 WASH. PRAC. (1997 Supp.)

Co-Author, Editors' Preface: *Predators & Politics: The Dichotomies of Translation in Washington's Sexually Violent Predator Statute*, 15 UNIV. OF PUGET SOUND L. REV. 507 (Spring 1992); Kenneth W. Masters, *Law in the Electronic Brothel*, 15 UNIV. OF PUGET SOUND L. REV. 415 (1992)

Seminar Presentations

Presenter, 2019 ETHICS IN CIVIL LITIGATION, *Ethical Issues in Appellate Litigation* (WSBA 2019)

Presenter (with Judges Worswick, Maxa, and Glasgow, and Catherine Smith), LIVE FROM DIVISION II: CUTTING EDGE CONVERSATIONS WITH THE APPELLATE COURT AND PRACTITIONERS, *The End of the Fisons Era?* (Div. II, WALA, TPCBA 2019)

Panelist (with Judge John Ruhl), CIVIL PROCEDURE: THE RULES OF THE GAME OR GAMING THE RULES, *State Bar Civil Litigation Rules Drafting Task Force: Overview of the Proposed New Pretrial Discovery Rule* (KCBA/KCSC 2019)

Panelist, KING COUNTY APPELLATE LAW SECTION LUNCH CLE, *Handling Clients on Appeal* (KCBA 2018)

Presenter (with Steve Bulzomi), 10TH ANNUAL TORT LAW UPDATE, *Afoa II & Appellate Law Update* (TPCBA 2018)

Presenter (with Judge Rebecca L. Pennell), STATEWIDE LEGAL ADVOCATE TRAINING, *Systemic Change Through Appellate Advocacy* (LFW/OCLA 2018)

Presenter (with Justice Debra Stephens & Comm. Aurora Bearse), 3RD ANNUAL ADVANCED APPELLATE SEMINAR: Brief Writing & Oral Argument (Pincus 2018)

Panelist, 2018 DV SYMPOSIUM, *Capitalizing On Our Success – Best Practices & Tools that Get Us There: ER 413- Unpacking Washington's New Procedural Protections for Immigrants* (SU School of Law 2018)

Panelist (with Judge Stephen Dwyer), KING COUNTY APPELLATE LAW SECTION LUNCH CLE, *Appellate Brief Writing: Thoughts From the Bench & Bar* (KCBA 2018)

Chair & Presenter, *Essentials of Persuasion: Appellate Legal Writing in Washington & Beyond* (SU School of Law 2017)

Presenter, *Preserving Issues for Appeal*, Kitsap Bar Annual Meeting (2017)

- Presenter, *Appellate Case Update*, TPCBA Tort Law Update, (TPCBA 2017)
- Chair & Presenter, *Advanced Appellate Seminar, Settlement on Appeal* (Pincus 2016)
- Presenter (with Justice Mary Yu & Michael King), *Appellate Practice: The Deskbook Edition, Appellate Briefs* (2016)
- Moderator, Brief Writing Panel, Seattle Convention of the American Academy of Appellate Lawyers (AAAL 2016)
- Presenter, *From Runnymede to the Temple of Justice – the Continued Relevance of Magna Carta and Tips on Appellate Advocacy, The Purpose of Each Brief on Appeal* (Washington Courts Historical Society 2015)
- Presenter, *Family Law 101: What You Need to Know, Ethical Challenges in the Family Law Case* (Pincus 2015)
- Co-Chair, Moderator & Panelist, *Appeals in Washington: Judges and Lawyers in Conversation* (Seattle University School of Law 2015)
- Lecturer, Judge Ann Ellington's Appellate Advocacy Course at the University of Washington, *Oral Argument* (University of Washington Law School 2015)
- Presenter, NALS *Super Saturday, Appeals & Writing* (NALS 2015)
- Presenter, Seattle University School of Law *Ready for Trial* seminar, *Great Legal Writing* (SU School of Law 2014)
- Presenter, Kitsap Bar Convention, *Case Law Update* (KCBA 2014)
- Panelist/Moderator, TPCBA Bar Convention, *Appeals – Everything You Wanted to Know* (TPCBA 2014)
- WSBA Re-admission CLE, *Appeals* (numerous presentations) (WSBA 2013, 2014)
- Advanced Civil Appeals Roundtable, *Update on Cases and Court Rules* (Pincus 2013)
- Presenter, The Persuasive Trial Attorney, *Just in Case: Making Sure You Preserve Trial Court Errors* (WSBA 2012)
- Chair & Moderator, Appeals: Writing, Editing, Persuasion & Ethics (KCBA 2012)

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Kenneth W. Masters
Page 6

Presenter, The Persuasive Trial Attorney, *Just in Case: Making Sure You Preserve Trial Court Errors and What is Worth Preserving and What is Not* (WSBA 2011)

Presenter, Ethics Workout, *Court Rules* (KCBA 2010)

Chair & Presenter, Washington Appeals: New Rules & Expert Guidance through the Appellate Process, *Ethical Issues on Appeal* (WSBA 2010)

Panelist, Bench – Bar Conference, Plenary Session, *Civil Appeals* (KCBA 2010)

Panelist, 10 Things You Should Know About, *Civil Appeals* (Gavel & Hammer Society 2009)

Co-Chair/Panelist, Appellate Practice Institute (KCBA 2007, 2008)

Gemstones of Successful Appeals, *Preserving the Appellate Record* (TPCBA 2007)

Technology and the Law, *Technology Tips and Tricks for Appellate Practice* (Office of the Washington State Attorney General 2007)

Appellate Law Update, *Meretricious Relationships & Other Family Law Issues* (Kitsap County Bar Assoc. 2007)

Family Law "Hot Topics," *Whose Your Momma? Parentage and Parenting in the 21st Century* (KCBA 2006)

The Essentials of Appellate Practice, *Stays, Attorney Fees, and Trial Court Authority During Appeal* (WSBA 2006)

The Master Class on Appeals, *Perfecting and Using the Record in a Digital Age* (WSBA 2005)

Anatomy of An Appeal, *Dissecting the Opening and Reply Briefs* (KCBA 2005)

Navigating the Shoals of the Appellate Process, half-day seminars (Clallam, Jefferson, Kitsap, and Grays Harbor County Bar Assocs. 2002 - 2004)

Appellate Practice: Persuasive Brief Writing and Beyond, *He Said/She Said: Telling the Truth From Your Client's Perspective* (WSBA 2002)

Anatomy of An Appeal, *Deciding Whether to Appeal* (KCBA 2001)

Improving Appellate Practice, *Technology on Appeal: Advancing With the New Electronic Tools of the Trade* (Washington State Courts Historical Society 2001)

Preserving Issues on Appeal (WSTLA Roundtable 2001)

The Appellate Practice, *The Brief of Appellant* (WSTLA 2000)
Subrogation & Liens, *Mahler Update – Practical Suggestions* (WSTLA 2000)

Winning Appeals, *Brief of Appellant and Reply Brief* (KCBA 1999)

Prosecutors' Spring Training, *Effective Appellate Advocacy* (WAPA 1999)

Introduction to Appeals (Washington State Court of Appeals, Div. II 1998)

APPENDIX B

TAMRA J. COLE

Appellate Paralegal

MASTERS LAW GROUP, P.L.L.C.
241 Madison Avenue North
Bainbridge Island, Washington 98110
(206) 780-5033
paralegal@appeal-law.com

PROFESSIONAL SKILLS

Masters Law Group, P.L.L.C.
Appellate Paralegal, 2017-present

Seattle City Attorney's Office
Litigation Paralegal, 2010-2017

Self Employed
Attorney, 2007-2010

Law Offices of Susan L. Jeffries
Attorney, 2006-2007

Self Employed
Attorney, 2004-2006

EDUCATION

Thomas Jefferson School of Law

J.D., Cum Laude with a Certificate in Law, Technology, and Communication, 2004

- Moot Court including leading a team that earned third place in a national competition.
- Awards: CALI Award; Jefferson Medal; Witkin Award in Civil Pro II; Honor Roll

California State University Monterey Bay

B.S. in Management and International Entrepreneurship, 2001

- Internships: Business Law Group at Grunsky, Ebey, Farrar & Howell; contract review and interpretation at Opportunity Builders.
- Awards: Excellence in Intrepreneurship for a project where a partner and I designed an introductory class for new students; Dean's List every semester.

LEGAL LICENSES AND PROFESSIONAL TRAINING

- Professional Mediation Skills Training Program, UW School of Law, 2010
- State Bar of Washington, admitted January 2009 (inactive)
- State Bar of California, admitted December 2004 (voluntarily surrendered)

APPENDIX C

C-1



KENNETH W. MASTERS
SHILBY R. FROST LEMMEL
KARA R. MASTERS
OF COUNSEL

MASTERS LAW GROUP
P L L C
ATTORNEYS

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206-812-6356

FEIN: 91-2015024

July 1, 2019

Invoice # 19986

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for May-June 2019

Date		Current Month's Services	Hours : Minutes	
05/14/19	KWM	Email from/to trial counsel; t/t trial counsel (N/C THIS TIME).	0:09	-
05/15/19	KWM	T/f trial counsel (N/C THIS TIME).	0:02	-
05/15/19	KWM	T/t trial counsel (N/C THIS TIME).	1:00	-
05/16/19	TJC	Emails from trial counsel/KWM.	0:05	10.83
05/16/19	KWM	Emails w/trial counsel.	0:12	76.00
05/17/19	TJC	Confer w/ KWM.	0:12	26.00
05/17/19	KWM	T/t potential client.	1:02	392.67
05/21/19	KWM	Scheduling; confer w/TJC.	0:11	69.67
05/22/19	KWM	Email from trial counsel.	0:12	76.00
06/07/19	TJC	Emails from trial counsel/KWM; upload/calendar ruling granting extension to file BA.	0:04	8.67
06/10/19	TJC	Emails from/to KWM.	0:03	6.50
			Total Current Fees	\$ 666.34
			Total Current Due	\$ 666.34
			Total Amount Due	<u>\$ 666.34</u>

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KENNETH W. MASTERS
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August 1, 2019

Invoice # 20031

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for July 2019

			Prior Balance:	\$	666.34
			Payment:		-
			Past Due Balance:	\$	666.34
			Hours :		
			Minutes		
07/10/19	KWM	Emails w/trial counsel/client.	0:12		76.00
07/15/19	TJC	Emails from trial counsel/client/KWM.	0:02		4.33
07/23/19	TJC	Email from trial counsel; upload/calendar ruling setting final BA due date.	0:06		13.00
			Total Current Fees	\$	93.33
			Total Current Due	\$	93.33
			Total Amount Due	\$	<u>759.67</u>

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KENNETH W. MASTERS
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FEIN: 91-2015024

September 1, 2019

Invoice # 20071

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for August 2019

Prior Balance: \$ 759.67
Payment: (759.67)
Past Due Balance: \$ -

Date		Current Month's Services	Hours :	Minutes
08/07/19	TJC	Emails from/to KWM.	0:11	23.83
08/20/19	KWM	Emails (several); review brief; confer w/TJC.	0:39	247.00
08/20/19	TJC	Confer w/ KWM; draft Ntc of Assoc; email to trial counsel.	0:34	73.67
08/21/19	KWM	Confirm notice of association; confer w/TJC.	0:11	69.67
08/21/19	TJC	Emails from trial counsel; upload pleadings; finalize/file Ntc of Assoc.	0:43	93.17
			Total Current Fees	\$ 507.34
			Total Current Due	\$ 507.34
			Total Amount Due	\$ 507.34

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206 812-0356

FEIN: 91-2015024
September 21, 2019

Invoice # 20098

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement through September 21, 2019

Prior Balance: \$ 507.34
Payment: (507.34)
Past Due Balance: \$ -

Date		Current Month's Services	Hours :	Minutes
09/10/19	TJC	Open BR.	0:02	4.33
09/17/19	TJC	Confer w/ KWM; gather cases; draft Mtn for Ext to File BR.	0:59	127.83
09/18/19	TJC	Finalize Mtn for Ext to File BR.	0:04	8.67
09/19/19	KWM	Confer w/TJC; review, revise & approve motion for extension.	0:09	57.00
09/19/19	TJC	Finalize/file Mtn for Ext to File BR; draft/file Ntc of Unavailability.	1:18	169.00
			Total Current Fees	\$ 366.83
			Total Current Due	\$ 366.83
			Total Amount Due	\$ 366.83

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C-5



KENNETH W. MASTERS
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November 1, 2019

Invoice # 20133

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for September 24 -October 31, 2019

			Prior Balance:	\$	366.83
			Payment:		<u>(366.83)</u>
			Past Due Balance:	\$	-
					Hours :
					Minutes
<u>09/24/19</u>	<u>TJC</u>	<u>Email from KWM; upload/calendar ruling granting</u>	<u>0:03</u>		<u>6.50</u>
		<u>Ext to File BR.</u>			
<u>10/31/19</u>	<u>KWM</u>	<u>Reviewing brieing and record to write response brief.</u>	<u>1:41</u>		<u>639.67</u>
				Total Current Fees	\$ 646.17
<u>09/30/19</u>	<u>COST</u>	<u>Lexis Nexis for September</u>			\$ 43.60
				Total Current Costs	\$ 43.60
				Total Current Due	\$ 689.77
			Total Amount Due	\$	<u>689.77</u>

Payable upon receipt

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December 1, 2019

Invoice # 20169

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: **Meyler_Cunningham**

Statement for November 2019

Prior Balance: \$ 689.77
Payment: (689.77)
Past Due Balance: \$ -

Date		Current Month's Services	Hours : Minutes	
11/01/19	KWM	Working on response brief (studying record; writing facts).	2:28	937.33
11/02/19	KWM	Working on response brief (writing facts).	2:46	1,051.33
11/04/19	TJC	Draft/file Sec Mtn for Ext to File BR.	0:47	101.83
11/04/19	KWM	Working on response brief (writing facts and arguments).	4:05	1,551.67
11/05/19	KWM	Working on response brief (research various legal questions for arguments); emails w/client.	4:04	1,545.33
11/06/19	TJC	Emails from KWM/client; upload/calendar ruling granting Sec Ext to File BR.	0:04	8.67
11/06/19	KWM	Working on response brief (arguments); further research.	5:33	2,109.00
11/07/19	TJC	Emails from client/trial counsel; edit/cite check BR.	0:23	49.83
11/07/19	KWM	Emails from client & trial counsel; review suggestions and edit draft brief; confer w/TJC.	0:26	164.67
11/12/19	TJC	Edit/cite check BR.	1:09	149.50
11/13/19	TJC	Edit/cite check BR.	2:51	370.50
11/14/19	TJC	Edit/cite check BR.	2:21	305.50
11/15/19	TJC	Confer w/ KWM; create BR App; finalize/file BR.	1:50	238.33
11/15/19	KWM	Confer w/TJC re cite check; review emails from client & trial counsel; review & revise cite check; confer w/TC; finalize brief and file.	2:58	1,127.33

11/20/19	TJC	Call to COA; confer w/ KWM.	0:08	17.33
11/21/19	TJC	Email from KWM; upload ruling setting reply due date.	0:03	6.50
				Total Current Fees \$ 9,734.65
11/30/19	COST	Lexis Nexis for November		573.27
				Total Current Costs \$ 573.27
				Total Current Due \$ 10,307.92
				Total Amount Due \$ 10,307.92

Payable upon receipt
Total Amount Due reflects payments received through end of billing month only
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C-8



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January 1, 2020

Invoice # 20203

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for December 2019

Prior Balance: \$ 10,307.92
Payment 12/02/19: \$ (2,000.00)
Payment 01/10/20: (2,000.00)
Past Due Balance: \$ 6,307.92

Date	Current Month's Services		Hours :	
			Minutes	
12/11/19	KWM	T/t client (N/C THIS TIME)	0:26	0.00
12/17/19	TJC	Email from COA; upload Reply.	0:05	10.83
12/17/19	KWM	Confer w/SRFL; t/f client.	0:26	164.67
12/18/19	TJC	Email from COA.	0:09	19.50
12/20/19	KWM	Various emails.	0:22	139.33
Total Current Fees			\$	334.33
Total Current Due			\$	334.33
Total Amount Due			\$	<u>6,642.25</u>

Payable upon receipt
Total Amount Due reflects payments received through end of billing month only
Please make checks payable to Masters Law Group
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C-9



KENNETH W. MASTERS
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February 1, 2020

Invoice # 20238

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for January 2020

Prior Balance: \$ 6,642.25
Payment: -
Past Due Balance: \$ 6,642.25

Date		Current Month's Services	Hours :	Minutes
01/06/20	KWM	T/f trial counsel.	0:08	50.67
01/07/20	KWM	Email from opposing counsel; prepare objection; confer w/TJC; emails from/to client.	1:09	437.00
01/07/20	TJC	Emails from trial counsel/KWM/COA; upload trial pleadings/Reply Brief; open/finalize/file Obj to Consideration of Decl Subjoined to Reply.	0:31	67.17
01/08/20	KWM	Several emails; review & revise proposed declaration.	1:39	627.00
01/10/20	TJC	Emails from KWM/client; upload ruling passing Obj to Consideration of Decl Subjoined to Reply to panel.	0:03	6.50
01/27/20	KWM	Emails; review judge's order.	0:14	88.67
01/27/20	TJC	Emails from trial counse/KWM; upload order setting Supersedeas bond.	0:05	10.83
			Total Current Fees	\$ 1,287.84
01/31/20	COST	Lexis Nexis for January		\$ 40.06
			Total Current Costs	\$ 40.06
			Total Current Due	\$ 1,327.90
			Total Amount Due	\$ 7,970.15

Payable upon receipt

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C-10



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March 1, 2020

Invoice # 20268

Shannon Cunningham
3516 SW Roxbury St
Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for February 2020

Prior Balance: \$ 7,970.15
Payment: (2,000.00)
Past Due Balance: \$ 5,970.15

Date		Current Month's Services	Hours :	Minutes	
02/03/20	KWM	Email from client re possible settlement; arrange charge information.	0:04	25.33	
02/12/20	KWM	Emails; think about your superseadeas issue.	0:18	114.00	
			Total Current Fees	\$	139.33
			Total Current Due	\$	139.33
			Total Amount Due	\$	<u><u>6,109.48</u></u>

Payable upon receipt
Total Amount Due reflects payments received through end of billing month only
Please make checks payable to Masters Law Group
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KENNETH W. MASTERS
SHELBY R. FROST LEMMEL
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April 1, 2020

Apr-20

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Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for March 2020

Previous Balance	\$ 6,109.48
Payment, Thank you!	<u>(2,000.00)</u>
Amount Due	<u>4,109.48</u>

Total Fees Billed	\$ 13,819.76
Total Costs Billed	<u>613.33</u>
Total Billed	14,433.09

Total Paid \$ (10,323.61)

Payable upon receipt
Total Amount Due reflects payments received through end of billing month only
Please make checks payable to Masters Law Group
To pay by credit card, please call Masters Law Group 206-780-5033



KENNETH W. MASTERS
 SHELBY R. FROST LEAMBLE
 KARA R. MASTERS
 OF COUNSEL

MASTERS LAW GROUP
 P L L C
 ATTORNEYS

TELEPHONE
 206-780-5033
 FACSIMILE
 206-342-6356

FEIN: 91-2015024

May 1, 2020

May-20

Shannon Cunningham
 3516 SW Roxbury St
 Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for April 2020

Previous Balance	\$ 4,109.48
Payment, Thank you!	<u>(2,000.00)</u>
Amount Due	<u>2,109.48</u>

Total Fees Billed	\$ 13,819.76
Total Costs Billed	<u>613.33</u>
Total Billed	14,433.09

Total Paid \$ (10,323.61)

Payable upon receipt

Total Amount Due reflects payments received through end of billing month only

Please make checks payable to Masters Law Group

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KENNETH W. MASTERS
 STEVEN R. FROST JAMMET
 KAREN R. MASTERS
 OF COUNSEL

MASTERS LAW GROUP
 P L L C
 ATTORNEYS

TELEPHONE
 206-780-5033
 FACSIMILE
 206-812-6456

FEIN: 91-2015024

June 1, 2020

Jun-20

Shannon Cunningham
 3516 SW Roxbury St
 Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for May 2020

Previous Balance	\$ 2,109.48
Payment, Thank you!	<u>(1,000.00)</u>
Amount Due	<u>1,109.48</u>

Total Fees Billed	\$ 13,819.76
Total Costs Billed	<u>613.33</u>
Total Billed	14,433.09

Total Paid \$ 13,323.61

Payable upon receipt

Total Amount Due reflects payments received through end of billing month only

Please make checks payable to Masters Law Group

To pay by credit card, please call Masters Law Group 206-780-5033



KENNETH W. MASTERS
 SHELBY R. FROST LEMMEL
 KARA R. MASTERS
 OF COUNSEL

MASTERS LAW GROUP
 PLLC
 ATTORNEYS

TELEPHONE
 206-780-5033
 FACSIMILE
 206-842-6356

FEIN: 91-2015024

June 15, 2020

Jun-20

Shannon Cunningham
 3516 SW Roxbury St
 Seattle, WA 98126

Via E-mail: shannon.j.cunningham@outlook.com

Re: Meyler_Cunningham

Statement for May 2020

Previous Balance	\$ 2,109.48
05/16/20 Payment, Thank you!	(1,000.00)
06/12/20 Payment, Thank you!	<u>(1,109.48)</u>
Amount Due	<u><u>-</u></u>

Total Fees Billed	\$ 13,819.76
Total Costs Billed	<u>613.33</u>
Total Billed	14,433.09
 Total Paid	 \$ 14,433.09

Payable upon receipt
Total Amount Due reflects payments received through end of billing month only
Please make checks payable to Masters Law Group
To pay by credit card, please call Masters Law Group 206-780-5033

CERTIFICATE OF SERVICE

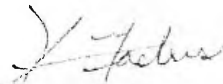
I certify that I caused to be filed and served a copy of the foregoing **RAP 18.1 DECLARATION OF KENNETH W. MASTERS IN SUPPORT OF AWARD OF ATTORNEY FEES AND COSTS** on the 25th day of June 2020 as follows:

Co-counsel for Respondent

Meyler Legal, P.L.L.C.	<input type="checkbox"/>	U.S. Mail
Samuel M. Meyler	<input checked="" type="checkbox"/>	E-Service
1700 Westlake Avenue North, Suite 200	<input type="checkbox"/>	Facsimile
Seattle, WA 98109		
samuel@meylerlegal.com		
meyler.legal@gmail.com		

Counsel for Appellants

Waid Law Office, P.L.L.C.	<input type="checkbox"/>	U.S. Mail
Brian J. Waid	<input checked="" type="checkbox"/>	E-Service
5400 California Avenue SW, Suite D	<input type="checkbox"/>	Facsimile
Seattle, WA 98136		
bjwaid@waidlawoffice.com		



Kenneth W. Masters, WSBA 22278
Attorney for Respondent

MASTERS LAW GROUP PLLC

June 25, 2020 - 4:46 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 79753-1
Appellate Court Case Title: Shannon Cunningham, Respondent v. Jon Karwoski, Appellant

The following documents have been uploaded:

- 797531_Financial_20200625164549D1359509_1523.pdf
This File Contains:
Financial - Affidavit of Attorney Fees
The Original File Name was Attorney Declaration RAP 18.1 KWM.pdf

A copy of the uploaded files will be sent to:

- bjwaid@waidlawoffice.com
- meyer.legal@gmail.com
- samuel@meyerlegal.com

Comments:

Sender Name: Coleen Turner - Email: office@appeal-law.com

Filing on Behalf of: Kenneth Wendell Masters - Email: ken@appeal-law.com (Alternate Email: paralegal@appeal-law.com)

Address:

241 Madison Ave. North
Bainbridge Island, WA, 98110
Phone: (206) 780-5033

Note: The Filing Id is 20200625164549D1359509

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

SHANNON CUNNINGHAM, an
unmarried individual

Respondent,

v.

JON R. KARWOSKI and
ELIZABETH COLLINS a/k/a
ELIZABETH ANNE KARWOSKI,
husband and wife and the marital
community comprised thereof,

Appellants.

No. 79753-1

RAP 18.1 DECLARATION OF
SAMUEL M. MEYLER IN
SUPPORT OF AWARD OF
ATTORNEY FEES AND
COSTS

SAMUEL M. MEYLER declares and states under penalty of
perjury:

1. I am filing this declaration in support of Respondent
Shannon Cunningham's request for an award of attorney fees and
costs on appeal. I am competent to testify to the matters stated in
this declaration.

2. My firm was retained to represent Shannon
Cunningham at the trial court level in the matter of Shannon
Cunningham v. Jon R. Karwoski, et al., King County Superior Court
Case No. 18-2-0464803 KNT, out of which this appeal arose. I

remained Ms. Cunningham's attorney throughout the appeal, but Ms. Cunningham engaged Ken Masters and Masters Law Group, PLLC as lead counsel on the appeal.

3. I have been practicing law in the State of Washington since I was admitted to the Bar on November 16, 2007 and have continuously practiced in King County since my admission. I am admitted to practice in the Federal District Courts for the Western and Eastern Districts of Washington; the Northern, Southern and Western Districts of Texas; and the Eastern District of Michigan. I am qualified to serve as an arbitrator by the King County Superior Court and I have served as arbitrator in over 15 cases. I spent reasonable, necessary, and non-duplicative time on this matter.

4. My current hourly rate is \$350.00 per hour. It is my understanding that my hourly rate is reasonable in comparison to the rates of other attorneys with similar skill and experience that practice in the Western Washington market.

5. Attached are true and accurate copies of regularly prepared and kept Invoices reflecting time entries, attorney fees and expenses incurred by Shannon Cunningham from my office since March of 2019, exclusive of time to prepare this fee declaration. As reflected on the Invoices, many services/activities were performed

without charge, as evidenced by a charge of "\$0.00" in the far righthand column.

6. I reviewed the Invoices and categorized entries that resulted in charges into three categories: (1) Supersedeas Expenses (2) Collection/Enforcement Activity, and (3) Appeal.

7. The following is a summary by category of the hourly service fees charged to Shannon Cunningham on each Invoice:

Invoice Date	Supersedeas Expenses	Collection/Enforcement Activity	Appeal
4/1/2019	\$0.00	\$31.00	\$31.00
6/2/2019	\$0.00	\$1,426.00	\$1,116.00
9/9/2019	\$0.00	\$775.00	\$0.00
1/22/2020	\$5,635.00	\$1,190.00	\$0.00
1/31/2020	\$70.00	\$1,890.00	\$0.00
4/12/2020	\$35.00	\$175.00	\$0.00
TOTALS	\$5,740.00	\$5,487.00	\$1,147.00

8. The following is a summary by category of out-of-pocket costs/expenses that my firm incurred and charged to Shannon Cunningham on each Invoice:

Invoice Date	Supersedeas Expenses	Collection/Enforcement Activity	Appeal
4/1/2019		\$90.98	
6/2/2019		\$647.42	\$151.24
9/9/2019		\$231.89	
11/20/2019		\$70.00	
1/22/2020		\$251.45	
TOTALS	\$0.00	\$1,291.74	\$151.24

9. In connection with this application for fees and costs, Ms. Cunningham seeks recovery of supersedeas expenses/fees and fees incurred on appeal. Segregated fees and costs incurred for collection/enforcement activity will be pursued separately with the trial court.

10. **Supersedeas Expenses:** On January 3, 2020, the Karwoskis filed Defendants' Motion to Post Real Estate As Supersedeas Bond Pursuant to RAP 8.1(b). I researched and prepared the Opposition and supporting pleadings and the Karwoskis filed a reply. On January 26, 2020, Judge Johanna Bender ruled in favor of Shannon Cunningham and entered an Order Denying Defendants' Motion to Post Real Estate As Supersedeas Bond Pursuant to RAP 8.1(b) and Fixing Amount of Supersedeas Bond. Shannon Cunningham incurred a total of \$5,740.00 in connection defeating Karwoski's Motion to Post Real Estate.

11. **Appeal:** In connection with the appeal, Ms. Cunningham incurred total fees and costs of \$1,298.24 from my office. Costs included:

- Clerk's papers (335 pages) at \$0.25 per page: \$83.75
- Hearing recordings for consideration of whether to prepare and file verbatim report of proceedings: \$67.49

12. In addition to the time listed on the attached Invoices, I have spent 2.2 hours to prepare this fee declaration, totaling an additional \$770.00 in fees.

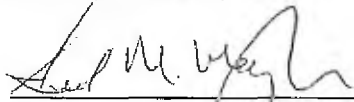
13. In summary, we ask for a fee award to Respondent Shannon Cunningham, to include total fees and costs incurred by my firm in connection with supersedeas expenses/fee and fees on appeal of \$7,808.24, *in addition to fees and costs incurred by Masters Law Group.*

14. Based on my knowledge and experience, the services and fees reflected in the attached Invoices are reasonable considering the complexity of the matters, the level of skill required, the time limitations imposed, the amount in controversy, my experience and my reputation in the community.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 25th day of June 2020.

MEYLER LEGAL, PLLC



Samuel M. Meyler, WSBA 39471
1700 Westlake Ave. N., Ste. 200
Seattle, WA 98109
(206) 876-7770
samuel@meylerlegal.com

Attorneys for Respondent



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 Office: 206-876-7770
 Fax: 206-876-7771
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 www.meylerlegal.com

Bill to:

Shannon Cunningham
 3516 SW Roxbury Street
 Seattle, WA 98126

shannon.j.cunningham@outlook.com

Cunningham v. Jon Robert Karwoski 0161

INVOICE

Invoice Date April 01, 2019
 Invoice Number 1520
 Due Date Due Upon Receipt

Account Summary	
Previous Balance	\$310.00
Payments Received	(\$310.00)
Outstanding Balance	\$0.00
Current Invoice	\$152.98
Total Due	\$152.98

Fee Detail

Date		Description	Hours	Rate	Total
3/6/2019	SMM	Prepared Motion for Entry of Judgment for Attorney's Fees, Notice of Hearing, Decl. of Samuel M. Meyler, Proposed Judgment and Order and Cert of Service. Filed and served the same.	2.40	\$310.00/hr	\$0.00
3/18/2019	SMM	E-mail to client advising that no response was received from Karwoski. E-mail correspondence with client regarding time frame for appeal and enforcement of judgment.	0.10	\$310.00/hr	\$0.00
3/18/2019	SMM	Correspondence with representative from Seize Assets regarding options available and pricing.	0.10	\$310.00/hr	\$0.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
3/20/2019	SMM	Received and reviewed Judgement and Order Awarding Atty. Fees. Fwd: Client.	0.10	\$310.00/hr	\$0.00
3/21/2019	SMM	Obtained SSN and DOB's for Karwoski and Collins via TLO search. Correspondence with Seize Assets regarding locating account. Prepared and submitted details to Seize Assets.	0.60	\$310.00/hr	\$0.00
3/28/2019	SMM	Received and reviewed letters from Court of Appeals. Fwd: Client. E-mail correspondence with client regarding notice from court and perfection of appeal.	0.10	\$310.00/hr	\$31.00
3/28/2019	SMM	Review of e-mail from client to Sergeant Long.	0.10	\$310.00/hr	\$31.00
Hours Total			3.50	Fee Total	\$62.00

Expense Detail

Date		Description	Quantity	Rate	Total
3/6/2019	SMM	Working copy submission	1	\$22.49	\$22.49
3/21/2019	SMM	King County Superior Court Fees for Certified Copies of Judgment and Expedited Delivery	1	\$58.49	\$58.49
3/21/2019	SMM	TLO Search for SSN and DOB	2	\$5.00	\$10.00
Expenses Total					\$90.98

Fees	\$62.00
Expense	\$90.98
Current Due	\$152.98
Outstanding Balance	\$0.00
Total Due	\$152.98

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.



1700 Westlake Ave. N., Ste. 200, Seattle, WA 98109
 Office: 206-876-7770
 Fax: 206-876-7771
 Email: info@meyerlegal.com
 www.meyerlegal.com

Bill to:

Shannon Cunningham
 3516 SW Roxbury Street
 Seattle, WA 98126

shannon.j.cunningham@outlook.com

Cunningham v. Jon Robert Karwoski 0161

INVOICE

Invoice Date June 02, 2019
 Invoice Number 1535
 Due Date Due Upon Receipt

Account Summary	
Previous Balance	\$152.98
Payments Received	(\$152.98)
Outstanding Balance	\$0.00
Current Invoice	\$3,340.66
Total Due	\$3,340.66

Fee Detail

Date		Description	Hours	Rate	Total
4/6/2019	SMM	E-mail to client providing update re: perfection of appeal.	0.10	\$310.00/hr	\$31.00
4/9/2019	SMM	E-mail to client presenting finding of account search, options available for judgment enforcement, implications of enforcing while appeal is pending and recording of order extinguishing of side-yard easement.	0.50	\$310.00/hr	\$155.00
4/9/2019	SMM	Telephone conference with client regarding status of appeal, garnishment and other enforcement options. Client instructed to record Judgment and Order and strategically hold off on garnishment until after CofA Motion to Dismiss for failure to pay filing fee.	0.40	\$310.00/hr	\$124.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
4/11/2019	SMM	Call to Clerk of the court of appeals. Confirm that appeal fee had not been received. Call to clerk of the Superior Court. Confirmed that payment was received.	0.10	\$310.00/hr	\$0.00
4/11/2019	SMM	Email to client advising of situation with appeal fee.	0.10	\$310.00/hr	\$31.00
4/22/2019	SMM	Received and reviewed: 1) Notice of Filing of Designation of Clerk's Papers and Exhibits, 2) Notice of Having Paid Filing Fee, and 3) Notice of No Intention of Filing Report of Proceedings. Research regarding Karwoski's attorney. E-mail to client regarding association of counsel and materials received.	0.40	\$310.00/hr	\$124.00
4/23/2019	SMM	Assembled all clerks papers designated by Karwoski. Review of all clerks papers designated by Karwaoski. Reviewed non-designated materials to be considered. Review minute orders and prepared and submitted order for recordings of hearings.	2.50	\$310.00/hr	\$775.00
4/23/2019	SMM	Received recordings of hearings. Prepared e-mail to client regarding review of recordings and strategic considerations for including or foregoing the inclusion of the hearings.	0.50	\$310.00/hr	\$155.00
5/7/2019	SMM	Received Index to Clerk's Papers. Obtained copy of the same.	0.10	\$310.00/hr	\$0.00
5/7/2019	SMM	E-mail to client presenting Index and Notice of Appearance.	0.10	\$310.00/hr	\$0.00
5/13/2019	SMM	Reviewed City Attorney's office public disclosure notice provided by client, which client received in response to Karwoski's public disclosure request. Review of applicable statute regarding protection from disclosure. Prepared advisory e-mail to client regarding the same.	0.60	\$310.00/hr	\$186.00
5/14/2019	SMM	Extended telephone conference with client regarding trimming of laurel hedge, terms of CR 2A, appeal timeline and procedures and enforcement of judgment. Client instructs to proceed with bank garnishment and will provide further instructions re: communication with Karwoski's current attorney regarding laurel hedge.	0.80	\$310.00/hr	\$248.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date	Description	Hours	Rate	Total	
5/15/2019	SMM Telephone conference with potential consultant/appellate counsel, Atty. Ken Masters. Discussed case facts, Atty. Brian Wade, options available, etc...	1.00	\$310.00/hr	\$0.00	
5/16/2019	SMM Drafted/sent advisory e-mail to client regarding discussion with Ken Masters and options available.	1.50	\$310.00/hr	\$0.00	
5/16/2019	SMM Continued e-mail correspondence with client regarding association with Ken Masters and garnishment. Introductory e-mail to client and Ken Masters.	0.30	\$310.00/hr	\$0.00	
5/21/2019	SMM Prepared calculations for writs. Prepared Application for Writ of Garnishment, Writ of Garnishment directed to Key Bank and Writ of Garnishment directed to Waid Law Office, PLLC.	1.00	\$310.00/hr	\$310.00	
5/21/2019	SMM Travel to King County Superior Court.	0.40	\$310.00/hr	\$0.00	
5/21/2019	SMM Appeared before Clerk of the Court and obtained Writs of Garnishment directed to Key Bank and to Waid Law Office, PLLC.	0.30	\$310.00/hr	\$93.00	
5/21/2019	SMM Return travel from court.	0.40	\$310.00/hr	\$0.00	
5/22/2019	SMM Prepared Answer forms, Exemption Claim forms, Notice of Garnishment and Your Rights form and checks for payment.	0.60	\$310.00/hr	\$186.00	
5/22/2019	SMM Prepared all materials for service via certified mail. E-mail to client providing copies of all materials.	0.70	\$310.00/hr	\$0.00	
5/28/2019	SMM Received and reviewed Waid's Answer to Writ. E-mail to client and Ken Masters providing the same and advising of results.	0.10	\$310.00/hr	\$0.00	
5/30/2019	SMM Drafted letter to Atty. Waid re: laurel hedge. Sent to client for review and approval.	0.40	\$310.00/hr	\$124.00	
		Hours Total	12.90	Fee Total	\$2,542.00

Expense Detail

Date	Description	Quantity	Rate	Total
4/8/2019	SMM King County Recorder's Office	1	\$106.44	\$106.44
4/9/2019	SMM Columbia Corp/Seize Assets Fee	2	\$219.00	\$438.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Quantity	Rate	Total
4/23/2019	SMM	Expedited order of hearing recordings	1	\$67.49	\$67.49
5/7/2019	SMM	Clerk's Papers	335	\$0.25	\$83.75
5/22/2019	SMM	Writ Fees	2	\$21.49	\$42.98
5/22/2019	SMM	Garnishee Statutory Fees	3	\$20.00	\$60.00
				Expenses Total	\$798.66

Fees	\$2,542.00
Expense	\$798.66
Current Due	\$3,340.66
Outstanding Balance	\$0.00
Total Due	\$3,340.66

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances



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 Fax: 206-876-7771
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Bill to:

Shannon Cunningham
 3516 SW Roxbury Street
 Seattle, WA 98126

shannon.j.cunningham@outlook.com

Cunningham v. Jon Robert Karwoski 0161

INVOICE

Invoice Date September 09, 2019
 Invoice Number 1610
 Due Date Due Upon Receipt

Account Summary	
Previous Balance	\$3,340.66
Payments Received	(\$3,340.66)
Outstanding Balance	\$0.00
Current Invoice	\$1,006.89
Total Due	\$1,006.89

Fee Detail

Date		Description	Hours	Rate	Total
6/6/2019	SMM	Received and reviewed motion for extension of time to file opening brief. Reviewed rules of appellate procedure with regard to response time and procedure. Email to client presenting motion and details regarding response time. Cc: Ken Masters.	0.40	\$310.00/hr	\$0.00
6/6/2019	SMM	Telephone conference with client regarding motion received and status of garnishment answer.	0.20	\$310.00/hr	\$0.00
6/7/2019	SMM	Received Order Granting Motion for Extension. Fwd: Client and Ken Masters.	0.10	\$310.00/hr	\$0.00
6/10/2019	SMM	Received KeyBank's Answer. E-mail to client providing the same.	0.10	\$310.00/hr	\$0.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
6/10/2019	SMM	E-mail correspondence with client regarding garnishment timing and procedures.	0.20	\$310.00/hr	\$0.00
7/1/2019	SMM	Prepared and assembled Motion and Subjoined Declaration for Judgment and Order to Pay, Declaration of Mailing and proposed Judgment and Order. Submitted materials for ex parte presentation.	0.90	\$310.00/hr	\$279.00
7/3/2019	SMM	E-mail from client inquiring regarding enforcement. Prepared advisory e-mail to client regarding options available.	0.40	\$310.00/hr	\$124.00
7/3/2019	SMM	E-mail from client confirming plan of action. E-mail response regarding unsuccessful garnishment against Karwoski's attorney.	0.10	\$310.00/hr	\$0.00
7/9/2019	SMM	E-mail to client and Ken Masters advising that no brief has been filed and inquiring as to Masters' opinion.	0.10	\$310.00/hr	\$0.00
7/23/2019	SMM	Received Notice from Court of Appeals. Sent to client and Atty. Ken Masters.	0.10	\$310.00/hr	\$0.00
7/24/2019	SMM	Reviewed search results provided by Seize Assets. Call to King County Superior Court disbursements desk. Confirmed receipt of funds and scheduled disbursement for Friday. E-mail to client providing update, account search results and options for additional writs.	0.60	\$310.00/hr	\$0.00
7/24/2019	SMM	E-mail from client approving pursuit of writs against both BofA and Key Bank.	0.10	\$310.00/hr	\$0.00
8/5/2019	SMM	Received Order from Court of Appeals granting two week extension to Karwoski. Fwd. Client and Ken Masters.	0.10	\$310.00/hr	\$0.00
8/5/2019	SMM	Draft cover letter to client re: gamished funds. Sent the same.	0.10	\$310.00/hr	\$0.00
8/5/2019	SMM	E-mail correspondence with Ken Masters regarding results of Clerk's Motion.	0.10	\$310.00/hr	\$0.00
8/12/2019	SMM	Prepared calculations for writs. Prepared Applications for Writs of Garnishment, Writs of Garnishment directed to Key Bank and Bank of America, Financial Institution Answer forms, Exemption Claim forms, Notice of Garnishment and Your Rights form and checks for payment of garnishment fees.	1.20	\$310.00/hr	\$372.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
8/12/2019	SMM	Prepared all garnishment materials for service on BofA, KeyBank and Karwoski.	0.40	\$310.00/hr	\$0.00
8/13/2019	SMM	Travel to King County Superior Court.	0.40	\$310.00/hr	\$0.00
8/13/2019	SMM	Appeared at King County Superior Court Clerk's office and obtained writs of garnishment.	0.30	\$310.00/hr	\$0.00
8/13/2019	SMM	Travel from Court to USPS. Appeared and placed all materials for service by certified mail.	0.50	\$310.00/hr	\$0.00
8/14/2019	SMM	E-mail to client providing update.	0.10	\$310.00/hr	\$0.00
8/19/2019	SMM	E-mail to client and Ken Masters regarding failure of Karwoski to file opening brief by the deadline and motion for sanctions or dismissal to be heard on 8/23/19.	0.30	\$310.00/hr	\$0.00
			Hours Total	6.80	
				Fee Total	\$775.00

Expense Detail

Date		Description	Quantity	Rate	Total
7/1/2019	SMM	Ex parte presentation fee.	1	\$32.49	\$32.49
7/3/2019	SMM	Sending judgment and order	1	\$6.85	\$6.85
7/24/2019	SMM	Seize Assets Invoice 21167	1	\$90.00	\$90.00
8/5/2019	SMM	Postage	1	\$0.50	\$0.50
8/13/2019	SMM	Clerk's fee for KeyBank writ	1	\$20.00	\$20.00
8/13/2019	SMM	Clerk's fee for BofA writ	1	\$20.00	\$20.00
8/13/2019	SMM	Cert Mail to BofA	1	\$7.00	\$7.00
8/13/2019	SMM	Cert mail to KeyBank	1	\$7.00	\$7.00
8/13/2019	SMM	BofA Fee	1	\$20.00	\$20.00
8/13/2019	SMM	KeyBank Fee	1	\$20.00	\$20.00
8/13/2019	SMM	Cert mail to Karwoski	1	\$8.05	\$8.05
				Expenses Total	\$231.89

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Fees	\$775.00
Expense	\$231.89
Current Due	\$1,006.89
Outstanding Balance	\$0.00
Total Due	\$1,006.89

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.



1700 Westlake Ave. N., Ste. 200, Seattle, WA 98109
 Office: 206-876-7770
 Fax: 206-876-7771
 Email: info@meylerlegal.com
 www.meylerlegal.com

Bill to:

Shannon Cunningham
 3516 SW Roxbury Street
 Seattle, WA 98126

INVOICE

Invoice Date November 20, 2019
 Invoice Number 1697
 Due Date Due Upon Receipt

shannon.j.cunningham@outlook.com

Cunningham v. Jon Robert Karwoski 0161

Account Summary	
Previous Balance	\$1,006.89
Payments Received	(\$1,006.89)
Outstanding Balance	\$0.00
Current Invoice	\$70.00
Total Due	\$70.00

Fee Detail

Date		Description	Hours	Rate	Total	
9/18/2019	SMM	E-mail to client advising regarding BofA response and options available.	0.50	\$310.00/hr	\$0.00	
9/19/2019	SMM	Telephone conference with client regarding difficulties created by Karwoski's actions and plan of action.	0.30	\$310.00/hr	\$0.00	
9/19/2019	SMM	Submitted bank account search.	0.20	\$310.00/hr	\$0.00	
9/24/2019	SMM	Received order granting motion for extension. Fwd: Client.	0.10	\$310.00/hr	\$0.00	
11/6/2019	SMM	Received, reviewed and proofed respondent's brief. E-mail to Atty. Masters providing change tracking version. Cc: Client.	1.50	\$350.00/hr	\$0.00	
			Hours Total	2.60	Fee Total	\$0.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Expense Detail

Date	SMM	Description	Quantity	Rate	Total
10/3/2019	SMM	Bank Search Exclusion Fees	2	\$35.00	\$70.00
				Expenses Total	\$70.00

Fees	\$0.00
Expense	\$70.00
Current Due	\$70.00
Outstanding Balance	\$0.00
Total Due	\$70.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.



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 www.meyerlegal.com

Bill to:

Shannon Cunningham
 3516 SW Roxbury Street
 Seattle, WA 98126

shannon.j.cunningham@outlook.com

Cunningham v. Jon Robert Karwoski 0161

INVOICE

Invoice Date January 22, 2020
 Invoice Number 1760
 Due Date Due Upon Receipt

Account Summary	
Previous Balance	\$70.00
Payments Received	(\$70.00)
Outstanding Balance	\$0.00
Current Invoice	\$7,076.45
Total Due	\$7,076.45

Fee Detail

Date		Description	Hours	Rate	Total
12/9/2019	SMM	Prepared Motion and Declaration for Supplemental Proceedings, Order for Supplemental Proceedings and Notice of Hearing. E-mail to client providing the same. Filed and submitted to Clerk for ex parte presentation.	0.80	\$350.00/hr	\$280.00
12/9/2019	SMM	E-mail correspondence with client regarding service.	0.10	\$350.00/hr	\$0.00
12/12/2019	SMM	Received Certified Order Directing Appearance for Supplemental Proceedings. Submitted materials to ABC Legal for service with instructions regarding the same.	0.20	\$350.00/hr	\$0.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
12/12/2019	SMM	E-mail to client advising regarding Order obtained and possible credit union with accounts.	0.10	\$350.00/hr	\$0.00
12/12/2019	SMM	Drafted and submitted Judgment and Order to Pay on Key Bank Writ for ex parte presentation. Drafted and sent Application for Writ to Wings Financial and Writ of Garnishment to Clerk for issuance.	0.90	\$350.00/hr	\$315.00
12/27/2019	SMM	E-mail to client advising of receipt of Answer from Wings Financial.	0.10	\$350.00/hr	\$0.00
12/27/2019	SMM	Review of pertinent rules pertaining to supersedeas bond. Calculated interest to accrue through March 31, 2021. E-mail to Atty. Waid presenting amounts required for bond. Fwd: Client.	0.30	\$350.00/hr	\$105.00
12/31/2019	SMM	E-mail correspondence with Atty. Waid and Ken Masters regarding bond amount and estimated legal fees, costs and expenses on appeal.	0.30	\$350.00/hr	\$0.00
1/3/2020	SMM	E-mail correspondence with Atty. Waid regarding possibility of property being used as security.	0.20	\$350.00/hr	\$0.00
1/3/2020	SMM	E-mail to client and Ken Masters forwarding correspondence with Waid and advising regarding the same.	0.30	\$350.00/hr	\$105.00
1/3/2020	SMM	Telephone conference with client regarding communication with Atty. Waid and security.	0.20	\$350.00/hr	\$70.00
1/3/2020	SMM	Received and reviewed Defendants' Notice of Hearing, Motion to Post Property, Declaration of Waid, Declaration of Karwoski and Proposed Order. E-mail to client and Atty. Masters providing docs and advising regarding the same.	0.70	\$350.00/hr	\$245.00
1/6/2020	SMM	E-mail to client regarding receipt of Key Bank garnished funds.	0.10	\$350.00/hr	\$0.00
1/6/2020	SMM	Telephone conference with Atty. Ken Masters regarding opposition to Motion to Post Property, preparation of Master's Declaration in Support, etc...	0.20	\$350.00/hr	\$70.00
1/6/2020	SMM	E-mail correspondence with client regarding client's declaration.	0.10	\$350.00/hr	\$0.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
1/7/2020	SMM	Review of materials and planning in preparation for drafting Objection and Opposition.	0.50	\$350.00/hr	\$175.00
1/7/2020	SMM	Prepared demand letter to Wings Financial and sent the same. Fwd: Client.	0.90	\$350.00/hr	\$315.00
1/7/2020	SMM	Received Amended First Answer from Wings. E-mail to client providing the same.	0.10	\$350.00/hr	\$35.00
1/7/2020	SMM	Received Amended Reply in appeal. Fwd: Client.	0.10	\$350.00/hr	\$0.00
1/7/2020	SMM	Prepared Masters Declaration and sent to Masters for review and edits. Cc: Client.	0.50	\$350.00/hr	\$175.00
1/7/2020	SMM	Review of photographs of the residence provided by client.	0.10	\$350.00/hr	\$0.00
1/7/2020	SMM	Prepared and transmitted letter to Atty. Waid demanding that Motion to Post Property be stricken. Fwd: client and Atty. Waid.	0.50	\$350.00/hr	\$175.00
1/7/2020	SMM	Conducted legal research regarding evidentiary issues/objections and alternative security pursuant to RAP 8.1(b) in preparation for drafting Opposition.	2.80	\$350.00/hr	\$980.00
1/8/2020	SMM	Began drafting Opposition to Defendants' Motion to Post Real Estate. Received and reviewed photographs and information provided by client regarding property at issue (to be considered for evidence).	5.60	\$350.00/hr	\$1,960.00
1/9/2020	SMM	Completed drafting Opposition to Defenants' Motion. Proofed and finalized the same. Confirmed updated all citation. Prepared Proposed Order Denying Motion and Fixing Supersedeas Amount.	3.90	\$350.00/hr	\$1,365.00
1/9/2020	SMM	Prepared exhibits, assembled all materials and formatted for submission. Filed, served and submitting working copies of Opposition and supporting docs.	0.60	\$350.00/hr	\$210.00
1/9/2020	SMM	E-mail to client and Atty. Masters providing final docs.	0.10	\$350.00/hr	\$0.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
1/22/2020	SMM	Obtained SCRA report. Prepared Motion for Judgment and Order to Pay. Prepared Cert. of Mailing Garnishment Pleadings. Prepared proposed Judgment and Order to Pay. Filed materials and submitted for presentation ex parte via the Clerk.	0.70	\$350.00/hr	\$245.00
			Hours Total	21.00	Fee Total
					\$6,825.00

Expense Detail

Date		Description	Quantity	Rate	Total
12/9/2019	SMM	Ex Parte Presentation and Cert Copy Fee	1	\$40.49	\$40.49
12/9/2019	SMM	Supp Proceedings Fee	1	\$22.49	\$22.49
12/12/2019	SMM	Postate	1	\$1.30	\$1.30
12/12/2019	SMM	SASE	1	\$0.80	\$0.80
12/12/2019	SMM	Writ Fee	1	\$20.00	\$20.00
12/12/2019	SMM	Ex Parte Presentation Fee	1	\$32.49	\$32.49
12/13/2019	SMM	Cert Mail	1	\$6.85	\$6.85
12/15/2019	SMM	ABC Invoice 6416087.100	1	\$74.50	\$74.50
12/30/2019	SMM	DOL vehicle/title search	1	\$20.04	\$20.04
1/22/2020	SMM	Ex Parte Presentation Fee	1	\$32.49	\$32.49
				Expenses Total	\$251.45

Fees	\$6,825.00
Expense	\$251.45
Current Due	\$7,076.45
Outstanding Balance	\$0.00
Total Due	\$7,076.45

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.



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 Email: info@meyerlegal.com
 www.meyerlegal.com

Bill to:

Shannon Cunningham
 3516 SW Roxbury Street
 Seattle, WA 98126

shannon.j.cunningham@outlook.com

Cunningham v. Jon Robert Karwoski 0161

INVOICE

Invoice Date January 31, 2020
 Invoice Number 1765
 Due Date Due Upon Receipt

Account Summary	
Previous Balance	\$7,076.45
Payments Received	(\$2,597.69)
Outstanding Balance	\$4,478.76
Current Invoice	\$1,960.00
Total Due	\$6,438.76

Fee Detail

Date		Description	Hours	Rate	Total
1/22/2020	SMM	E-mail to client advising of receipt of funds and submission of Motion for Judgment and Order to Pay. E-mail from client regarding recovery of fees. Sent advisory e-mail regarding the same.	0.60	\$350.00/hr	\$0.00
1/27/2020	SMM	Received and reviewed Order Denying Defendants' Motion to Post Bond. E-mail to client and Atty. Masters presenting the same.	0.20	\$350.00/hr	\$70.00
1/27/2020	SMM	E-mail from Atty. Waid regarding client's acceptance of junior lien position on Karwoski property. Prepared response regarding the same. Fwd: Client.	0.80	\$350.00/hr	\$0.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
1/27/2020	SMM	Review of e-mail correspondence from client regarding supplemental proceedings including article cited by client. Review of applicable statute and rules. Prepared response to client regarding the same.	0.70	\$350.00/hr	\$245.00
1/31/2020	SMM	Prepared Motion and Declaration for Order Directing Delivery of Property in Possession, proposed Order Directing Delivery Property in Possession, Motion and Declaration for Bench Warrant, proposed Order for Bench Warrant to Clerk, and Bench Warrant to be issued in the event Karwoski fails to appear for supplemental proceedings.	1.00	\$350.00/hr	\$350.00
1/31/2020	SMM	Travel to KCSC in Kent for supplemental proceeding.	0.70	\$350.00/hr	\$0.00
1/31/2020	SMM	E-mail correspondence with King County Sheriff Civil Unit regarding delivery of property.	0.40	\$350.00/hr	\$0.00
1/31/2020	SMM	E-mail from Atty. Waid requesting amount for judgment payoff.	0.10	\$350.00/hr	\$0.00
1/31/2020	SMM	E-mail from Atty. Waid inquiring as to settlement. Fwd: Client.	0.10	\$350.00/hr	\$0.00
1/31/2020	SMM	E-mail to Atty. Waid presenting judgment payoff.	0.10	\$350.00/hr	\$35.00
1/31/2020	SMM	Call from client approving transmittal of judgment payoff.	0.10	\$350.00/hr	\$0.00
1/31/2020	SMM	Return travel from hearing. Debriefed client during trip (0.6 hours).	0.80	\$350.00/hr	\$280.00
1/31/2020	SMM	Conducted Supplemental Proceeding examination, obtained Order Directing Production of Documents and Order Directing Defendant to Deliver Property In Possession.	2.80	\$350.00/hr	\$980.00
1/31/2020	SMM	Prepared e-mail to client regarding judgment payoff, results of hearing and garnishment payment.	0.60	\$350.00/hr	\$0.00
Hours Total			9.00	Fee Total	\$1,960.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				
			Expenses Total	\$0.00

Fees	\$1,960.00
Expense	\$0.00
Current Due	\$1,960.00
Outstanding Balance	\$4,478.76
Total Due	\$6,438.76

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.



1700 Westlake Ave. N., Ste. 200, Seattle, WA 98109
 Office: 206-876-7770
 Fax: 206-876-7771
 Email: info@meylerlegal.com
 www.meylerlegal.com

Bill to:

Shannon Cunningham
 3516 SW Roxbury Street
 Seattle, WA 98126

shannon.j.cunningham@outlook.com

Cunningham v. Jon Robert Karwoski 0161

INVOICE

Invoice Date April 12, 2020
 Invoice Number 1901
 Due Date Due Upon Receipt

Account Summary	
Previous Balance	\$6,438.76
Payments Received	(\$3,028.00)
Outstanding Balance	\$3,410.76
Current Invoice	\$210.00
Total Due	\$3,620.76

Fee Detail

Date		Description	Hours	Rate	Total
2/1/2020	SMM	E-mail correspondence with client regarding settlement demand. Ran/calculated numbers.	1.20	\$350.00/hr	\$0.00
2/3/2020	SMM	Continued correspondence with client regarding settlement terms.	0.30	\$350.00/hr	\$0.00
2/3/2020	SMM	E-mail to Atty. Waid advising of removal of assets by Karwoski. Received acknowledgment of the same.	0.10	\$350.00/hr	\$35.00
2/3/2020	SMM	E-mail to Atty. Waid presenting settlement offer.	0.10	\$350.00/hr	\$35.00

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

Date		Description	Hours	Rate	Total
2/11/2020	SMM	Telephone conference with client regarding status and plan of action. Writ of execution to be obtained and order for contempt to be sought if Karwoski fails to deliver assets to Sheriff.	0.30	\$350.00/hr	\$105.00
2/12/2020	SMM	E-mail from Atty. Waid advising that cash bond was posted.	0.10	\$350.00/hr	\$0.00
2/12/2020	SMM	Review of RAP with respect to required procedures for cash bond. Obtained required Notice of Cash Supersedeas. Prepared e-mail to Atty. Waid regarding meeting requirements of RAP. Substantial compliance with Form 24 Appendix to RAP required.	0.20	\$350.00/hr	\$0.00
2/12/2020	SMM	E-mail from Waid providing receipt and incorrect bond form which was not validated by Clerk. Call to clerk to confirm deposit of proceeds. Prepared e-mail to Waid requesting use of correct form.	0.10	\$350.00/hr	\$35.00
2/12/2020	SMM	E-mail to client providing status update. Cc: Atty. Masters.	0.10	\$350.00/hr	\$0.00
2/12/2020	SMM	Continued correspondence with client regarding reason or strategy for posting bond rather than paying off judgment.	0.20	\$350.00/hr	\$0.00
2/17/2020	SMM	E-mail correspondence with client regarding supplemental proceedings order being moot given deposit of supersedeas bond.	0.20	\$350.00/hr	\$0.00
Hours Total			2.90	Fee Total	\$210.00

Expense Detail

Date	Description	Quantity	Rate	Total
<i>No expenses have been charged for this invoice.</i>				
Expenses Total				\$0.00

Fees	\$210.00
Expense	\$0.00
Current Due	\$210.00
Outstanding Balance	\$3,410.76
Total Due	\$3,620.76

Payment is due upon your receipt of this invoice. A finance charge of 12% per annum (1% per month) will accrue on unpaid balances.

CERTIFICATE OF SERVICE

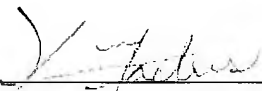
I certify that I caused to be filed and served a copy of the foregoing **RAP 18.1 DECLARATION OF SAMUEL M. MEYLER IN SUPPORT OF AWARD OF ATTORNEY FEES AND COSTS** on the 25th day of June 2020 as follows:

Co-counsel for Respondent

Meyler Legal, P.L.L.C.	<input type="checkbox"/>	U.S. Mail
Samuel M. Meyler	<input checked="" type="checkbox"/>	E-Service
1700 Westlake Avenue North, Suite 200	<input type="checkbox"/>	Facsimile
Seattle, WA 98109		
samuel@meylerlegal.com		

Counsel for Appellants

Waid Law Office, P.L.L.C.	<input type="checkbox"/>	U.S. Mail
Brian J. Waid	<input checked="" type="checkbox"/>	E-Service
5400 California Avenue SW, Suite D	<input type="checkbox"/>	Facsimile
Seattle, WA 98136		
bjwaid@waidlawoffice.com		



Kenneth W. Masters, WSBA 22278
Attorney for Respondent

MASTERS LAW GROUP PLLC

June 25, 2020 - 4:46 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 79753-1
Appellate Court Case Title: Shannon Cunningham, Respondent v. Jon Karwoski, Appellant

The following documents have been uploaded:

- 797531_Financial_20200625164617D1532229_4724.pdf
This File Contains:
Financial - Affidavit of Attorney Fees
The Original File Name was Attorney Declaration RAP 18.1 Meyler.pdf

A copy of the uploaded files will be sent to:

- bjwaid@waidlawoffice.com
- meyer.legal@gmail.com
- samuel@meylerlegal.com

Comments:

Sender Name: Coleen Turner - Email: office@appeal-law.com

Filing on Behalf of: Kenneth Wendell Masters - Email: ken@appeal-law.com (Alternate Email: paralegal@appeal-law.com)

Address:

241 Madison Ave. North
Bainbridge Island, WA, 98110
Phone: (206) 780-5033

Note: The Filing Id is 20200625164617D1532229

COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

SHANNON CUNNINGHAM,

Respondent,

vs.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A
ELIZABETH ANNE KARWOSKI, husband and wife and the marital
community comprised thereof,

Appellants.

APPELLANTS' ANSWER TO ATTORNEY FEE DEMANDS BY
RESPONDENT'S ATTORNEYS

Brian J. Waid
WSBA No. 26038
WAID LAW OFFICE, PLLC
5400 California Ave. S. W., Ste D
Seattle, Washington 98136
Telephone: 206-388-1926
Email: bjwaid@waidlawoffice.com
Attorney for Appellants

Appellants Jon. R. Karwoski and Elizabeth Anne Collins, by and through their undersigned counsel of record, object to the fee requests by Respondent's attorneys, Kenneth W. Masters and Samuel E. Meyler on the following grounds:

I. The Court Should Deny Fees to Respondent for Time Spent on Her Unsuccessful Demand for Frivolous Appeal Damages.

Washington uses the *Lindy* lodestar calculation to determine a reasonable attorney fee. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193, 203 (1983). Although not conclusive, the attorney's "established rate for billing clients. . . will likely be a reasonable rate." *Id.*

"If attorney fees are recoverable for only some of a party's claims, the award must properly reflect a segregation of the time spent on issues for which fees are authorized from time spent on other issues," even where the claims overlap or are interrelated. *Mayer v. City of Seattle*, 102 Wn. App. 66, 79-80, 10 P.3d 408 (2000), citing *Dash Point Village Assoc. v. Exxon Corp.*, 86 Wn..App. 596, 611, 937 P.2d 1148 (1997)); *Loeffelholz v. Citizens for Leaders with Ethics & Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 690, 82 P.3d 1199 (2004). The court

must also segregate time spent litigating claims against codefendants.

Ewing v. Glogowski, 198 Wn. App. 515, 523, 394 P.3d 418 (2017). “The party claiming an award of attorney fees has the burden of segregating its lawyer’s time.” *Loeffelholz, supra* 119 Wn. App. at 690; *Manna Funding, LLC v. Kittitas Cty.*, 173 Wn. App. 879, 901, 295 P.3d 1197 (2013)

Here, the Karwoski’s briefing did *not* dispute Cunningham’s entitlement to reasonable attorney fees on appeal (unless the Court reversed the trial court judgment). Karwoski Op. Br., p. 11; Karwoski Reply Br. Cunningham nevertheless devoted fully 50%¹ of Respondent’s Argument section of her Brief, as well as her later Objection to Karwoski’s Reply Brief, to the completely separate issue of whether Karwoski’s appeal was frivolous. The *only* possible reason for Cunningham to seek frivolous appeal damages pursuant to RAP 18.9 was an attempt, which failed, to recover those same fees from Karwoski’s counsel rather than Karwoskis. Cunningham’s objection to Karwoski’s Reply also failed. In effect, Karwoskis’ counsel became the “co-defendant” for whom the attorney must segregate fees.

¹ The Argument section of Cunningham’s Brief (pp. 12-28) includes pages 12-15 and 25-28 dedicated to her frivolous appeal argument.

Here, Mr. Masters has not segregated his fees seeks. He nevertheless fees and expenses totaling \$14,433.09. Of that amount, approximately \$13,800 accrued prior to the filing of Karwoski's Reply Brief and approximately \$1,600 accrued in connection with Cunningham's failed objection to the Karwoski's Reply Brief.

Again, the burden was on Mr. Masters to segregate. He did not do so and cannot do so for the first time in reply. The Court should therefore approve only 50% of Mr. Master's fees incurred prior to the Karwoski's Reply Brief (*i.e.* approx.. \$6,900) and deny the entirety of Mr. Master's time and expenses (approx..\$1,600) incurred after the filing of Karwoski's Reply Brief.

2. The Court Should Deny Double Recovery of Any Amount

Respondent's Cost Bill included \$98.00 in **per page** charges for Respondent's Brief, to which Appellants did *not* object. Mr. Master's fee demand includes that identical item and amount. Master's Decl. p. 4 (§§8, 10). **The Court should not condone double recovery.**

Mr. Meyler's **fee demand** similarly includes "supersedeas expenses" (which consist of fees) totaling \$5,740. Meyler Decl. pp. 3, 4. Mr. Meyler also sought the identical fees in Respondent's Cost Bill.

The Court should deny double recovery of that amount (and any other amount for which Messrs. Masters and/or Meyler seek double recovery.

3. RAP 18.1(a) Does *Not* Authorize An Attorney Fee Award for Fees and Expenses Incurred in the Trial Court.

RAP 18.1(a) only authorizes this Court to award “reasonable fees or expenses **on review.**” (Emphasis added). Indeed, Cunningham’s Brief specifically requested recovery of attorney fees and costs “on appeal.” Resp. Br., pp. 25, 28. **It did not request trial court fees or expenses.**

Cunningham, however, seeks attorney fees and expenses related to proceedings that occurred in the trial court and *not* “on appeal.” For example, all of the “supersedeas expenses” (\$5,740) claimed by Meyler² occurred in the trial court and *not* in this Court. Mr. Meyler’s “collection/enforcement activity” (\$5,487) similarly occurred in the trial court and *not* in this Court. Indeed, certain activities of that nature (e.g., garnishment) are subject to explicit statutory fee amounts.

The Court should therefore deny all claims for fees which were not incurred “on review.” Furthermore, considering Mr. Meyler’s attempt at duplicate recovery and recovery of fees not incurred “on review,” the Court should deny his request for \$770.00 in time incurred to prepare his

² Meyler Decl. pp. 3-4.

fee Declaration.

4. The Court Should Reject Mr. Meyler's Hourly Fee Rate that Exceeds His Actual Hourly Fee Rate.

Washington uses the *Lindy* lodestar calculation to determine a reasonable attorney fee. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193, 203 (1983). Although not conclusive, the attorney's "established rate for billing clients. . . will likely be a reasonable rate." *Id.* Furthermore, as "[t]he party requesting a deviation from the lodestar [Respondent] bears the burden of justifying it." *Pham v. City of Seattle, Seattle City Light*, 159 Wn.2d 527, 541, 151 P.3d 976 (2007).

Here, Mr. Meyler actually billed his client \$310 per hour up until January 2020, as documented in his invoices attached his Declaration. He nevertheless demands that the Court award him \$350/hour for his work in this case. The Court should therefore reduce the hourly rate for whatever amounts of time it awards Mr. Meyler from \$350/hour to \$310/hour. See, e.g., *Caruso v. WSBA*, 2017 WL 2634340 *2 (W.D. Wash. 06/19/2017)(awarding \$295 for partners and \$235 for associates).

The Court should also adjust Mr. Meyler's allowable time to reflect a discount for his many blockbilling entries and time incurred for services that could have been performed by a paralegal or clerical staff member but for which he seeks attorney rates. E.g., *Welch v. Metro. Life*

Ins. Co., 480 F.3d 942, 946 (9th Cir. 2007).

5. CONCLUSION

Respondent's fee requests are excessive. Appellants therefore request that the Court either deny or reduce the fee requests by Messrs. Masters and Meyler on the bases set forth in this Answer.

DATED: July 2, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
Attorney for Appellants

CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail:
None

July 2, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
Brian J. Waid
WSBA No. 26038
Attorney for Appellants

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

SHANNON CUNNINGHAM,

Respondent,

v.

JOHN R. KARWOSKI and
ELIZABETH COLLINS a/k/a
ELIZABETH ANNE KARWOSKI,
husband and wife and the marital
community comprised thereof,

Appellants.

No. 79753-1

REPLY TO APPELLANTS'
ANSWER TO ATTORNEY
FEE DEMANDS AND
OBJECTIONS TO AMENDED
COST BILL

REPLY

Karwoski continues his misrepresentations to this Court in his "Answer" and "Objections." This Court should grant the fees and costs requested, which Karwoski nowhere argues were unreasonable or unnecessary, and which patently were not.

A. Cunningham's frivolous-appeal arguments were not rejected – the Court simply did not reach them – and they did not take a significant amount of counsel's time.

Karwoski falsely asserts that "50%" of the Argument section in Cunningham's Brief of Respondent (BR) was spent on pointing out that, just as the trial court correctly ruled Karwoski's trial court

arguments frivolous, his appeal was equally frivolous. Answer 2-4 & n.1. At BR 12-15, Cunningham properly explained that Karwoski had failed to challenge the trial court's rulings that his claims were frivolous, and also failed to properly present any admissible evidence or preserve any legal arguments in the trial court. These are *substantive* arguments that the appellate court *did not* reject, but rather chose not to reach. Slip Op. at 11 n.7 & 15 n.9. Since this Court did not reject them, there was no "obligation" to segregate fees. Cunningham prevailed: she is entitled to her fees and costs.

As for BR 25-28, that is a fee request – including recognizing that this appeal is frivolous – but also other grounds for a fee award. Cunningham obviously prevailed on her fee request – hence these pleadings. There is no basis on which to reduce the very reasonable fee request simply because the Panel chose not to reach arguments properly raised. Karwoski's assertions that Cunningham "lost" on these issues are false and misleading.

Similarly false are his preposterous assertions that "50%" of the argument section concerns the frivolous-appeal argument and that the fee request should thus be reduced by 50%, or eliminated entirely. Answer 4. As noted above, very little of the response brief was dedicated to that issue – it does not take much time to point

out that an appeal is frivolous. And again, Cunningham did not lose this argument – the Court chose not to reach it. It is obviously not true to say that the argument had no effect on Cunningham’s success. The Court should award the requested reasonable fees and costs.

B. Cunningham nowhere sought a double recovery – but the expenses of obtaining supersedeas should be awarded.

Cunningham is not seeking any double recovery.

Kawoski objects to paying the costs of compelling him to properly supersede the judgment in order to preserve the fruits of Cunningham’s wins in the trial and appellate courts. Appellant’s Objections to Cost Bill 2-4.¹ That required extensive litigation, as Karwoski refused and resisted at every turn. A quick read of the Court’s Slip Opinion illustrates the sorts of behaviors he resorts to, and supersedeas was no different.

The RAP Comments Karwoski quotes are neither binding nor do they support his argument. *Id.* They plainly state that the 1994 amendments were designed to *broaden* RAP 14.3 to include expenses incurred in superseding the judgment:

¹ Karwoski failed to paginate his Objection.

The committee believed that **this provision was too restrictive**, in that stays are often obtained without the actual posting of a bond. . . . The proposed amendment allows recovery of "expenses incurred in superseding the decision of the trial court." [Emphasis added.]

The Comment does not say, for instance, "solely by the superseding party," as Karwoski appears to argue. An appellant should not be permitted to resist providing security with impunity.

Moreover, the "usual cost of the commercial surety bond" is "ordinarily" an adequate measure, but where (as here) extraordinary measures were necessary, those expenses should be allowed:

The limiting phrase "but not ordinarily greater than the usual cost of a commercial surety bond" was added **to establish a norm**, but at the same time **to give the court some leeway for handling unusual cases** [Emphasis added.]

Cunningham successfully persuaded the trial court to order Karwoski to file alternate security (cash) in the amount of \$48,500. This Court therefore should award supersedeas expenses as costs. Contrary to Karowski's Answer at 5, RAP 14.3(a)(5) *expressly* allows this Court to award "expenses incurred in superseding the decision."

Oddly, Karwoski objects to Meyler's request for \$770 to prepare his fee declaration – a normally awarded fee request – *because* Meyler "requested" a double recovery. That is false.

Cunningham is requesting the expenses she incurred in superseding the judgment as costs – not as fees. But Meyler had to substantiate those expenses in his *fee* affidavit – they were primarily attorney fees. *Cunningham* did not request (and is not requesting) them twice – she simply clearly identifies and justifies them. The Commissioner is perfectly capable of parsing such requests.

C. The Court should award attorney Meyler his normal hourly rate for his entirely reasonable fee request.

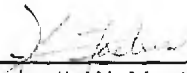
Finally, Karwoski attempts to seek the benefit of whatever reduced hourly rate attorney Meyler may have charged to his client. Answer 6-7. He cites inapposite authorities that do not support his arguments. The simple fact is that Mr. Meyler's normal hourly rate (\$350) is perfectly reasonable. So is his total fee request. Karwoski should pay all of it.

CONCLUSION

This Court should award *Cunningham* the requested fees and Costs. It should add \$500 in fees for attorney Masters and his paralegal to prepare this Reply.

RESPECTFULLY SUBMITTED this 6th day of July 2020.

MASTERS LAW GROUP, P.L.L.C.



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CERTIFICATE OF SERVICE


I certify that I caused to be filed and served a copy of the foregoing **REPLY TO APPELLANTS' ANSWER TO ATTORNEY FEE DEMANDS AND APPELLANTS' OBJECTION TO AMENDED COST BILL** on the 6th day of July 2020 as follows:

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July 06, 2020 - 3:17 PM

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Appellate Court Case Number: 79753-1
Appellate Court Case Title: Shannon Cunningham, Respondent v. Jon Karwoski, Appellant

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

SHANNON CUNNINGHAM, an)	No. 79753-1-I
unmarried individual,)	
)	COMMISSIONER'S RULING
Respondent,)	AWARDING ATTORNEY FEES
)	AND COSTS
v.)	
)	
JON R. KARWOSKI and ELIZABETH)	
ANNE COLLINS a/k/a ELIZABETH)	
ANNE KARWOSKI, husband and wife)	
and the marital community comprised)	
thereof,)	
)	
Appellant.)	
_____)	

On June 15, 2020, this Court issued an unpublished opinion affirming the trial court's enforcement of a settlement agreement between appellants Jon and Elizabeth Karwoski and respondent Shannon Cunningham. This Court awarded attorney fees on appeal to Cunningham under the settlement agreement.

Cunningham's appellate counsel Kenneth Masters filed a declaration and a cost bill. Counsel requests an award of attorney fees on appeal in the amount of \$13,776.17 plus fees for preparing the fee declaration in the amount of \$1,004, totaling \$14,780.17. Counsel requests an award of costs in the amount of \$98 for preparing the brief. In total, counsel requests an award of \$14,878.17.

Cunningham's trial counsel Samuel Meyler, who remained counsel on appeal, filed a separate declaration, requesting additional attorney fees, expenses, and costs in the total amount of \$7,808.24.

The Karwoskis filed objections to the requested attorney fees, expenses, and costs, and Cunningham's appellate counsel filed a reply. As explained below, I grant the Karwoskis' objection in part regarding counsel Meyer's request for supersedeas expenses, costs for clerk's papers, and fees. Otherwise, over the Karwoskis' objection, the requested fees and costs are awarded.

Cunningham requests reimbursement of "supersedeas expenses" in the amount of \$5,740 for work performed in the trial court in "defeating" the Karwoskis' motion to post real estate. But such expenses or fees are not "expenses incurred in superseding the decision of the trial court." RAP 14.3(a)(5). This Court generally does not award attorney fees for work on post-trial motions in the trial court. See Hepler v. CBS, Inc., 39 Wn. App. 838, 848 n.3, 696 P.2d 596 (1985). Thus, the supersedeas expenses are disallowed.

Cunningham also requests costs for "clerk's papers" in the amount of \$83.75. Although RAP 14.3(a) includes "copies of clerk's papers," this Court has applied this rule to allow only the costs for the clerk's papers paid to the trial court to be transmitted to this Court. Because the Karwoskis designated and paid for the clerk's papers transmitted to this Court, Cunningham may not recoup her costs for obtaining her copy of the clerk's papers under the rule.

Counsel Meyler includes as costs "hearing recordings for consideration of whether to prepare and file verbatim report of proceedings" in the amount of \$67.49. Counsel separately charges for his time spent reviewing the recordings, which are proper. The costs for obtaining recordings are not allowed under RAP 14.3(a). Thus, these costs (\$67.49) are disallowed.

No. 79753-1-I

Thus, only the costs for preparing the brief (\$98) are properly requested under RAP 14.3(a) and are awarded. Other costs and expenses are disallowed.

Reasonable attorney fees are based on the number of hours reasonably spent, multiplied by a reasonable hourly rate. Berryman v. Metcalf, 177 Wn. App. 644, 660, 312 P.3d 745 (2013). This calculation does not turn solely on what the prevailing party's firm can bill. See Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). "Courts must take an *active* role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." Berryman, 177 Wn. App. at 657 (quoting Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998)). The court may discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time. Asher Constr. Co. v. Kent Sch. Dist. No. 425, 79 Wn. App. 841, 847, 917 P.2d 1086 (1995).

The Karwoskis argue that Cunningham's appellate counsel failed to segregate work in seeking attorney fees for frivolous appeal. The Karwoskis argue that Cunningham devoted 50% of its argument section in her merits brief to the frivolousness issue, which this Court declined to reach. The Karwoskis ask this Court to approve only 50% of the fees incurred before the filing of their reply brief and deny the entire fees incurred afterwards. But Cunningham's argument regarding the asserted frivolousness of the Karwoskis' argument is intertwined with the merits of this appeal. The Karwoskis offer no good reason why this Court should reduce the amount of attorney fees requested by appellate

No. 79753-1-I

counsel Masters. The attorney fees requested by appellate counsel are reasonable and supported by counsel's declaration. Thus, attorney fees in the amount of \$14,780.17 requested by appellate counsel are awarded.

As to counsel Meyler's fees, the Karwoskis argue that the fees incurred in "collection/enforcement activity" should be disallowed because such activity occurred in the trial court. I agree. But counsel does not include the amount of such activity in the requested fees. The Karwoskis argue that \$770 (\$350 hourly rate x 2.2 hours) incurred in preparing his fee declaration should be denied. But it is appropriate to include fees for preparing a fee declaration as part of attorney fees on appeal. Because counsel's declaration sets forth disallowed expenses (and fees at a rate not actually charged as discussed below), I reduce the fees by \$70 to \$700. Counsel Meyler requests an award of attorney fees at counsel's current hourly rate of \$350, although all of the work counsel performed for this appeal (3.7 hours as marked green by counsel) was charged at counsel's former rate of \$310. The Karwoskis argue that Cunningham should not be awarded attorney fees not actually incurred without a request and justification to deviate from the lodestar. I agree. I allow only \$1,147 ($3.7 \times \310), together with \$700, totaling \$1,847 for attorney fees on appeal with respect to counsel Meyler.

Accordingly, attorney fees and costs in the amount of \$14,878.17 as to appellate counsel Masters and attorney fees in the amount of \$1,847 as to counsel Meyler, totaling \$16,725.17 are awarded to Cunningham.

No. 79753-1-I

Therefore, it is

ORDERED that attorney fees and costs in the amount of \$16,725.17 are awarded to respondent Shannon Cunningham. Appellants Jon and Elizabeth Karwoski are liable for this award and shall pay this amount.

Masako Hanzawa, Commissioner

No. 79753-1-1

COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

SHANNON CUNNINGHAM,

Respondent,

vs.

JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A
ELIZABETH ANNE KARWOSKI, husband and wife and the marital
community comprised thereof,

Appellants.

APPELLANTS' MOTION TO MODIFY COMMISSIONER'S
DECISION RE: SEGREGATION OF ATTORNEY FEES

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I. Identity of Moving Party

Appellants Jon and Elizabeth Ann Collins Kaworski (“Kaworski”) were the Defendants in the trial court.

II. Decision Below

On July 20, 2020, Commissioner Kanazawa issued a Ruling Awarding Attorney Fees and Costs in which she refused to require Respondent to segregate their attorney fees from defending the appeal on the merits (for which Karwoski had *not* opposed an award of fees) from attorney fees incurred to pursue Respondent’s unsuccessful attempt to impose RAP 18.9 frivolous appeal damages *against the Karwoskis’* counsel. The Commissioner refused to require Respondent to segregate her attorneys’ fees between the successful (but unopposed) award of fees on the merits, from fees incurred to pursue Respondent’s unsuccessful frivolous appeal claim which the Commissioner considered “intertwined with the merits of this appeal” and “there is no good reason why this Court should reduce the amount of attorney fees requested. . .”. 07/20/20 Order, p. 3.

The Commissioner’s theory thus applied an erroneous legal standard and encourages litigants to seek RAP 18.9 frivolous appeal fees against opposing counsel even when the Respondent will recover attorney fees in any event if the Respondent prevails on the merits.

III. Issues Presented for Review

1. Did the Commissioner commit legal error when she placed the

burden on Appellants to establish that there is a “good reason why this Court should reduce the amount of attorney fees requested,” rather than place the burden on the Respondent to establish that “no reasonable segregation [of fees] can be made” between Respondents’ fees related to the merits of the appeal (award of which was not disputed if Respondent prevailed) and Respondents’ request for RAP 18.9 frivolous appeal fees against Appellants’ attorneys? **Answer: Yes.**

IV. Statement of the Case

The Karwoski’s briefing did *not* dispute Cunningham’s entitlement to reasonable attorney fees on appeal (unless the Court reversed the trial court judgment). Karwoski Op. Br., p. 11; Karwoski Reply Br., p. 3 n.4. Indeed, Cunningham expressly acknowledged that “concession” in Respondent’s Brief at p. 26.

Cunningham nevertheless devoted fully 50%¹ of Respondent’s Argument section of her Brief, as well as her later Objection to Karwoski’s Reply Brief, to the completely separate issue of whether Karwoski’s appeal was frivolous. The *only* possible reason for Cunningham to seek frivolous appeal damages pursuant to RAP 18.9 was an attempt, which failed, to recover those same fees from Karwoski’s counsel rather than the Karwoskis. Cunningham’s objection to

¹ The Argument section of Cunningham’s Brief (pp. 12-28) includes pages 12-15 and 25-28 dedicated to her frivolous appeal argument.

Karwoskis' Reply also failed. In effect, Karwoskis' counsel became the "co-defendant" in respect to which the Respondent must segregate fees. See discussion of *Ewing*, *infra*.

V. ARGUMENT: THE COMMISSIONER APPLIED ERRONEOUS LEGAL STANDARDS

This Court recently explained the rules governing segregation of fees in *Team Car Care W., LLC v. Anderson*, 2019 WL 6318037 *5 (Div. I, 11/25/19)(unpublished):

"A trial court may award reasonable attorney fees only if it has a statutory, contractual, or recognized equitable basis." *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 687-88, 82 P.3d 1199 (2004). **Where a party can recover attorney fees for only some of its claims, the award should reflect a segregation of the time spent on issues for which fees are authorized.** *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 672, 880 P.2d 988 (1994). " **'If attorney fees are recoverable for only some of a party's claims, the award must properly reflect a segregation of the time spent on issues for which fees are authorized from time spent on other issues,' even where the claims overlap or are interrelated.**" *Ewing v. Glogowski*, 198 Wn. App. 515, 523, 394 P.3d 418 (2017) (quoting *Mayer v. City of Seattle*, 102 Wn. App. 66, 79-80, 10 P.3d 408 (2000)). "But segregation of attorney fees is not required if the trial court determines that the claims are so related that no reasonable segregation can be made." *Id.* (citing *Loeffelholz*, 119 Wn. App. at 691.

This Court also recently held that parties "**must also segregate time spent litigating claims against codefendants.** . . . [unless] the

claims are so related that no reasonable segregation can be made.”

Ewing v. Glogowski, 198 Wn. App. 515, 523, 394 P.3d 418 (2017).

The proponent must therefore establish that “the claims are so related that no reasonable segregation can be made,” rather than whether the claims overlap or are interrelated or intertwined. The Commissioner reached no such conclusion in this case in which request for RAP 18.9 relief was entirely gratuitous (except to punish appellate counsel) considering that no dispute existed as to whether Respondent would have recovered fees if she prevailed on appeal. Indeed, in these circumstances, Respondent’s request for attorney fees against opposing counsel pursuant to RAP 18.9 is no different from the time spent litigating claims against codefendants in *Ewing*.

The Commissioner also placed the burden on the wrong party by concluding that “Karwoskis offer no good reason why this Court should reduce the amount of attorney fees requested. . .”. 07/20/20 Order, p. 3. However, “the burden of segregating fees rests with the party claiming those fees.” *Bulk FR8, LLC v. Schuler*, 2019 WL 2103366 *2 (Div. 1, 05/13/2019)(unpublished), quoting, *Loeffelholz, supra*, 119 Wn. App. at 690. The Karwoskis were therefore under no obligation to “offer [any] good reason why this Court should reduce the amount of attorney fees requested”---other than to ask the Court to apply the governing law that

required *Respondent* to establish that segregation of fees was not possible.

Accordingly, Respondent (and *not* the Karwoskis) had the burden to establish that “no reasonable segregation could be made.” This they did not do. Indeed, Respondents’ advanced their entire briefing related to attorney fees to the RAP 18.9 issue because there was no dispute but that they would receive an award of attorney fees if they prevailed on the appeal. And, if they did not prevail on appeal then the appeal had obviously *not* been frivolous and RAP 18.9 rendered moot. Furthermore,

Respondents are represented by experienced appellate counsel who undoubtedly understood, or certainly should have anticipated that he might be called upon to segregate fees and maintained his time records accordingly. Respondent’s failure to segregate thus reflects a choice on their part for which Appellants should not be responsible.

VI. Conclusion

For these reasons, the Kaworskis respectfully request that the Court vacate the Commissioner’s award of fees to Respondents’ appellate counsel and either reduce the fee request by appellate counsel by 50% or grant Appellants’ such other relief as the Court deems appropriate.

DATED: August 7, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
BRIAN J. WAID

WSBA No. 26038
Attorney for Appellants

CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail:
None

Dated: August 7, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
Brian J. Waid
WSBA No. 26038
Attorney for Appellants

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

SHANNON CUNNINGHAM, Respondent, v. JOHN R. KARWOSKI and ELIZABETH COLLINS a/k/a ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof, Appellants.	No. 79753-1 RESPONSE TO APPELLANTS' MOTION TO MODIFY COMMISSIONER'S DECISION RE: SEGREGATION OF ATTORNEY FEES
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I. Identity of Responding Party & Relief Requested

Respondent Shannon Cunningham asks this Court to deny Appellant Karwoski, et al.'s Motion to Modify Commissioner Kanazawa's Ruling Awarding Attorney Fees and Costs (7/20/2020). This Court should also award Cunningham additional contractual attorney fees for having to respond to this baseless motion.

II. Facts Relevant to Motion

Karwoski's so-called "Statement of the Case" is baseless and argumentative. Not only does it lack a single citation to the record, but it falsely argues that the "only possible reason for Cunningham to seek frivolous appeal damages [sic] pursuant to RAP 18.9 was an

attempt, which failed, to recover those same fees from Karwoski's counsel rather than the Karwoskis." Motion to Modify (MTM) at 2. Karwoski obviously has no factual basis on which to assert Cunningham's motivations. His groundless and open attack on Cunningham's appellant counsel is beneath contempt.

In *fact*, the *trial court* ruled that Karwoski's attempts to evade his settlement agreement *were frivolous* (CP 311):

The Court concludes that the arguments and defenses presented by Defendants were frivolous, not supported by any rational argument and advanced without reasonable cause. Attorney's fees are therefore owing pursuant to RCW 4.84.185.

As a result of this ruling, one proper – and fully justified – legal basis for responding to Karwoski's appeal – both *on the merits* and as to attorney fees – is that his appeal is *also* frivolous. Karwoski's snide innuendo that some personal motivation exists here is false, immaterial, impertinent, and scandalous. See *generally* CR 12(f).

And again – as was thoroughly briefed to the Commissioner¹ – Cunningham did *not* "lose" this argument. Rather, this Court declined to reach it. Slip Op. at 15 n.9 (copy attached as App. B). Karwoski's claims to the contrary are false.

¹ A copy of our reply re fees and costs is attached as App. A.

III. Argument

Cunningham raised her frivolous-appeal arguments because (1) the trial court ruled that Karwoski's arguments were frivolous; (2) Karwoski should not be permitted to raise new arguments on appeal; and (3) his appeal was frivolous. No other motivations existed.

Karwoski's appellate counsel is, however, making it personal because – again, perfectly legitimately – Cunningham also chose to seek fees against him. Karwoski's persistent frivolous arguments evidence his vexatious litigatory efforts to evade justice for his outrageous abuse and threats – including death threats. *See, e.g.*, BR 4-5. Cunningham was (at the time of filing her Brief of Respondent) thus justifiably concerned – notwithstanding her trial counsel's successful (if difficult) efforts to force Karwoski to file a cash supersedeas bond² – that he would continue to increase the costs of litigation *ad nauseam*, and ultimately would refuse to pay all the fees that could be awarded in lengthy trial and appellate litigation. It was thus incumbent on her appellate counsel to attempt to ensure a source of payment, if possible. Indeed, while Karwoski appears to be slowing down a bit, his counsel plainly has not stopped.

² The Commissioner *denied* Cunningham's request for fees incurred in that effort. Ruling attached as App. C. That ruling is not at issue here.

Thus, as Commissioner Kanazawa properly ruled, Cunningham's claims – *both on the merits and as to attorney fees* – were so interrelated that no reasonable segregation would be possible. See, e.g., *Ewing v. Glogowski*, 198 Wn. App. 515, 523, 394 P.3d 418 (2017). Indeed – as again briefed to the Commissioner – Cunningham spent *very little* time asking for fees from Karwoski's lawyer. App. B. The *merits* and *fees* arguments as to his frivolous appeal were fully justified by the trial court's ruling: it was simply another valid legal basis to affirm and to grant fees. Karwoski's attempts to cast those arguments as *personal* are disgraceful.

And as noted, Karwoski's appeal was frivolous. This Court held (1) that Karwoski *waived* the only two arguments he raised on appeal (Slip Op. at 12); (2) that even if he had not waived them, he was wrong on the merits (*id.*); (3) that Karwoski's "self-serving after the fact annotation of an e-mail was insufficient to show a genuine dispute as to the agreement's existence" (*id.* at 13); and (4) that Cunningham has a right to attorney fees under the *disputed* Settlement Agreement, so the Court need not reach whether Karwoski's frivolous appeal was frivolous (*id.* at 13-15 & n.9). That the agreement was disputed also justified making a frivolous-appeal fee request under RAP 18.9.

Finally, Commissioner Kanazawa did not “shift the burden” to Karwoski. She simply found Cunningham’s request for her appellate attorney’s fees reasonable – which it *undisputedly* was. App. C at 4. In light of Karwoski’s failure to argue to the contrary, the Commissioner was perfectly justified in saying that Karwoski offered “no good reason why this Court should reduce the amount of attorney fees requested.” App. C at 3. His objection was as frivolous as his appeal – and as this MTM.

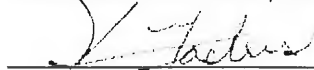
IV. Conclusion

This Court should deny the MTM. It should award appellate counsel fees of \$2,229.33 for responding to this motion and Appellants’ Answer to Attorney Fee Demands and Objections to Cost Bill – under the contract. See Slip Op. at 14-15; CP 174 (Settlement Agreement ¶ 12); RCW 4.84.330 (contractual fees); RAP 18.1.

A fee affidavit is attached as App. D.

Respectfully submitted this 14th day of August 2020.

MASTERS LAW GROUP, P.L.L.C.



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APPENDIX

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IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SHANNON CUNNINGHAM,

NO. 79753-1

Respondent,

vs.

APPELLANTS' REPLY IN
SUPPORT OF APPELLANTS'
MOTION TO MODIFY

JON R. KARWOSKI and ELIZABETH
ANNE COLLINS A/K/A ELIZABETH
ANNE KARWOSKI, husband and wife,

Appellants.

I. Respondent Confirmed Her Improper Purposes

Respondent confirms that she sought frivolous appeal damages "to attempt to ensure a source¹ of payment, if possible" in the event Mr. Karwoski "would refuse to pay all the fees that could be awarded." Resp. Answer, p. 3 (emphasis added). Respondent's admitted motivation was nonsensical considering that Mr. Karwoski posted a \$48,500 cash bond in the trial court. That admission also confirms that Respondent falsely asserts that "Karwoski obviously has no factual basis on which to assert Cunningham's motivations."² Those motivations were unambiguous from the beginning. The Court should therefore recognize Respondent's repeated, personal attacks on the Karwoski's appellate attorney³ are projections by Respondent and her

¹ The only additional source of payment is Appellants' counsel.

² Resp. Answer, p. 2.

³ Ans. p. 2: "Beneath contempt"

Appellants' Reply in Support of Appellants'
Motion to Modify

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1 counsel who (rather than Appellants' counsel) personalized this matter when they
2 unnecessarily sought frivolous appeal damages solely to punish appellate counsel.
3 Their repeated denials and additional attacks on Appellants' counsel are therefore not
4 only baseless but, in the words of Respondent, "beneath contempt." Resp. Ans., p. 2.
5 Mr. Masters' reputation provides no excuse for the Court to condone his conduct; any
6 other result would merely encourage practitioners (including Mr. Masters) to burden
7 this Court with similarly unnecessary and unwarranted RAP 18.9 claims in the future.

9 Having admitted that they sought RAP 18.9 remedies against Appellants'
10 counsel to "ensure a source of payment" despite the existence of Appellants' cash bond,
11 Respondent confirms precisely the point Appellants' made in their Motion to Modify,
12 *i.e.* Respondent's "request for RAP 18.9 relief was entirely gratuitous (except to punish
13 appellate counsel) considering that no dispute existed as to whether Respondent would
14 have recovered fees if she prevailed on appeal." Mot., p. 4.

16 Unable to defend the Commissioner's actual ruling, Respondent resorts to
17 **misrepresentation of that ruling**, *i.e.*, "Cunningham's claims--*both on the merits and*
18 *as to attorney fees*—were so interrelated that **no reasonable segregation would be**
19 **possible.**" Ans., p. 4. The words "no reasonable segregation would be possible" do
20 *not* appear in the Commissioner's ruling; she instead merely concluded that the two
21 issues were "intertwined." Order, p. 3. Because Appellants had not disputed the
22 availability of attorney fees in the event Respondent prevailed on the merits of the
23 appeal, Respondent's frivolous appeal argument could *not* have been so interrelated that
24
25

1 “no reasonable segregation would be possible.” Indeed, the contrary is true, *i.e.*,
2 segregation should have been readily possible. See, App. Mot., p. 3-5.

3 **II. The Court Should Not Approve Respondents’ Request for Double**
4 **Recovery of Fees**

5 One additional point: Respondent previously sought, and the Commissioner
6 previously awarded, Respondent fees related to the motion before the Commissioner.
7 The Court should therefore deny the \$615.50 in fees related to proceedings before the
8 Commissioner, which they seek in their Answer to the Motion to Modify.

9
10 **III. CONCLUSION**

11 For these reasons, the Karwoskis respectfully request that the Court vacate the
12 Commissioner’s award of fees to Respondents’ appellate counsel and either reduce the
13 fee request by appellate counsel by 50% or grant Appellants’ such other relief as the
14 Court deems appropriate.

15 The Karwoskis also request that the Court deny any award of fees to Respondent
16 in connection with this Motion to Modify, either because the Court grants the motion or
17 as a sanction for the conduct of Respondent in making unfounded and inflammatory
18 allegations of improper conduct by Appellants’ counsel in connection with this Motion.
19 In the event the Court denies this motion, Appellants’ nevertheless request that the
20 Court deny the \$615.50 in attorney fees and expenses claimed by Respondent as
21 not properly before the Court on this motion.

22
23
24 DATED: August 17, 2020.

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Appellants’ Reply in Support of Appellants’
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BY: /s/ Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, I served all parties, through their attorneys, via the Court's ECF delivery system.

DATED: August 17, 2020.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
Attorney for Appellants

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

SHANNON CUNNINGHAM, an unmarried
individual,

Respondent,

v.

JOHN R. KARWOSKI and ELIZABETH
ANNE COLLINS a/k/a ELIZABETH ANNE
KARWOSKI, husband and wife and the
marital community comprised thereof,

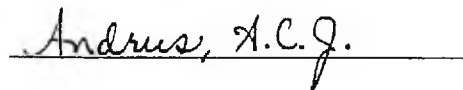
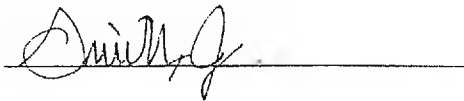
Appellants.

No. 79753-1-1

ORDER DENYING MOTION
TO MODIFY

Appellants, Jon and Elizabeth Karwoski move to modify the commissioner's July 20, 2020 ruling awarding fees in favor of Respondent, Shannon Cunningham. Respondent has filed a response. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is

ORDERED that the motion to modify is denied.



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