

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:

LISA JAYNE HOLROYD,

Respondent/Cross-Appellant,

and

PHILIP JOHNSON HOLROYD,

Appellant/Cross-Respondent.

No. 80838-9-I

DIVISION ONE

UNPUBLISHED OPINION

SMITH, J. — Philip Holroyd and Lisa Holroyd incorporated a property settlement agreement (PSA) into their marital dissolution orders. After failing to abide by the PSA, Philip<sup>1</sup> agreed to sign a confession of judgment (confession). Eight years later, Philip moved to vacate the confession. The trial court denied the motion but granted Philip equitable relief. It ordered that proceeds from the sale of property Lisa acquired in the confession be used to offset Philip's outstanding debts to her.

Philip appeals the denial of his motion to vacate and argues that the confession is void. Lisa also appeals, contending that the trial court's equitable relief was beyond the scope of the motion to vacate and that the court violated her right to due process by now allowing her to file a response to Philip's motion for reconsideration. We affirm the trial court's orders.

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<sup>1</sup> We refer to the parties by first name for clarity and mean no disrespect.

## FACTS

Philip and Lisa married in 1989 and had two children. The couple separated in 2008, and Lisa petitioned for dissolution in 2009. In April 2011, the court entered the parties' agreed final orders and incorporated by reference the PSA that they executed pursuant to RCW 26.09.070.<sup>2</sup>

The PSA constituted a "full and complete settlement of both parties' property rights and debts." In pertinent part, Philip agreed to pay Lisa \$50,000 within six months of the entry of the decree of dissolution or Lisa would have judgment against him at an interest rate of 6 percent per annum. He also agreed to replenish the children's accounts in the amount of \$100,000 each by no later than their 18th birthdays. The parties agreed that Philip's interest in the "Raymond Shell gas station" (Shell Station) must "be sold on the open market and listed no later than May 1, 2011" and that "[a]ll proceeds from the sale will first be applied to replenishing the children's accounts."

According to Philip, at a meeting in October 2011, Lisa's counsel threatened and "coerced [him] into signing a confession of judgment without the assistance of counsel." Philip says counsel "offered" to sell the Shell Station "to cover the contributions to [his] children's accounts and then repay Lisa." Anytime Philip inquired about getting his own attorney during this meeting, Lisa's counsel "intimated" that if he left without signing the confession, counsel "would take [him] back to court." Philip "admit[s] that [he took counsel's] word as to the

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<sup>2</sup> In all, the court entered a dissolution decree, a child support order, a parenting plan, and findings of fact and conclusions of law. The parties executed the PSA in March 2011.

[confession's] contents" and that he "did not read [it] as closely as [he] should have."<sup>3</sup> The confession and statement Philip signed, in relevant part, reads:

In compliance with RCW 4.60.060 I declare under oath, under penalty of perjury under the laws of the State of Washington the following is true and correct; namely, that I willingly and voluntarily confess judgment in favor of Lisa Holroyd as follows:

1. I authorize entry of judgment against me as follows:
  - a. Principal judgment sum of \$62,000.00
  - b. Interest to date of judgment of \$540.00
  - c. Cost of \$500.00
  - d. Attorneys fees of \$5,000.00
  - e. Other recover amounts of \$0
  - f. The principal judgment sum, the interest to date of judgment, the costs, the attorneys fees and other recovery amounts shall all bear interest at 12 [percent] per annum.

2. This confession is for an amount due which arose due to the fact that I owe Lisa J. Holroyd past due child support in the amount of \$12,000.00, plus pre-judgment interest on it of \$540.00;

Pursuant to the attached PSA I also owe Lisa J. Holroyd \$50,000.00 which I cannot and will not pay by the October 8, 2011 due date consequently I authorize judgment now for it.

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Also pursuant to the attached PSA, I am required to transfer my children's custodial accounts into Lisa J. Holroyd's name. I authorize judgment such that if I fail to timely sign such documents Lisa J. Holroyd may obtain one or more court orders ordering any such financial institutions to effectuate such transfers without my signature(s).

Pursuant to the attached PSA I was required to market and sell my interests in the Raymond, Washington Shell station by May 1, 2011 and I have failed to do so and therefore I am in breach of the PSA on this issue. As a result I agree that all my interests, real or personal, beneficial, legal or equitable, in the Raymond, Washington Shell station mentioned in the PSA are immediately transferred to Lisa J. Holroyd who shall manage them and/or sell them as is determined by her to be in the best interests of our children, and once our children's custodial accounts are replenished as listed in the PSA, she may manage them and/or sell as is determined by her to be in her best interest[.]

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<sup>3</sup> Lisa's counsel challenged Philip's version of the events surrounding execution of the confession. The trial court determined that "there is not clear, cogent and convincing evidence that the [c]onfession was fraudulently obtained." Neither party has assigned error to this determination on appeal.

On October 11, 2011, the trial court entered Philip's confession. But instead of immediately selling the Shell Station, Lisa pursued other methods of collection, to wit:

- In February 2012, Lisa successfully garnished \$18,284.72 from a bank account Philip owned jointly with his mother;
- In August 2012, Lisa obtained an order directing Philip's mother to appear for examination and produce financial documents in supplemental proceedings;
- In 2013, the children commenced a "TEDRA action"<sup>4</sup> against Philip's mother to recover missing inheritance. Those parties later settled this dispute, awarding \$195,000.00 plus interest to each child. The children waived the right to have their accounts replenished, which ended Philip's obligation to do so as required in the PSA; and
- In 2016, Lisa obtained an order directing Philip to appear for examination and produce financial documents in supplemental proceedings. She also seized and later sold property Philip owned in Seattle for the sum of \$4,750.00.

Philip says that from these collection efforts, he assumed that Lisa decided not to sell the Shell Station in order to fulfill his debts. Meanwhile, Philip continued to manage the Shell Station and be responsible for its property taxes. In August 2019, however, Lisa and the other owner of the Shell Station sold the property.

The next month, Philip filed a motion for an order to show cause to vacate the confession under multiple provisions of CR 60(b) and for an order that any proceeds from the sale of the Shell Station be segregated and preserved until released by the court. The trial court heard arguments and denied the motion to

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<sup>4</sup> Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW.

vacate. But, sitting in equity, the trial court interpreted the confession “to be for the express purpose of paying the monies owed in the divorce.” The court noted:

Underlying this motion is the question: has [Lisa] benefitted from unjust enrichment? The answer is no, but the proceeds from the sale of the gas station should be counted against any money owing [to] her. [Philip] owes child support and other monies to this day. [He] proposes that the Court change or adjust the interest rates on monies owed.

Ultimately, the trial court ordered that all money received by Lisa is to be applied against money owed by Philip and denied Philip’s request to reconsider the interest rates applied to monies owed. Philip moved for reconsideration; Lisa did not. The trial court denied reconsideration but granted Philip a hearing to offset Lisa’s sales proceeds against his remaining debts.

Both parties appeal.

#### ANALYSIS

Philip’s appeal is limited to the trial court’s denial of his motion to vacate. Lisa’s cross appeal challenges the court’s award of equitable relief and the due process she was afforded on Philip’s motion for reconsideration. We examine each in turn.

#### Philip’s Appeal

Philip contends that the trial court improperly denied him relief under CR 60(b)(5) and CR 60(b)(11). We disagree.

#### *CR 60(b)(5) – Judgment is Void*

CR 60(b)(5) permits a court to vacate a judgment if it is void. A judgment is void when “entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular

order involved.” In re Marriage of Ortiz, 108 Wn.2d 643, 649, 740 P.2d 843 (1987) (quoting Dike v. Dike, 75 Wn.2d 1, 7, 448 P.2d 490 (1968)). But “where a court has jurisdiction over the person and the subject matter, no error in the exercise of such jurisdiction can make the judgment void” and “a judgment rendered by a court of competent jurisdiction is not void merely because there are irregularities or errors of law in connection therewith.” Dike, 75 Wn.2d at 8. Thus, the question of whether an order is void depends only on whether the court had jurisdiction to enter it.

Because courts “have a mandatory, nondiscretionary duty to vacate void judgments,” we review a trial court’s decision to vacate a judgment for voidness de novo. Dobbins v. Mendoza, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997). Void judgments may be challenged at any time. In re Marriage of Leslie, 112 Wn.2d 612, 620, 772 P.2d 1013 (1989).

Here, the trial court undisputedly had jurisdiction over Philip’s and Lisa’s property. “In a dissolution proceeding, the trial court ‘has practically unlimited power over the property, when exercised with reference to the rights of the parties and their children.’” In re Marriage of Kowalewski, 163 Wn.2d 542, 550, 182 P.3d 959 (2008) (quoting Arneson v. Arneson, 38 Wn.2d 99, 102, 227 P.2d 1016 (1951)). “Indeed, a trial court has a duty to decide the parties’ interests in *all* property brought to its attention.” Kowalewski, 163 Wn.2d at 550 (citing In re Marriage of Little, 96 Wn.2d 183, 194, 634 P.2d 498 (1981)).

Philip asserts that RCW 4.60.010<sup>5</sup> limited the trial court's inherent power to enter the confession because the relief afforded in the confession exceeded the relief requested in the complaint. He says, "in this case the PSA is the 'complaint' for purposes of RCW 4.60.010." But he cites no authority for either assertion; nor have we found any. Philip does cite Leslie, which holds that "[t]o the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void." 112 Wn.2d at 618. Leslie, however, is inapposite to this case because a default judgment is not the same as a confessed judgment.

We conclude that the trial court had the inherent authority to enter Philip's confession. The confession is not void. Accordingly, the trial court did not err in denying his motion to vacate for voidness.

*CR 60(b)(11) – Extraordinary Circumstances*

CR 60(b)(11) allows for relief from judgment for "[a]ny other reason justifying relief from the operation of the judgment." We review the trial court's ruling on a CR 60(b)(11) motion for an abuse of discretion. In re Marriage of Shoemaker, 128 Wn.2d 116, 120-21, 904 P.2d 1150 (1995). A trial court abuses its discretion when its "decision is manifestly unreasonable or based on untenable grounds or untenable reasons." In re Marriage of Katare, 175 Wn.2d

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<sup>5</sup> RCW 4.60.010 states, "On the confession of the defendant, with the assent of the plaintiff or his or her attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint."

23, 35, 283 P.3d 546 (2012) (citing In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)).

“CR 60(b)(11) applies only in extraordinary circumstances relating to irregularities which are extraneous to the action of the court or go to the question of the regularity of its proceedings.” Barr v. MacGugan, 119 Wn. App. 43, 48, 78 P.3d 660 (2003) (citing In re Marriage of Flannagan, 42 Wn. App. 214, 221, 709 P.2d 1247 (1985)). But here, Philip failed to present extraordinary circumstances to vacate his confessed judgment. Thus, the trial court did not abuse its discretion in denying his motion to vacate.<sup>6</sup>

#### Lisa’s Appeal

Lisa contends that the trial court exceeded its authority and violated her rights to due process. Again, we disagree.

#### *Exercise of Equitable Authority*

Lisa argues that affirmative relief is not allowed under CR 60(b) and, therefore, the court erred by changing the terms of the confession “in the guise of interpreting it.”

“Sitting in equity, a trial court enjoys broad discretion to grant relief to parties in a dissolution based on what it considers to be ‘just and equitable.’” In re Marriage of Farmer, 172 Wn.2d 616, 624, 259 P.3d 256 (2011) (quoting RCW 26.09.080). We review a trial court’s equitable remedies for abuse of

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<sup>6</sup> Philip suggests that the confession is “[ ]voidable” because Lisa’s counsel became a witness in the proceedings by notarizing the confession. Because he raises this argument for the first time on appeal, we need not address it. See RAP 2.5(a); Roberson v. Perez, 156 Wn.2d 33, 39, 123 P.3d 844 (2005).



discretion. Farmer, 172 Wn.2d at 624. It is not an abuse of discretion to modify a property distribution where the modification clarifies or effectuates the intent of the parties. See In re Marriage of Knies, 96 Wn. App. 243, 248, 979 P.2d 482 (1999) (affirming modification of a property settlement where husband's job-related disability status allowed him to circumvent the property settlement agreement and eliminated possibility that the wife would obtain her one-half interest in his pension).

Here, the trial court clearly invoked its equitable authority to interpret the confession. And that is exactly what it did in this case, nothing more. In the confession, Philip stated, (1) "This confession is for an amount due which arose due to the fact that I owe Lisa J. Holroyd past due child support in the amount of \$12,000.00, plus pre-judgment interest on it of \$540.00"; (2) "Pursuant to the attached PSA I also owe Lisa J. Holroyd \$50,000.00 which I cannot and will not pay by the October 8, 2011 due date consequently I authorize judgment now for it"; (3) "I agree that all my interests . . . in the [Shell Station] mentioned in the PSA are immediately transferred to Lisa J. Holroyd who shall manage them and/or sell them as is determined by her to be in the best interests of our children"; and (4) "I also agree that Lisa J. Holroyd is entitled to an attorneys fee award of \$5,000.00, and a costs award of \$500 based on my inaction to date and her need to obtain counsel to effectuate the attached PSA." Based on these provisions, the trial court reasonably determined that the intent of Philip's confession and statement was to fulfill his financial obligations to his children and

to Lisa. To that end, the trial court ordered Lisa to use the proceeds of the Shell Station sale to offset Philip's remaining debts.

Because the trial court did not change the terms of the confession as Lisa claims, we conclude that there was no abuse of discretion.

*Due Process Claim*

Lisa claims that her constitutional right to due process was violated because the trial court denied her the opportunity to respond to Philip's motion for reconsideration. We see no error.

Due process requires "that a party receive proper notice of proceedings and an opportunity to present his [or her] position before a competent tribunal." Parker v. United Airlines, Inc., 32 Wn. App. 722, 728, 649 P.2d 181 (1982) (citing State v. Ralph Williams' N. W. Chrysler Plymouth, Inc., 87 Wn.2d 327, 335, 553 P.2d 442 (1976)). "No response to a motion for reconsideration shall be filed unless requested by the court" under King County Superior Court Local Civil Rules (KCLCR), and "[n]o motion for reconsideration will be granted without such a request." KCLCR 59(b). Here, the trial court *denied* the motion for reconsideration so a response from Lisa was unnecessary. There was no due process violation here.<sup>7</sup>

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<sup>7</sup> In the order denying reconsideration, the trial court granted Philip's request for a hearing to offset Lisa's sales proceeds against his debts. This does not change our conclusion for two reasons. First, such a hearing was necessary because there were no "closing documents" in the record at that time detailing the amount of Lisa's proceeds. This information was necessary to provide Philip the offset that the trial court awarded. Second, Lisa failed to move for reconsideration of the equitable relief, even though she disagreed with the court's ruling.

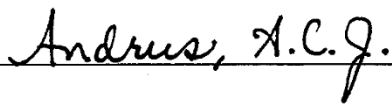

*Request for Attorney Fees on Appeal*

We deny Lisa's request for attorney fees and costs on appeal under RAP 18.1 and RCW 4.84.330, because she is no more of a prevailing party under the facts of this case than is Philip.

Accordingly, we affirm the trial court's orders and deny Lisa's request for attorney fees.

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WE CONCUR:

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