

COURT OF APPEALS  
DIVISION II

2014 APR 29 PM 1:21

STATE OF WASHINGTON

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No. 45657-5-II

COURT OF APPEALS, DIVISION II,  
OF THE STATE OF WASHINGTON

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LUCINDA B. CARPENTER,  
Respondent,

v.

BRADLEY A. CARPENTER,  
Appellant.

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BRIEF OF APPELLANT

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## **ASSIGNMENTS OF ERROR**

1. The trial court erred by entering a Decree of Legal Separation and Findings of Fact and Conclusions of Law, by default, without any notice to the Appellant.
2. The trial court erred by entering Findings of Fact that are not supported by any evidence whatsoever.  
Findings of Fact 2.8, 2.9, 2.10, 2.11.
3. The trial court erred by failing to value the marital assets and liabilities.  
Findings of Fact 2.8, 2.10.
4. The trial court erred by assigning values to some of the property, debts and liabilities based on no evidence.
5. The trial court erred by granting relief far in excess of the amount prayed for in the Petition for Legal Separation.
6. The trial court erred by denying Bradley's motion to vacate the default orders.
7. The trial court erred by awarding Lucinda attorney's fees.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- I. Should Bradley have been given notice that Lucinda was seeking an Order of Default?  
Assignment of Error 1.
- II. Did the trial court err by declining to vacate the Decree of Legal Separation and Findings of Fact and Conclusions of Law?  
Assignment of Error 6.
- III. Did the trial court err by granting relief that far exceeds what was prayed for in the Petition for Legal Separation?  
Assignment of Error 5.

V. Did the trial court err by dividing property that was not valued?

Assignment of Error 3.

VI. Did the trial court err by valuing some of the debts based on no evidence?

Assignment of Error 4.

VII. Did the trial court err by awarding Lucinda attorney's fees?

Assignment of Error 7.

VII. Should Bradley be awarded his attorney's fees for bringing this appeal?

## STATEMENT OF THE CASE

A decree of legal separation entered by default underlies this appeal.

Appellant Bradley A. Carpenter is the respondent to a petition for legal separation filed by his wife on June 13, 2013. CP 20 – 22.

Respondent Lucinda B. Carpenter is the petitioner in the legal separation proceeding at issue in this appeal. CP 20 – 22.

Lucinda and Bradley<sup>1</sup> were married on March 7, 1992. CP 21; VRP (Nov. 15, 2013) at 4. Lucinda filed a petition for legal separation on June 13, 2013 under Pierce County Superior Court cause number 13-3-02263-9. CP 20 – 22; VRP (Nov. 15, 2013) at 5.

In the petition, Lucinda pleaded that “the division of property should be determined by the court at a later date.” CP 21 at para. 1.8; VRP (Nov. 15, 2013) at 5.

With similar regard to debts and liabilities, Lucinda pleaded that “the court should make a fair and equitable division of all debts and liabilities” in the petition. CP 21 at para. 1.9. Lucinda did not name any specific items of property, debts or liabilities subject to

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<sup>1</sup> For ease of identification, the parties are referred to herein by their first names. No disrespect whatsoever is intended by so doing.



distribution in the petition, nor did she assign any values to said property, debts or liabilities. CP 20 – 21.

On June 14, 2013, Bradley and Lucinda jointly filed for bankruptcy protection. CP 54.

That same day, June 14, 2013, Bradley executed an Acceptance of Service. CP 25; VRP (Nov. 15, 2013) at 5. Bradley acknowledged acceptance of the Order Assigning Case to Department, Summons and Petition for Legal Separation. CP 25. At paragraph 2, which refers to consent to personal jurisdiction, the document states “does not apply.” CP 25. The Acceptance of Service was filed with the Court on July 16, 2013. CP 25.

At that time, Lucinda was earning between \$9,000 and \$10,500 per month, exclusive of bonuses, and Bradley was earning about \$2,000 per month. VRP (Nov. 15, 2013) at 5.

On July 17, 2013, Lucinda filed a Motion and Declaration for Default. CP 26 – 30. In the motion, she stated under penalty of perjury, “**the other party has appeared by signing the Acceptance of Service, but has failed to respond.”** CP 27 at para. 2.5 (emphasis added); VRP (July 17, 2013).

In presenting the motion in the Ex Parte Department, counsel stated:

We're asking for an order of default. This case was served on the 14<sup>th</sup> of June. I've got the proof of service right here, the acceptance of service, **and there's been no appearance or response**. And we're not trying to enter a final. This is a petition for legal separation, we could, but we're not trying to enter any final at this time.

VRP (July 17, 2013) at 2 (emphasis added). Moreover, Lucinda did not seek the division of the property at that time, and there was no mention of or reference to the bankruptcy proceeding. VRP (July 17, 2013). The Court Commissioner granted Lucinda's motion. CP 31 - 32. Bradley was given no notice of the motion. CP 55; VRP (Nov. 15, 2013) at 6.

On September 25, 2013, the bankruptcy was discharged. CP 55, 63 - 66.

A Decree of Legal Separation and Findings of Fact and Conclusions of Law were subsequently entered by the Court on September 30, 2013 in the Ex Parte Department. CP 42 - 46; 37 - 41; VRP (Sept. 30, 2013).

The following items were specified as community property in the Findings of Fact and Conclusions of Law:

1. 20% ownership in Treos Café;
2. 401(k) account in the name of Bradley Carpenter;
3. Whistler timeshare;
4. Residence at 5611 134<sup>th</sup> Street Ct., Gig Harbor, WA 98332;
5. Wife's 401(k) through Allstate with an account number ending in 753;
6. 2011 Jeep Cherokee;
7. Two (2) Havanese dogs

CP 38 (Finding of Fact 2.8).

The Findings of Fact and Conclusions of Law also specify the following community liabilities:

1. Any obligations related to Treos Café or Forza Coffee to the extent said obligation survives bankruptcy;
2. Chase Bank in the amount of approximately \$269,000.00;
3. OBEE Credit Union in the amount of approximately \$15,000;
4. Key Bank account number ending in 8731, balance approximately \$140,000.00;
5. Bank of America in the amount of approximately \$37,000.00.

CP 38 – 39 (Finding of Fact 2.10).

In the decree of legal separation, Bradley was awarded the following property:

1. 20% ownership in Treos Café;
2. 401(k) accounts in the name of Bradley Carpenter;
3. Whistler timeshare;
4. 2005 Acura vehicle;
5. The parties' dining room set;
6. All of the furniture and contents of his office and residence;

7. All furniture acquired by husband prior to marriage;
8. His personal clothing and jewelry;
9. All other personal property in his possession except that expressly awarded to wife; and,
10. All bank accounts in his name.

CP 43 at paragraph 3.2.

In the Decree of Legal Separation, Lucinda was awarded the following property:

1. Residence at 5611 134th Street, Ct., Gig Harbor, Washington 98332, subject to the mortgage obligation to Chase awarded to wife, as more particularly described on exhibit "A" attached hereto and incorporated herein by this reference;
2. Wife's 401(k) through Allstate with an account number ending in 753;
3. 2011 Jeep Cherokee;
4. Two (2), Havanese dogs;
5. All household goods, furnishings and personal property in her possession except those expressly awarded to Husband;
6. All bank accounts in her name.

CP 43 at paragraph 3.3. No values were assigned to any of these items of property. CP 43 at paragraphs 3.2 and 3.3.

In the decree of legal separation, Bradley was awarded the following liabilities:

1. Any obligations related to the operation of Treos Café or Forza Coffee,
2. Key Bank account number ending in 8731, with an approximate balance of \$140,000.00;
3. OBEE Credit Union in the amount of \$15,000.00;

4. All other debts incurred by him at any time, whether before marriage, during marriage, or after separation.

Unless otherwise provided herein, the Husband shall pay all liabilities incurred by him since the date of separation.

CP 43 – 44 at paragraph 3.4.

In the Decree of Legal Separation, Lucinda was awarded the following liabilities:

1. Mortgage with Chase Bank in the amount of approximately \$269,000.00;
2. Bank of America account in the amount of approximately \$37,000.00;
3. All other debts incurred by her at any time, whether before marriage, during marriage, or after separation.

Unless otherwise provided herein, the Wife shall pay all liabilities incurred by her since the date of separation.

CP 44 at paragraph 3.5.

On the same date the Decree of Legal Separation and Findings of Fact and Conclusions of Law were entered by the Court (September 30, 2013), counsel for Bradley entered a Notice of Appearance on his behalf. CP 36.

On October 24, 2013, Bradley filed a motion to vacate the final legal separation orders that had been entered by the Court on September 30, 2013. CP 47 – 52.

In his motion to vacate the final orders, Bradley relied on Civil Rules 60(b)(1), 60(b)(11) and 54. CP 47 – 52.

Oral argument on Bradley's motion to vacate the final orders was heard on November 15, 2013. VRP (Nov. 15, 2013).

At the hearing, Bradley's counsel argued:

Rule 60(b)(11) says, 'The Court may vacate final orders for any other reason justifying relief.' And, Your Honor, this isn't just a court of law, it's a court of equity and a court of justice, and the result that would occur from those final documents would be unfair and inequitable.

VRP (Nov. 15, 2013) at 7.

Counsel further argued

I would ask the Court to also consider rule 54(c) which says clearly, 'a judgment or decree entered by default shall not be different in kind from or exceed an amount that prayed for in the demand from justice.'

VRP (Nov. 15, 2013) at 8.

The trial court denied Bradley's motion to vacate the final orders. CP 106 – 107. In addition, the trial court awarded Lucinda awarded attorney's fees in the amount of \$1,732.50 for having to respond to Bradley's motion. CP 106.

Bradley timely filed this appeal. CP 108 – 123.

## **ARGUMENT**

### **I. THE TRIAL COURT ERRED BY DENYING BRADLEY'S MOTION TO VACATE.**

#### **A. STANDARD OF REVIEW**

A trial court's decision on a motion for default judgment is reviewed for abuse of discretion. *Morin v. Burris*, 160 Wn.2d 745, 753, 161 P.3d 956 (2007) (citations omitted). A trial court abuses its discretion when it is exercised on untenable grounds or for untenable reasons. *Braam v. State*, 150 Wn.2d 689, 706, 81 P.3d 851 (2003) ("among other things, discretion is abused when it is based on untenable grounds, such as a misunderstanding of law"). Questions of law are reviewed de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

#### **B. DEFAULT JUDGMENTS ARE NOT FAVORED.**

"It is the policy of the law that controversies be determined on the merits rather than by default." *Dlouhy v. Dlouhy*, 55 Wn.2d 718, 721, 349 P.2d 1073 (1960). Proceedings to vacate default judgments are regarded as equitable; therefore, relief is to be granted according to equitable principles. *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979).

Washington courts disfavor orders and judgments entered by default. *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979). A trial court has wide discretion to vacate orders entered by default. It may do so for good cause or “upon such terms as the court deems just.” CR 55(c)(1); *Seek Sys., Inc. v. Lincoln Moving/Global Van Lines, Inc.*, 63 Wn. App. 266, 271, 818 P.2d 618 (1991). In this case, the trial court erred by failing to exercise its wide discretion to vacate the default orders.

**C. BRADLEY WAS ENTITLED TO NOTICE OF THE MOTION FOR DEFAULT.**

CR 55(a) requires that Bradley should have been given notice of Lucinda’s motion for default.

(3) Notice. **Any party who has appeared in the action for any purpose** shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in rule 55(f)(2)(A).

CR 55(a) (emphasis added).

In Washington, when default orders are entered and a party who is entitled to notice has not been given the requisite notice, that party is entitled to have any such order or judgment set aside as a matter of right. CR 55(a)(3); *Batterman v. Red Lion Hotels*, 106 Wn.



App. 54, 58, 21 P.3d 1174 (2001). A party generally "appears" in an action when the party "answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his appearance." RCW 4.28.210.

Courts in other jurisdictions have similarly held that an acceptance of service constitutes an appearance in an action, requiring that notice be given to the other party prior to seeking an order of default.

In one Colorado case, the defendants' attorney had filed an acceptance of service, but did not timely respond to the complaint. The plaintiff obtained a default judgment against defendants with no notice to the defendants or their counsel. The trial court denied the defendants' CR 60 motion to vacate the default judgment. The Colorado Court of Appeals set the judgment aside, holding that the defendants' acceptance of service constituted an appearance in the proceeding. *Southerlin v. Automotive Electronics Corp.*, 773 P.2d 599 (Colo. Ct. App. 1988) (holding that "any contact with the court which is 'responsive' to the plaintiff's legal action, and which evidences an intent to resist the suit, constitutes an 'appearance,' requiring written notice before a default judgment may be entered.") (citing *Sisneros v.*

*First National Bank*, 689 P.2d 1178 (Colo. Ct. App. 1983); *Biella v. Dep't of Highways*, 652 P.2d 1100 (Colo. Ct. App. 1983), *aff'd*, 672 P.2d 1983)). *See Bradley v. Bradley*, 118 P.3d 984 (Wyo. 2005) (holding that even though wife had not answered complaint, her acceptance of service very likely constituted an appearance, entitling her to notice of default proceeding) (citations omitted); *MROP v. Design-Build-Manage, Inc.*, 45 P.3d 647 (Wyo. 2002); *Arekay Realty Group v. Lievi*, 595 A.2d 1036 (Me. 1991); *City of Philadelphia v. Sulzer's Estate*, 20 A.2d 233, 342 Pa. 37 (Pa. 1941) ("acceptance of service is, of course, equivalent to a general appearance"). *See also* 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kayne, *Federal Practice and Procedure* § 3686 at 54 (1998); 6 C.J.S. *Appearances* §§ 18, 19 (2004); *but see Maddocks v. Maddocks*, 676 A.2d 937 (Me. 1996).

Bradley did not respond to the petition, but he did make an appearance in the proceeding. CP 27 at para. 2.5. Lucinda acknowledged under penalty of perjury that Bradley had "appeared by signing the Acceptance of Service. . ." CP 27 at para. 2.5 (Motion and Declaration for Default).

**1. BRADLEY'S ACCEPTANCE OF SERVICE  
CONSTITUTED AN APPEARANCE IN THIS  
PROCEEDING.**

“At common law, any action on the part of a defendant [or respondent], except to object to the jurisdiction, which recognizes the case as in court, amounts to a general appearance. *Dlouhy v. Dlouhy*, 55 Wn.2d 718, 349 P.2d 1073 (1960), *overruled on other grounds*; *Di Bernardo-Wallace v. Gullo*, 34 Wn. App. 362, 661 P.2d 991 (1983). By signing the Acceptance of Service, Bradley “recognized the case” and entered a general appearance. *Id.*

Although Lucinda’s counsel represented to the Court upon presenting her Motion for Default that Bradley had not appeared or responded (VRP (July 17, 2013) at 2), in her Motion and Declaration for Order of Default, Lucinda acknowledged under penalty of perjury that Bradley “**has appeared** by signing the Acceptance of Service, but has failed to respond.” CP 27 (emphasis added). Bradley had indeed appeared in the proceeding, and he was entitled to notice of the motion for default as a matter of right pursuant to CR 55. Therefore, the trial court erred by denying his motion to vacate. He is entitled to have the default orders set aside as a matter of right.

**D. THE RELIEF GRANTED FAR EXCEEDS THE RELIEF PRAYED FOR IN THE PETITION.**

It is well settled that any relief granted by default cannot exceed or substantially differ from that prayed for in the petition. *See, e.g., Sceva Steel Buildings, Inc. v. Weitz*, 66 Wn.2d 260, 262, 401 P.2d 980 (1965)), *rev. denied*, 85 Wn.2d 1018 (1975); *Columbia Val. Credit Exchange, Inc. v. Lampson*, 12 Wn. App. 952, 954, 533 P.2d 152 (1975).

To the extent a default judgment exceeds the relief prayed for in the petition, that portion of the default judgment is void. *Marriage of Leslie*, 112 Wn.2d 612, 618, 772 P.2d 612 (1989). Granting such relief without notice and an opportunity to be heard denies the defaulting party procedural due process. *Id.* at 617. Bradley was wrongfully denied the opportunity to receive notice and be heard.

**E. THE TRIAL COURT DID NOT VALUE ALL OF THE ASSETS AND LIABILITIES IN THE FINDINGS OF FACT.**

Washington courts have long held that it is impossible to review a trial court's division of assets and liabilities if there are not specific findings as to the value of said property. *Shaffer v. Shaffer*, 43 Wn.2d 629, 631, 262 P.2d 763 (1953); *Wold v. Wold*, 7 Wn. App. 872, 878, 503 P.2d 118 (1972) ("The review of the award of properties cannot be undertaken without knowledge of their value.").

In this case, the parties' community property was listed as follows in the Findings of Fact and Conclusions of Law:

1. 20% ownership in Treos Café;
2. 401(k) account in the name of Bradley Carpenter;
3. Whistler timeshare;
4. Residence at 5611 134<sup>th</sup> Street Ct., Gig Harbor, WA 98332;
5. Wife's 401(k) through Allstate with an account number ending in 753;
6. 2011 Jeep Cherokee;
7. Two (2) Havanese dogs

CP 38 (Finding of Fact 2.8). None of these assets was valued by the trial court.

The community liabilities are listed in the Findings of Fact and Conclusions of Law as follows:

1. Any obligations related to Treos Café or Forza Coffee to the extent said obligation survives bankruptcy;
2. Chase Bank in the amount of approximately \$269,000.00;
3. OBEE Credit Union in the amount of approximately \$15,000;
4. Key Bank account number ending in 8731, balance approximately \$140,000.00;
5. Bank of America in the amount of approximately \$37,000.00.

CP 38 – 39 (Finding of Fact 2.10). There are no findings of fact with regard to the value of the liabilities related to Treos Café or Forza Coffee. CP 37 – 41.

In this case, the trial court approved a property division after making no findings as to the values of the various assets, and only valuing part of the parties' debts. Therefore, on review, it is impossible for this Court to determine whether the overall property division was "just and equitable" as required by RCW 26.09.080.<sup>2</sup> *Shaffer*, 43 Wn.2d at 631; *Wold*, 7 Wn. App. at 878. See also *Marriage of Hadley*, 88 Wn.2d 649, 657, 565 P.2d 790 (1977); *In re the Marriage of Greene*, 97 Wn. App. 708, 712, 986 P.2d 144 (1999).

In addition, "[a] trial court abuses its discretion when it orders a division of property without having knowledge of the value of a substantial part of it." *Wold*, 7 Wn. App. at 878 (quoting 24 AM. JUR. 2D Divorce & Separation § 933 (1966)) (footnote omitted). Here, the trial court had no knowledge of the value of a substantial value of the marital estate it divided in the Decree of Legal Separation. CP 37 - 41.

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<sup>2</sup> In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

The debts related to Treos Café and Forza Café were not valued. CP 37  
- 41. This was a clear abuse of discretion by the trial court.

There are three possible remedies available when a trial court  
omits material findings of fact:

- (1) Remand without reversal, giving the parties an opportunity to file additional arguments after the necessary finding has been supplied;
- (2) Reverse and remand with instructions to the trial judge to make and enter the necessary findings and conclusions and judgment thereon from which either party may appeal; or
- (3) Reverse and remand for a new trial.

*Wold*, 7 Wn. App. at 877.

In this case, the property division should be vacated. This matter should be remanded in order for a record as to property values to be developed. Thereafter, that property can be divided justly and equitably.

**1. THE FINDINGS OF FACT THAT DO INCLUDE  
VALUES ARE NOT SUPPORTED BY  
SUBSTANTIAL EVIDENCE.**

On review, findings of fact are evaluated to determine whether they are supported by substantial evidence in the record. *See, e.g., Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959). When it is clear that such findings of fact are unsupported

by the record, the reviewing court will find that the trial court abused its discretion by entering any unsupported findings. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 583, 220 P.3d 191 (2009) (citing *Mayer v. Sto Industries*, 156 Wn.2d, 677, 684, 132 P.3d 115 (2006)). “Substantial evidence” is “defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.” *McCleary v. State*, 173 Wn.2d 477, 514, 269 P.3d 227 (2012) (citing *Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)).

In this case, with regard to those findings of fact that do assign values to certain of the parties’ debts, there is nothing in the record that substantiates those values other than the parties’ declarations. CP 38 – 39 (Finding of Fact 2.10), CP 34 – 35, CP 53 – 66. This is an insufficient quantum of evidence. The trial court abused its discretion by entering findings unsupported by substantial evidence, and the default orders should be vacated on remand.

**II. THE TRIAL COURT ERRED BY AWARDING LUCINDA ATTORNEY’S FEES SUBSEQUENT TO HEARING BRADLEY’S MOTION TO VACATE.**

At the hearing on Bradley’s motion to vacate, Lucinda was awarded \$1,732.50 as and for attorney fees for having to respond to



Bradley's motion. CP 110 – 111, VRP (Nov. 15, 2013) at 19. Because Bradley was entitled to bring his motion as a matter of right, the trial court erred by denying it. There was therefore no basis for an award of attorney's fees to Lucinda, and it was error.

**III. BRADLEY SHOULD BE AWARDED HIS ATTORNEY'S FEES FOR HAVING TO BRING THIS APPEAL.**

RAP 18.1(a) provides:

Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

RCW 26.09.140 provides:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

Bradley requests an award of attorney's fees for this appeal. His motion to vacate the default orders was denied in error. Because that denial was error, the concomitant award of attorney's fees to Lucinda was also error. In addition, Lucinda earns far more than Bradley earns, and he is also entitled to an award of attorney's fees on that basis.

#### **VIII. CONCLUSION**

By filing an Acceptance of Service, Bradley appeared in the proceeding below sufficient to preclude entry of default orders without prior notice to him. The trial court erred by denying his motion to vacate the default orders on this basis.

The relief in the default orders far exceeds the amount of relief prayed for in the Petition for Legal Separation. The trial court erred by denying Bradley's motion to vacate the default orders on this basis as well.

The vast majority of the property awarded in the Decree of Legal Separation was not valued by the Court. The trial court erred by denying Bradley's motion to vacate the default orders on this basis as well.

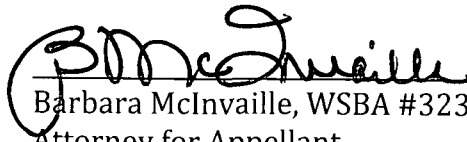
The Findings of Fact that do attribute values to certain of the marital debts are not supported by substantial evidence. The trial court erred by denying Bradley's motion to vacate the default orders on this basis as well.

This Court should remand this matter for a new trial on the issue of property division.

Bradley should also be awarded his attorney's fees for the necessity of bringing this appeal.

DATED this 29<sup>th</sup> day of April, 2014.

RESPECTFULLY SUBMITTED,

  
Barbara McInville, WSBA #32386  
Attorney for Appellant


Declaration of Transmittal

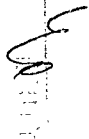
Under penalty of perjury under the laws of the State of Washington I affirm the following to be true:

On this date I transmitted the original Brief of Appellant to the Washington State Court of Appeals, Division II by personal service, and delivered a copy of said document via legal messenger, to the following:

Barton Adams  
Adams & Adams Law PS  
2626 N. Pearl St.  
Tacoma, WA 98407-2499  
bartonladamsl@msn.com

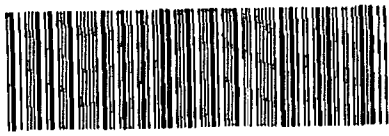
Signed at Tacoma, Washington on this 29<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
Ursula Johnson

FILED  
COURT OF APPEALS  
DIVISION II  
2014 APR 29 PM 1:27  
STATE OF WASHINGTON  
BY 

# **APPENDIX A**

**Findings of Fact and Conclusions of Law**



13-3-02263-9 41304756 FNFCL 10-01-13

FILED  
IN COUNTY CLERK'S OFFICE

A M SEP 30 2013 P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN B TOOK, County Clerk  
BY \_\_\_\_\_ DEPUTY

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE**

In re the Marriage of:

LUCINDA B CARPENTER,

Petitioner,

and

BRADLEY A. CARPENTER,

Respondent.

No. 13-3-02263-9

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
(Marriage)  
(FNFCL)**

**I. Basis for Findings**

The findings are based on an order of default signed dated July 17, 2013.

**II. Findings of Fact**

Upon the basis of the Court records, the Court  *Finds*:

**2.1 Residency of Petitioner**

The Petitioner is a resident of the state of Washington.

**2.2 Notice to the Respondent**

The Respondent was served in the following manner: Respondent accepted service on June 14, 2013. An Acceptance of Service was filed on July 16, 2013.

1 **2.3 Basis of Personal Jurisdiction Over the Respondent**

2 The facts below establish personal jurisdiction over the Respondent.

3 The Respondent is currently residing in Washington.

4 **2.4 Date and Place of Marriage**

5 The parties were married on March 7, 1992 at Pierce County, Washington.

6 **2.5 Status of the Parties**

7 Petitioner and Respondent separated on June 13, 2013.

8 **2.6 Status of Marriage**

9 The Petitioner wishes to be legally separated.

10 **2.7 Separation Contract or Prenuptial Agreement**

11 There is no written separation contract or prenuptial agreement.

12 **2.8 Community Property**

13 The parties have the following real or personal community property:

- 14
- 15 1. 20% ownership in Treos Café;
  - 16 2. 401(k) account in the name of Bradley Carpenter;
  - 17 3. Whistler timeshare;
  - 18 4. Residence at 5611 134th Street Ct , Gig Harbor, Washington 98332;
  - 19 5. Wife's 401(k) through Allstate with an account number ending in 753;
  - 20 6. 2011 Jeep Cherokee;
  - 21 7. Two (2) Havanese dogs

22 **2.9 Separate Property**

23 The Petitioner has no real or personal separate property.

24 The Respondent has no real or personal separate property.

25 **2.10 Community Liabilities**

The parties have incurred the following community liabilities:

- 1 Any obligations related to Treos Café or Forza Coffee to the extent said obligation survive bankruptcy;

2. Chase Bank in the amount of approximately \$269,000.00;
3. OBEE Credit Union in the amount of approximately \$15,000.00;
4. Key Bank account number ending in 8731, balance approximately \$140,000.00;
5. Bank of America in the amount of approximately \$37,000 00.

**2.11 Separate Liabilities**

The Petitioner has no known separate liabilities.

The Respondent has no known separate liabilities.

**2.12 Maintenance**

Maintenance was not requested.

**2.13 Continuing Restraining Order**

Does not apply.

**2.14 Protection Order**

Does not apply.

**2.15 Fees and Costs**

There is no award of fees or costs.

**2.16 Pregnancy**

Neither spouse is pregnant.

**2.17 Dependent Children**

The parties have no dependent children of this marriage.

**2.18 Jurisdiction Over the Children**

Does not apply because there are no dependent children.

**2.19 Parenting Plan**

Does not apply.



1 **2.20 Child Support**

2 Does not apply.

3 **2.21 Other**

4 **III. Conclusions of Law**

5 The Court makes the following conclusions of law from the foregoing findings  
6 of fact:

7 **3.1 Jurisdiction**

8 The Court has jurisdiction to enter a decree in this matter.

9 **3.2 Granting a Decree**

10 The parties should be granted a decree of legal separation.

11 **3.3 Pregnancy**

12 Does not apply.

13 **3.4 Disposition**

14 The Court should determine the marital status of the parties, make provision for  
15 a parenting plan for any minor children of the marriage, make provision for the  
16 support of any minor child of the marriage entitled to support, consider or  
17 approve provision for maintenance of either spouse, make provision for the  
18 disposition of property and liabilities of the parties, make provision for the  
19 allocation of the children as federal tax exemptions, make provision for any  
necessary continuing restraining orders, and make provision for the change of  
name of any party. The distribution of property and liabilities as set forth in the  
decree is fair and equitable.

20 **3.5 Continuing Restraining Order**

21 Does not apply.

22 **3.6 Protection Order**

23 Does not apply.

24 **3.7 Attorney Fees and Costs**

25 Does not apply.

1 3.8 Other

2

3 Dated: 9-30-13

  
\_\_\_\_\_  
Judge/Commissioner

4

5

6

7 Presented by:

  
\_\_\_\_\_  
BART L. ADAMS, WSBA #11297

9 Attorney for Petitioner

10   
11

FILED  
IN COUNTY CLERK'S OFFICE

A.M. **SEP 30 2013** P.M.

PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk

BY \_\_\_\_\_ DEPUTY

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