97151-0

In the Court of Appeals of the State of Washington
Division Three

PETITION FOR REVIEW TO THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Marriage of

PHILLIP EUGENE JONES

Respondent

and

SHARON JONES

Appellant

APPEAL NO. 35309-5-III

FILED APRIL 2, 2019

Gary R Stenzel
WSBA #16974
Attorney for the Appellant/Petitioner
1304 W. College Ave. LL
Spokane, WA 99201
Stenz2193@comcast.net
509-327-2000
Fax 509-327-5151

Table of Contents

Table of Cases

Washington Supreme Court Cases

Washington Court of Appeals

Unpublished cases

Petition for Review to the Supreme Court of Washington From the Court of Appeals, Division III

Facts

The parties in this matter were married in June 1978, and separated November 2008, for a 30+ year marriage with children. CP 1-7. During the marriage, Mr. Jones went to medical school and Ms. Jones worked as a nurse. CP 50-57, 179-201. The husband became a well-recognized cardiologist of some repute and the wife stayed at home to take care of their two boys, who were either 18 or over that age at the time of the divorce in 2010. Id. After having their two children and quitting her job, she experienced some anxiety and depression. CP 172-178. Ms. Jones started seeing a psychiatrist in Spokane named Dr. Bot in 2007 for her psychiatric symptoms. CP 172-201. After the decree was entered in 2010, her psychiatrist indicated that she was being treated for a mood disorder, insomnia, depression, anxiety and some suicide ideation. CP 172-178. There was no evidence that Ms. Jones could not work before the decree was entered. At the time of the divorce Dr. Jones was working in Spokane.

Historically, at the time of the Decree the husband was earning about $36,000 a month here in Spokane, or $450,000.00. CP 50-57 & 216-218. However, that still was a great deal of income compared to Ms. Jones' income, even at the time of the hearing. CP 20-24. This disparity was also very important since Ms. Jones had raised their two boys virtually by herself, as Dr. Jones was very busy in his practice.

After the divorce Petition was filed, and in settlement of the matter, exclusive of some parenting issues, both parties receiving over 1 million dollars in property, and it included 6 years of maintenance for the wife at $4,500.00 a month and $1,400.00 in child support for Ms. Jones, (since their 18-year-old was still in high school for several months). CP 8-12. The maintenance order also automatically increased to $5,750.00 a month for 5 years after their youngest son graduated from high school. Id.

The parties' decree was drafted by the husband's counsel, and also included a provision that the maintenance was "modifiable". Id. This clause states, "*The obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance, and is modifiable.*" (Emphasis added); Id.

The reason for this "modifiable" reservation, according to Ms. Jones, was that she agreed to this settlement because she felt she could go back to work as a nurse. CP 179-201. The maintenance therefore was to help her find a good job as a nurse to supplement her income. Id.

An important issue in the case was that Ms. Jones did have some psychiatric issues, however, she had never been diagnosed as not being able to work. Nor had she been able to obtain Social Security benefits. In fact, she had been turned down for those benefits.

As for Dr. Jones, after the decree was entered he moved to Florida with his new wife and his income doubled to between $700,000.00 and $1,000,000.00 a year (RP8-9 & 14-15 and CP 50-57 & 216-218). While

Dr. Jones' was, in Florida earning a much better almost doubled income living, and after the settlement, Ms. Jones started battling her depression more and more. CP 158-178. She continued to see her psychiatrist Dr. Bot, and decided to seek additional help from the Social Security Department through their job services program. She did this to try and get help to go back to work and with the entry of their divorce decree, and the reality of the loss of her family, she was becoming increasingly ill. CP 158-178.

As part of her attempt to seek the help of the Social Security Office, Ms. Jones also filed for the social security insurance benefits. Id. By way of consultation with her psychiatrist, he indicated that her depression was so severe that she could not work. See Dr. Bot's letter. CP 158-178. At no time during the pendency of her divorce was there ever any finding that she could not work because of her psychiatric problems. In fact, her returning to work was part of the reason for this shorter than usual maintenance agreement was signed. Also, the receipt of social security insurance benefits did not preclude Ms. Jones from working but was an added benefit. At the same time, for her to receive those benefits she had to see Dr. Bot, her psychiatrist for evaluations.

It was the Social Security evaluations by Dr. Bot, for the social security department that led he and Ms. Jones to the conclusion that she could not work. That her anxiety, depression and suicide issues precluded her from finding a job. See letter opinion by Dr. Bot CP 158-178. Since the goal of being able to go back to work was now impossible, this led to

her filing of the petition to keep the maintenance going since she could not work, something she had hoped would come about after 5-6 years of maintenance, and Dr. Jones' practice was providing him with almost double his Spokane income.

The maintenance matter was set on the Child Support Modification docket in Spokane County Superior Court by local rule. LSPR 9.04 (b)(6). By that rule these matters are heard on affidavit and argument only, and are heard by a Court Commissioner. At the modification hearing, Ms. Jones counsel addressed the issues of her continued need for maintenance, which they felt were the appropriate reasons for the reservation of that issue, along with the fact that Dr. Jones' increased his income. RP 5-13 & 27-33. Ms. Jones argued that the current severity of her disability prevented her from reaching her goal of working as a nurse. RP 28-30 & CP 172-178.

Although the standard of living during her long-term marriage with Dr. Jones was very high ($37,000 a month), Dr. Jones had doubled his income, the Social Security payments were her only source of income, and Ms. Jones had substantial evidence that she could not work, the Commissioner denied her petition. She did that, stating that Dr. Jones new income in Florida was not at issue, and because there was allegedly no change in circumstances that was not contemplated before the decree was entered. She based this on the fact that Ms. Jones had mental health issues before the decree was entered and therefore, her not working and the

severity of her psychiatric problems to the extent that she would be unable to work, were "contemplated" by the parties. RP 33-35. That her obtaining a decision that she was unable to work from the Social Security Disability department, along with Dr. Bot's declaration (which was not refuted by any other expert about her inability to work), was not a change in circumstances that was not expected. Id. However, as was indicated, Dr. Jones presented no evidence that the parties knew that Ms. Jones would ultimately succumb to depression and other problems and be completely unable to work after the decree was entered. The Commissioner's conclusion that Ms. Jones and everyone else knew she had some psychiatric problems, therefore, the severity of her problems were contemplated before the decree was entered, was never support by anything but conjecture by the Commissioner. However, again the ex-husband never once had an expert there to refute her claim that the severity of her problem was known before the decree was entered, and they had no one to discount what Dr. Bot testified about, that she became increasingly sicker and that she was now (post decree) completely unable to work. This was completely disregarded by the Commissioner. See e.g. See RP 33-39.

Ms. Jones appealed the Commissioner's ruling since there was no evidence to support her decision that all knew she eventually would not be able to work. The Commissioner was basically saying that It was totally contemplated that Ms. Jones would be this ill after the decree was entered to not be able to work. Basically the Commissioner substituted her opinion

over Dr. Bot, a well-known psychiatrist who said, at this time her psychiatric problems were so severe that she could not work. She ordered the dismissal of her Petition even though Ms. Jones had never applied for SS benefits before the decree was entered, she had never been found to be so disabled that she could not work by Dr. Bot her psychiatrist, and she had warned her ex-husband that she might need to modify the maintenance if she "absolutely" could not work, according to her expert Dr. Bot. CP 172-178.

The Petitioner/Appellant has filed this appeal because of the Commissioner's dismissal of her request to modify the maintenance under the decree. CP 219-224. What was contemplated in the reservation was the fact that Ms. Jones would be employed and no longer need maintenance, even Dr. Jones' counsel agreed with that analysis. See RP 34-37 & CP 179-20. The Social Security findings showed that she was severely disabled, post decree. She needed help financially to try and maintain the kind of life style they enjoyed and they worked for all those years. All of the factors that are need to allow a post decree modification of the Appellant's maintenance payment were there, but were ignored and dismissed.

The ruling by the Appeals Court is in conflict with cases ruled on by the Supreme Court & other Appeals Courts and Adresses a broder Public Policy issue about mental health, exacerbation, and inability to work.

a. Supreme and Appeals Court rulings on maintenance modifications seem in conflict with this ruling by the Appeals Court when it upheld the ruling by the Superior Court Commissioner that Dr. Jones' income was not relevant to the issue of a "changed circumstances". They quoted the Commissioner when she said that she was not considering Dr. Jones' new Florida income, even though it went from $450,000.00 (Spokane) to between $700,000 and 1 million dollars a year, after he was divorced. The Supreme Court has ruled that the definition of a "change in circumstances" refers to the obligor spouse's financial ability to pay while accounting for the other spouse's necessities, when considering the disadvantaged spouse's need. See *Bartow v. Bartow*, at 12 Wash.2d 408, 121 P.2d 962 (1942); See also *In re Marriage of Spreen*, 107 Wn. App. 341, 346, 28 P.3d 769 (2001). The Appeals Court seemed to imply in its ruling, that there was nothing inappropriate in the Commissioner's ruling when they said, "*The commissioner rejected Sharon's reliance on Phil's increased income following the divorce and his marriage and property acquisitions, stating that without a substantial change of circumstances, 'The fact that Dr. Jones has remarried, has increased his assets post-divorce, is not relevant at all to this case.'" (See p. 5 of ruling).* This comment by the Court of Appeals seemed to indicate that the commissioner's

failure to use one-half of the required formula for determining a change in circumstances was appropriate. At the very least the Court should have indicated, that it was wrong for the Commissioner to say that she felt the ex-husband's one million dollars pay for one year was not relevant.

b. It could be argued that the Appeals Court dealt with the issue of Dr. Jones' increased income when they cited the *Gordon* case at 44 Wn.2d 222, 266 P.2d 786 (1954), however, that case was used by the court to try and say that Ms. Jones' request for maintenance was intended to share in Dr. Jones' prosperity. However, given the length of their marriage, 30 years, and that Ms. Jones quit her nursing career to take care of their kids to help him become a cardiac doctor, belies this suggestion. And there was also no argument or suggestion that she wished more maintenance because of that attitude. Unlike this case where Ms. Jones was found to not be able to work, Ms. Gordon did not show any need for an increase in maintenance, since her financial problems were largely due to the "shrinking" value of the dollar. *Id.* Further, the trial court did not find that Ms. Jones' increase in the property award was the basis for the denial of her Petition, her Petition was denied because the Commissioner felt that her psychiatric condition was known before their divorce, and should have been dealt with before the decree was signed.

c. There was no question that Ms. Jones met her burden to show that Dr. Jones could afford an increase in maintenance, given the doubling, if not more, of his income. It was inappropriate for both the commissioner and the Appeals Court to seemingly ignore Dr. Jones' very high increase in income as the first prong of a substantial change in circumstances. Again, there was little to no substantive evidence that Ms. Jones wanted to continue her maintenance because of her greed or desire to benefit from his increased income. There may have been argument by his attorney to that affect, however, had Ms. Jones not been found to be unable to work by the Social Security department, she would not have, and could not have filed this petition for modification.

d. The Court of Appeals and the commissioner seemed to misapply the Supreme Court ruling in the case of *Lambert v. Lambert* at 66 Wn,2d 503, 403 P.2d 664 (1965), when it ruled that Ms. Jones did not meet the basic test of a "substantial change in circumstances" that was "not contemplated" at the time of the divorce. The Appeals Court indicated that since she said in her Social Security Disability application, filed after the divorce, that the "onset" of her disability was in 1996, that the issue of her ability to work was something that she could have and should have dealt with before the entry of the decree. However, the Superior Court Commissioner confirmed that although she filed for social security disability about a week after

the decree, she was not found to be totally disabled until over two years later. Thus, this was not just an immediate thing; she had gone to her psychiatrist from before the divorce was final to over two years later and it was not until 2012, or 16+ years later she was found to not be able to work. There was absolutely no finding by any agency, hospital, doctor or psychologist that she could not work because of the continuation of her mental health problems before the decree was entered. Therefore, to find that this was something contemplated before the decree was entered is without any proof and seemed to be totally based on conjecture, or misapplication of the law.

e. The determination of whether there is a substantial change in circumstances in a maintenance modification case that the parties did not contemplate at the time of the dissolution decree is a well-accepted rule. *Wagner v. Wagner*, 95 Wn.2d 94, 98, 621 P.2d 1279 (1980); *In re Marriage of Spreen*, 107 Wn.App. 341, 346, 28 P.3d 769 (2001); *In re Marriage of Scanlon*, 109 Wn.App. 167, 173, 34 P.3d 877 (2001). The appellant is not questioning the use of this explanation of the law; however, again, there was little to no evidence showing that Ms. Jones' mental health condition, before the entry of the decree was such that she could not work, so that she could even begin to address that issue with the court before the decree was entered. It was simply presumed by the commissioner

and the Court of Appeals that the issue of the severity of Ms. Jones' mental health problems rose to that level before the decree was entered.

f. In addition to all this analysis, neither the Court of Appeals or the commissioner dealt with the fact that Dr. Jones' attorney drafted the final papers and included in the maintenance order that it could "be modified"; which Ms. Jones indicated was to see if she could work before maintenance expired. The long-time rule in drafting decrees is that the decree's language will be read against the drafter, that being Dr. Jones. Therefore, if the modifiable clause is even to make sense it must be read against Dr. Jones as being placed there in case Ms. Jones could not work. See e.g. *Holaday v. Merceri*, 49 Wn.App. 321, 322-23, 325, 742 P.2d 127 (1987).

g. Although not the same exact issues in this case, the court in the case of *Spreen v. Spreen*, 107 Wn.App. 341, 28 P.3d 769, (Div. 2 2001) found that limiting the maintenance for an ex-spouse in a modification of maintenance was inappropriate where they did this because of the availability of public funding. The *Spreen* case was also applicable to this case because the trial court found that although Ms. Spreen had depression and bipolar problems before the decree was entered, those symptoms exacerbated to the point where it affected her ability to work, and found that that was a

substantial change in circumstances. So also in this case, the Commissioner found that the finding by Social Security that she was disabled and could not work was a change in circumstances, but contradicted herself by then saying that because her problems started in the 90's, that Ms. Jones should have done something about that issue before the final papers were entered. The problem then becomes a public policy issue and that is if we let that kind of analysis continue, no-one such as Ms. Spreen or Ms. Jones would ever qualify for a modification of maintenance when their psychiatric symptomology worsens. Many people suffer from mental illnesses; but not all those illnesses become so exacerbated with time so that the people cannot work. What the commissioner and the Court of Appeals are saying by this ruling is that even though it was clear that a modification was reserved by the ex-husband, and that Ms. Jones had never been found unable to work due to her emotional problems, that that had no bearing on whether the new finding that she could not work was a substantial change in circumstances allowing a modification of the maintenance. This is especially telling where there was a 30-year marriage and Ms. Jones became a stay at home mom to helped Dr. Jones get to where he was professionally and financially. See e.g. *In re Marriage of Washburn,* 101 Wash.2d 168, 178, 677 P.2d 152 (1984); and *DeRuwe v. DeRuwe*, 72 Wash.2d 404, 408, 433

P.2d 209 (1967); See also the unpublished case of *Janes v. Janes* at #63523-9-1 (2010).

h. Reading the *Spreen* case it was abundantly clear that that court felt that the onset of a medical problem is not the test to see if there is a change in circumstances after the decree, when it deals with the increased severity of such emotional problems. Mr. and Mrs. Jones did not go to trial, and Dr. Bot's opinion came long after the divorce was settled. At the time of the settlement Ms. and Dr. Jones thought that her disability was not bad enough to prevent her from working; that is why she settled on a shorter maintenance package than the case of *Washburn* may have afforded her. She vehemently disputes that she got more money to supplement her maintenance shortfall. Even so the Court of Appeals assumed that that was the reason for the extra money she received. This cannot be presumed since there are many cases where maintenance is long term and a disproportionate distribution is ordered. See e.g. *Spreen*.

i. Again, the commissioner held that because Ms. Jones simply had emotional problems at the time of settlement, that she had to have contemplated she might not be able to work because of those problems. This was a substantial departure from the *Lambert* test in that it virtually makes the test impossible if the dependent spouse had anything even remotely close to the problem that

caused them to not be able to work. It is as if, for example, they interpreted that test to mean that if say a trucker had a cut on their right tow, and after many years of trips kept getting cut and eventually became so infected that the toe was removed, and they could not drive truck again, that the loss of the toe was contemplated and would preclude modification. This would also preclude anyone with an emotional or mental health disorder from seeking a future modification if it was even remotely related to an emotional problem. From a public policy standpoint, this way of implementing the *Lambert* ruling seems to enter the realm of speculation, something that other appeals courts have said is inappropriate in the context of determining whether something is contemplated or not. See *In re Marriage of Drlik*, 121 Wn.App. 269, 87 P.3d 1192, (2004). Being upset and seeking counseling is one thing, taking anti-depressants because you are suicidal is another. See e.g. *Heuchan v. Heuchan*, 38 Wn.2d 207, 228 P.2d 470 (1951). No one, not even Ms. Jones could say that just because she had some depression during the interlocutory period of her divorce, that the newest finding after their decree that her condition exacerbated so much that she could not work, was contemplated. See e.g. *Drlik*, supra. This ruling seems to completely do away with such rulings as in the *Heuchan* case, and makes it so hard to file a modification if it is psychiatrically

related it becomes almost like an insurance claim investigation and also moves into the realm of treating emotional problems differently than physical problems. The Appeals Court ruling in this case seriously affect public policy issues for those ex-spouses who suffer from emotional disorders that by their nature may exacerbate over time, expanding their need for financial assistance. At least Ms. Jones should be able to go to court and present her needs and have the court rule on her maintenance request, and not simply dismiss her claim for other reasons that ironically happened after their decree was entered. We respectfully request that this court accept review of this matter.

Dated 5-2-19

Gary R Stenzel, WSBA #16974
1304 W College Ave LL
Spokane, WA 99201
Stenz2193@comcast.net

Declaration of Mailing

I Gary R Stenzel hereby state that on the date of 5-3-19 I did place in the US Post Office Box a true and correct copy of this Petition for Review to David Crouse, attorney at law at the address as follows:

David Crouse
Attorney at Law
422 W Riverside Ave #920
Spokane, WA 99201

I sign this under penalty of perjury under the laws of the State of Washington on this date of 5-3-19 at Spokane.

Gray R Stenzel, WSBA #16974

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

In the Matter of the Marriage of PHILLIP EUGENE JONES, Respondent, and SHARON LEE HOKE JONES, Appellant.	)	No. 35309-5-III UNPUBLISHED OPINION

SIDDOWAY, J. — Sharon Jones appeals the denial of her motion to modify the maintenance awarded by the 2010 decree dissolving her marriage to Dr. Phillip Jones. The trial court found that she had not established a substantial change of circumstances. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Sharon Jones and Dr. Phillip Jones were married for 30 years before separating in November 2008. Phil[1] is a cardiologist. For a time during their marriage, Sharon worked

[1] Given the common last name, we refer to the parties by their first names for clarity. We intend no disrespect.

as a registered nurse, but she ceased working in 1989. Sharon received treatment for bipolar disorder and depression from David Dunner, M.D. beginning in 1996 and continuing through 2005. She has been treated for her mental health issues by David Bot, M.D. since 2007. Dr. Bot has diagnosed her as suffering from mood disorder, depression, and anxiety.

When the parties divorced in July 2010, Phil was ordered to pay maintenance for five years beginning on August 1, 2010, and to pay child support until their youngest child graduated from high school. The maintenance amount was initially to be $4,600 a month, and child support was another $1,400 a month. Upon the youngest child's high school graduation, the maintenance amount would increase to $5,750 per month through the July 2015 termination of the obligation.

In dividing the marital property in 2010, the court placed no value on the family residence in Cheney, which had been destroyed in a fire, nor did it place a value on real estate in Alaska owned by the couple. According to Phil, that is because neither property had any value. What was left of the family residence was distributed to Phil, who allowed it to be foreclosed. He sold the Alaska property for a $150,000 capital loss. His uncontested characterization of the value of marital assets distributed to the parties by the

2010 decree is that Sharon received $1,533,000 in value and he received $1,018,900 in value.

Six days after the divorce decree was entered, Sharon filed for Social Security disability benefits based on her disabling mental health problems. She alleged an onset date of June 1, 1996. She filed a request for a hearing in March 2011, and her case was heard in January 2012. Benefits were awarded her in February 2012. The order awarding benefits found that Sharon had "not engaged in substantial gainful activity since June 1, 1996," and that she suffered from "migraine headache with vision changes; thyroid disorder; and bipolar disorder." Sealed Clerk's Papers (SCP) at 210. The administrative law judge found that she had not worked as a nurse for 20 years "in part because of her bipolar disorder." SCP at 211. Ms. Jones receives $924 a month in Social Security disability payments.

A couple of weeks before Phil's otherwise-final maintenance payment was due, Sharon petitioned for modification. She alleged the following substantial change of circumstances since entry of the decree:

> I have been found to be disabled by Social Security and only receive a small amount a month. I supported Dr. Jones for more than 30 years. We established a standard of living that I cannot maintain without his financial help. He earns what I have in savings in just 2 years and can afford maintenance.

Clerk's Papers (CP) at 16.

Phil opposed the petition, arguing that while he had an annual base salary of $700,000, he was almost 65 years old and nearing retirement, and it had taken him many years to "even begin to recover" financially from the divorce. CP at 50. Among Phil's circumstances cited by his lawyer were that Sharon received over $500,000 more in assets than Phil in the property distribution, he had paid her more than $345,000 in maintenance over the years, and he had paid the post-secondary education expenses of the parties' two children. Phil argued that despite his employment, his net worth remained lower than Sharon's.

In response to Phil's declaration, Sharon filed a declaration of her own, in which she claimed that at the time the divorce decree was entered, she thought she would be able to return to her prior employment as a nurse. She also stated that the parties had "agreed to reserve maintenance," because Phil was aware of her mental health issues, and the reservation was needed to ensure that she would have the necessary financial resources. CP at 183. She accused Phil of being dishonest about his finances.

At the hearing on the modification request, the court commissioner cited Sharon's petition, in which she identified the substantial change in circumstances as being the finding by the Social Security Administration that she was disabled. The commissioner rejected that as a "new or different set of circumstances," explaining:

> The fact that she was found to be disabled and received an award from Social Security is new and different. But the fact that her situation with her mental health, that wasn't new; that was something that had going on—

> been going on clear back to 2007 that was existing at the time the parties negotiated, settled upon, and/or had an award from Judge Sypolt in 2010. That situation with Ms. Jones' mental health was existing at that point in time.

Report of Proceedings (RP) at 34-35. The commissioner rejected Sharon's reliance on Phil's increased income following the divorce and his marriage and property acquisitions, stating that without a substantial change of circumstances, "The fact that Dr. Jones has remarried, has increased his assets post-divorce, is not relevant at all to this case." RP at 37.

The commissioner denied the request for modification. Sharon appeals.

ANALYSIS

Sharon argues that her inability to work is a substantial change in circumstances not contemplated by the parties at the time the divorce decree was entered.

Maintenance awards can only be modified upon a showing of a substantial change in circumstances not within the parties' contemplation at the time of the dissolution decree. *In re Marriage of Spreen*, 107 Wn. App. 341, 346, 28 P.3d 769 (2001); *see also* RCW 26.09.170(1). The change must have been one "that was not within the contemplation of the parties at the time the decree was entered." *In re Marriage of Ochsner*, 47 Wn. App. 520, 524, 736 P.2d 292 (1987). "The phrase 'change in circumstances' refers to the financial ability of the obligor spouse to pay vis-à-vis the necessities of the other spouse." *Id.* at 524. Regarding the financial ability of the obligor

spouse, "[a] former wife may not obtain additional alimony on the theory that such is in keeping with her former husband's present station in life." *Gordon v. Gordon*, 44 Wn.2d 222, 228, 266 P.2d 786 (1954).

The party petitioning for modification bears the burden of demonstrating the change of circumstances. In determining whether she or he has met this burden, "the basic test, absent the most exceptional circumstances, is: Could and should the facts now relied upon as establishing a change in the circumstances have been presented to the court in the previous hearing?" *Lambert v. Lambert*, 66 Wn.2d 503, 509, 403 P.2d 664 (1965). Determining whether there has been the required change in conditions and circumstances, is a question addressed to, and that rests within, the sound discretion of the trial court. *Gordon*, 44 Wn.2d at 226. "Unless it can be said that the trial court has abused its judicial discretion in this regard, its exercise thereof will not be disturbed." *Id.* at 227.

A substantial change of circumstances can be demonstrated where the expectation at the time of divorce is that the spouse receiving maintenance will become self-supporting during the term of the obligation, and the expectation does not come to pass through no substantial fault of the receiving spouse. *Bowman v. Bowman*, 77 Wn.2d 174, 175, 459 P.2d 787 (1969). At the same time, where it is believed that one spouse will "have a more difficult time adjusting her lifestyle than will [the other]," a trial court may

"choose[ ] a disproportionate division of the property in lieu" of ordering maintenance for an extended period of time. *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997). "The trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property." *Id.* (citing *In re Marriage of Rink*, 18 Wn. App. 549, 552-53, 571 P.2d 210 (1977).

The issue for the commissioner presented by Sharon's primary contention below was whether Sharon demonstrated that the parties and the court expected in 2010 that she would resume working within five years—or whether, as Phil contends, they recognized she was not likely to become self-supporting and for that reason she was awarded $500,000 more in value of the parties' assets.

The record demonstrates that both parties were completely aware of Sharon's mental health issues at the time the divorce decree was entered and were aware that her mood disorder and depression had been debilitating in the past. Sharon's claim that she expected to go back to work as a nurse at the time the decree was entered is not easily reconciled with her application for Social Security disability benefits six days later. It is not easily reconciled with her allegation in the disability benefit proceedings that her disability onset date was June 1, 1996.

Sharon's alternative and inconsistent theory is that she foresaw future financial difficulty and obtained Phil's agreement "to reserve maintenance." CP at 183. Phil

denies the issue was reserved. Sharon's lawyer appears to rely on a handwritten notation on the decree in contending that the issue was reserved, but the notation cannot reasonably be read as reserving the issue or as otherwise circumventing the requirement to show a substantial change of circumstances.[2] Her disputed assertion that "Phil agreed to reserve" is not easily reconciled with the trial court's disproportionate distribution of the marital assets. *Id*. If it was understood that Phil would pay maintenance as long as needed to maintain Sharon's historic standard of living, there would have been no reason for the court to award her $500,000 more in assets than it awarded to Phil.

---

[2] Sharon's lawyer appears to rely on the handwritten language in this, the "Maintenance" provision of the decree:

> The husband shall pay $4,600 maintenance and $1,400 child support until Brandon graduates from high school. At that time child support will end and maintenance shall increase to $5,750 maintenance per month. Maintenance shall be paid semi-monthly. Maintenance shall continue for five years from August 1, 2010. The last payment shall be due July 1, 2015. The first maintenance payment shall be due on August 1, 2010.
>
> The obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance, [illegible]
>
> Payments shall be made:
>
> directly to the other spouse.

CP at 11.

We find no abuse of discretion in the commissioner's determination that Sharon failed to show a substantial change of circumstances. Its order is affirmed.

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

Siddoway, J.

WE CONCUR:

Lawrence-Berrey, C.J.

Korsmo, J.

Renee S. Townsley
Clerk/Administrator

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

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

April 2, 2019

Gary R. Stenzel
Gary R. Stenzel PS
1304 W College Ave
Spokane, WA 99201-2006
stenz2193@comcast.net

David James Crouse
Attorney at Law
422 W Riverside Ave Ste 920
Spokane, WA 99201-0305
dcrouselaw@comcast.net

CASE # 353095
Phillip E. Jones v. Sharon L. H. Jones
SPOKANE COUNTY SUPERIOR COURT No. 083026700

Counsel:

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

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

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be <u>received</u> (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:jab
Enclosure

c: **E-mail**—Hon. Rachelle E. Anderson

OPINION FACT SHEET

Case Name: *Phillip E. Jones v. Sharon L. H. Jones*

Case Number: 35309-5-III

1. TRIAL COURT INFORMATION:

A. SUPERIOR COURT: Spokane County
Judgment/Order being reviewed: Order on Petition for Modification of Maintenance
Judge Signing: Hon. Rachelle E. Anderson
Date Filed: April 17, 2017

B. DISTRICT COURT:
Judgment/Order being reviewed:
Judge Signing:
Date Filed:

2. COURT OF APPEALS INFORMATION:
Disposition* Check only 1

(X)	**Affirmed**	( )	Other
( )	Affirmed as Modified	( )	Reversed and Dismissed
( )	Affirmed in Part/Remanded**	( )	Remanded**
( )	Affirmed/Reversed-in part and Remanded**	( )	Reversed
( )	Affirmed/Vacated in part	( )	Reversed in part
( )	Affirmed in part/Reversed in part	( )	Remanded with Instructions**
( )	Denied (PRP, Motions, Petitions)	( )	Reversed and Remanded**
( )	Dismissed (PRP)	( )	Reversed, Vacated & Remanded**
( )	Granted/Denied in part	( )	Vacated and Remanded**
( )	Granted (PRP, Motions, Petitions)		

* These categories are established by the Supreme Court
** If remanded, is jurisdiction being retained by the Court of Appeals? ( ) YES (X) NO

3. SUPERIOR COURT INFORMATION (IF THIS IS A CRIMINAL CASE, CHECK ONE)

Is further action required by the superior court?
( ) YES
(X) NO

Authoring Judge's Initial

Log Number: U-081
Oral Argument Date:

DO NOT CITE. SEE GR 14.1(a).

Court of Appeals Division III
State of Washington

Opinion Information Sheet

Docket Number: 35309-5
Title of Case: In the Matter of the Marriage of: Phillip Eugene Jones & Sharon Lee Hoke Jones
File Date: 04/02/2019

SOURCE OF APPEAL

Appeal from Spokane Superior Court
Docket No: 08-3-02670-0
Judgment or order under review
Date filed: 04/17/2017
Judge signing: Honorable Rachelle Elizabeth Anderson

JUDGES

Authored by Laurel Siddoway
Concurring: Kevin Korsmo
Robert Lawrence-Berrey

COUNSEL OF RECORD

Counsel for Appellant(s)
Gary R. Stenzel
Gary R. Stenzel PS
1304 W College Ave
Spokane, WA, 99201-2006

Counsel for Respondent(s)
David James Crouse
Attorney at Law
422 W Riverside Ave Ste 920
Spokane, WA, 99201-0305