97151-0

SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE MATTER OF THE MARRIAGE OF

PHILLIP EUGENE JONES
Respondent

V.

SHARON JONES
Appellant

Supreme Court No. 97151
Court of Appeals No. 35309-III

PHILLIP JONES' MEMORANDUM IN OPPOSITION TO PETITION FOR REVIEW

DAVID J. CROUSE
Attorney for Phillip Jones
W. 422 Riverside, Suite 920
Spokane, WA. 99201
(509) 624-5338
WSBA #22978

STATUTES AND RULES

WASHINGTON SUPREME COURT CASES

WASHINGTON APPELLATE COURT CASES

ARGUMENT

There are four factors under RAP 13.4(b) that the Washington Supreme Court should consider when determining whether a Petition for Review of the Supreme Court should be accepted or denied. These factors are: "1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or 2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or 3) If a significant question of law under the Constitution of the State of Washington or the United States is involved; or 4) If the petition involves an issue of substantial interest that should be determined by the Supreme Court. RAP 13.4(b). In essence, as there is no substantial constitutional argument present here, Ms. Jones has the burden of either establishing that Division III's unpublished opinion regarding the parties' maintenance modification in some way conflicts with a decision of the Washington Supreme Court or another Court of Appeals decision or that it is of significant interest. *See* In re Coats, 173 Wn. 2d 123, 132 (2011).

Ms. Jones, through counsel, details at page 7 of her Petition for Review, a set of 10 bullet points, (a)-(j), which she believes necessitates not only review, but ultimately reversal of Division III's ruling in this case. She

seeks a strict application of the facts contained in the cited authority in arguing that the Court of Appeals made the wrong decision in applying the facts of the case at hand. However, the holdings of the cases, as opposed to string-cited facts, show exactly why her Petition should fail and review should not be granted.

As discussed below, case law regarding maintenance modifications is well-established. Counsel argues the *facts* of this case require review from this Court, but Division III's *holding* in this case is exactly in line with half a century of established case law regarding this specific issue. As Counsel's own cited authorities hold, when it comes to modification actions, the Trial Court's findings will not be reversed absent abuse of discretion. *See* Lambert v. Lambert, 66 Wn.2d 503, 508 (1965).

DISCRETION OF THE TRIAL COURT

Modification issues have been heavily litigated in Washington State dating back to the 1950's. *See* Gordon v. Gordon 44 Wn.2d 222 (1954); Hanson v. Hanson, 47 Wn.2d 439 (1955). Both the Washington Supreme Court and the Court of Appeals are replete with case law regarding the subject, and considering the sheer volume of published case law on point at this time, it is hard to see any reason why this Court's review of this specific matter would be beneficial in any way. This is not a matter of significant

legal interest.

RCW 26.09.170 lays the groundwork for maintenance modifications. It states: "Except as otherwise provided in RCW 26.09.070(7), the provisions of any decree respecting maintenance or support *may* be modified . . . upon a showing of substantial change in circumstances." RCW 26.09.170 (*emphasis added*). The inclusion of the word, "may," establishes the Court's discretion in these matters. Moreover, there is very substantial case law that explicitly upholds said discretion in modification matters.

Counsel cites to the 1965 Washington Supreme Court case, Lambert v. Lambert, in his argument, but the holding of Lambert is *directly* opposed to Counsel's current Petition for Review. Lambert holds, "The burden on demonstrating the required change of circumstances, rests upon the parties petitioning for the modification." Lambert v. Lambert, 66 Wn.2d 503, 508 (1965) *citing* Corson v. Corson, 46 Wn.2d 611 (1955). "And, determination of the question whether, under the evidence presented, there has been a substantial and material change in circumstances which will authorize and justify a modification in the alimony and support payments is addressed to, and rests within, the sound judgment and discretion of the trial judge, *whose decision thereupon will not be reversed on appeal absent error or abuse of*

discretion." Id. (emphasis added) *citing* Wages v. Wages, 39 Wn.2d 74 (1951); Gordon v. Gordon 44 Wn.2d 222 (1954); Hanson v. Hanson, 47 Wn.2d 439 (1955).

There is absolutely no dissonance between Division III's unpublished opinion and any Washington case law in existence. Cases explicitly upholding the trial court's discretion in modification actions can be found, not only in Supreme Court cases, but in every division of this state. *See* Lambert, 66 Wn.2d at 508 (*Supra*); *See also* In re Marriage of Maughan, 113 Wn. App. 535, 537 (Div. I 2002) (modifications reviewed for abuse of discretion); In re Marriage of Spreen, 107 Wn. App. 341, 346 (Div. II 2001) (Court will not reverse modification findings absent abuse of discretion); In re Marriage of Belsby, 51 Wn. App. 711, 713 (Div. III 1988) ("whether a substantial change in circumstances has occurred is a factual question discretionary with the judge.")

Counsel's sole complaint appears to rest with Division III's failure to reverse the Trial Court's findings. He argues that Division III inappropriately upheld the trial court, where the trial court failed to find a change of circumstances existed in this case. Yet, as cited by the Court of Appeals in its decision and in the record it reviewed, the trial court appropriately made multiple findings supporting its decision.

The Trial Court found that many of Ms. Jones' cited change of circumstances actually occurred prior to the entry of the decree of dissolution on July 21, 2010 and were not changes in circumstances at all. The record shows that, as a basis for a change of circumstances, Ms. Jones submitted in her petition for modification of maintenance that she is medically unable to work. However, the trial court appropriately found that this was not a change in circumstances as this was her situation in 2010 when the parties divorced and Ms. Jones had not been employed since 1989. There is no abuse of discretion.

The record shows that in her petition to modify maintenance, another of Ms. Jones' stated basis is that she has "been found to be disabled by Social Security and only receive a small amount a month." However, the record shows that on July 27, 2010, 6 days after the decree was entered, Ms. Jones applied for Social Security Disability and that the information provided to Social Security Administration showed that the alleged onset date of her disability was June 1, 1996, and accordingly, she was been found to be disabled from June 1, 1996, long before their divorce. The trial court was entitled to rely on this in determining that this was not a change of circumstance justifying relief. There is no abuse of discretion.

Further, the record shows that Ms. Jones was collecting $924.00 per month in disability while receiving maintenance, a fact not disclosed to Dr. Jones until after the maintenance order expired. This is especially pertinent given that maintenance was based on Ms. Jones having no income. The trial court was entitled to consider her lack of disclosure.

The record shows that at the time of the maintenance hearing, Ms. Jones failed to provide any information as to ongoing medical problems. Her last medical record was from 2015. She also provided no current bank account statements and completely failed to provide any bank account statements for one account. She did not provide any current debt statements. The record shows that Ms. Jones' answers to interrogatories were provided to the trial court for review prior to hearing. The trial court is entitled to consider this lack of current, relevant information in its equitable use of discretion.

Further, the record shows that the totality of maintenance paid by Dr. Jones was in excess of $345,000.00. Additionally, the record shows that there was a substantial disproportionate share of property awarded in the wife's favor. The total net value of assets awarded to Phillip Jones in the decree was $1,018,900.00 while the total net amount awarded to Sharon Jones was $1,533,000.00. This is a very substantial difference, approximately $860,000.00, when the disparate property division was combined with the aforementioned maintenance award. As noted by the Court of Appeals, the trial court was entitled to consider the equities of this disproportionate division.

Additionally, the record shows both of the parties' children went to

college and Phillip Jones exclusively paid their tuition and college-related expenses (books, housing, meals, fees). Dr. Jones' estimate based on his records was that $214,000.00 tuition was paid by him for their college education, with substantial additional assistance for other housing, food, and personal expenses over the 6years of their college education. At the time of the maintenance modification hearing in this matter, Dr. Jones was still paying for tuition, housing, food, and expenses for their boys as they were not done with their college education. The trial court was entitled to consider and rely on this given the discretion afforded to it.

As set forth in the record, because of the tremendous costs associated with the burned-out home, the mortgages, the court-ordered maintenance, and the college tuition, Dr. Jones could not meet his monthly expenses. In order to make ends meet, Dr. Jones was forced to liquidate assets he was awarded and in addition, he was required to seek more profitable work out of the Spokane area. Dr. Jones was awarded approximately $450,000.00 of gold, gold coins, and a non-gold coin collection in the decree. At the time of the support modification hearing in this action, he had about $40,000.00 worth of gold left while Ms. Jones has never used her $450,000.00 share of this gold. Dr. Jones also sold the Porsche, the tractor, and one trailer. The Volvo that he was awarded went

to their son Alex. These facts, established in the record, were appropriately considered and relied on by the trial court in forming its opinion and making its findings.

Additionally, the record shows that post-decree Dr. Jones discovered that Ms. Jones had incurred significant debt on the Wells Fargo credit card that was not disclosed in discovery nor in the decree. Wells Fargo sought collection from him and the only source for payment on this debt was his Fidelity account. He negotiated down the debt with Wells Fargo to $11,478.08 (thereby saving $6,471.89. from the original debt of $17,658.58) and then took $20,000.00 from the Fidelity account to pay this debt. Dr. Jones had to take $20,000.00 as there was a tax withholding of $8,000.00 from the withdrawal of retirement funds. Also, because this $6,471.89 reduction was "forgiven" by Wells Fargo, that also resulted in a tax obligation to Dr. Jones. The trial court was entitled to consider this in its equitable application of discretion.

The record shows that Dr. Jones left Spokane and accepted a cardiology position in Florida in order to increase his income and resolve his financial crisis. The record shows that at the time of the hearing, Dr. Jones made full disclosure of his financial assets and liabilities to include his bank accounts, real properties, vehicles, and retirement interests. The

record shows that at the time of the hearing in this matter, despite his increased income, the total value of Dr. Jones' estate was $905,627.00. This value is less than he was awarded in the decree despite working as a cardiologist for over 6 years after the divorce and even though the record shows that Dr. Jones worked many 80 hour+ weeks throughout 2016 due to a physician shortage in the area and was able to receive a production bonus based on RVU units produced beyond the threshold. The trial court was entitled to rely on these facts in its equitable use of discretion.

The record also shows that despite Dr. Jones' earnings as a cardiologist, at the time of hearing he owned only a 2005 Mercedes C-Class worth $7,500.00, a 2006 Chevrolet Silverado 1500 pickup truck worth $15,000.00 and a 1998 Harris boat worth $3,000.00. The record shows that he testified that despite his income, he continued to drive 10+ year old cars as he was trying to earnestly save for retirement and re-build, given that he was nearing 65 years old. The trial court was entitled to consider Dr. Jones' advanced age (near retirement) and his need to re-build in its equitable use of discretion and fact finding.

The record further shows that at section IV of her June 2015 financial declaration, Ms. Jones' assets were $1,112,790.00, before the rapid growth of the stock market, which formed the basis for the majority of her estate value and which would have increased by hundreds of thousands of dollars given the all-time highs of the current stock market. The record shows that Ms. Jones failed to provide the trial court or Dr. Jones (in

discovery), updated values. Further, the record shows that despite 6 years of Dr. Jones' work as a cardiologist, his net worth had decreased and Ms. Jones' net estate was still worth substantially more than his. The trial court was entitled to consider in its equitable use of discretion the fact that Ms., Jones did not disclose her current net worth at the time of hearing, and even when utilizing the last known records of her wealth, it was still substantially greater than Dr. Jones' wealth.

As case law requires the Court of Appeals appropriately deferred to the trial court's findings in modification actions, given that substantial justification for the holding was provided and that there was clearly no abuse of discretion as a result. *See* Lambert, 66 Wn.2d at 508., *supra.* Ms. Jones could not demonstrate that the trial court abused its discretion, and Division III appropriately denied the appeal. Counsel now petitions this Court to review the facts yet again for mistake, but he entirely fails to provide any adequate grounds this Court has for doing so. Guidance to the appellate courts is provided by decades of established case law providing for deference to the trial courts discretion.

Despite Ms. Jones's argument otherwise, the unpublished opinion in this case is directly in line with the *holdings* of the entirety of Ms. Jones's cited authority and with the precedent established by the decisions of this Court and all of the visions of the Court of Appeals. The "conflict between the divisions" that Ms. Jones attempts to create simply does not exist. Issues of modification of decrees (custody, maintenance, child support) are likely

the most widely reported in marital dissolution case law. Contrary to Ms. Jones' claim, all three Divisions of the Court of Appeals and the Supreme Court are completely uniform in this regard.

This is why the Supreme Court and cases from all three Divisions are cited above. (Lambert, 66 Wn.2d 503, 508 (1965; In re Marriage of Maughan, 113 Wn. App. 535, 537 (Div. I 2002) (modifications reviewed for abuse of discretion); In re Marriage of Spreen, 107 Wn. App. 341, 346 (Div. II 2001) (Court will not reverse modification findings absent abuse of discretion); In re Marriage of Belsby, 51 Wn. App. 711, 713 (Div. III 1988) ("whether a substantial change in circumstances has occurred is a factual question discretionary with the judge.").

There are no conflicts in the Divisions of the Court of Appeals regarding the holdings of this case and the law as applied, especially considering the discretion afforded to the trial court in this area. Nothing in the petition for review is of significant public interest given the substantial case law present. This Court is respectfully asked to deny the petition for review.

RESPECTFULLY SUBMITTED this 24th day of May, 2019.

DAVID J. CROUSE WSBA #22978
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion to be competent to serve papers.

That on the 29th day of May, 2019, he personally served a copy of the Response to Petition for Review to the persons hereinafter named at the places of address stated below which is the last known address.

ATTORNEY FOR RESPONDENT

Mr. Gary Stenzel
Attorney At Law
1304 W. College Ave LL
Spokane, WA 99201

Zachary Stettler, WSBA # 50065

SUBSCRIBED AND SWORN to before me this 29th day of, May 2019.

MIRANDA PELLEGRINI
NOTARY PUBLIC #205157
STATE OF WASHINGTON
COMMISSION EXPIRES
FEBRUARY 19, 2023

NOTARY PUBLIC in and for the State of Washington, residing in Spokane.
My Commission Expires: 2-19-23

DAVID J. CROUSE & ASSOCIATES

May 29, 2019 - 10:35 AM

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