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68933-9

NO. 68933-9-1

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

In re the Marriage of:

MICHELLE HUGHES,

Respondent

v.

ROBERT HUGHES,

Appellant.

BRIEF OF APPELLANT

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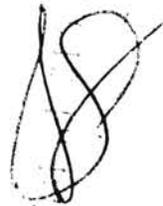


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INTRODUCTION

The 60/40 asset distribution favors Michelle Evans with a \$654,490 equalizing payment, plus \$1.217 million in maintenance paid over 18 years – \$144,000 for six years and \$120,000 for 11 years. Evans has no interest in taking steps to increase her earning capacity. She will enjoy a six-figure income, in addition to her significant cash award, working part-time, if at all.

The award leaves Robert Hughes working on his family farm, providing hard physical labor, until he is nearly 70-years old. But his labor will not be enough. Hughes will have to sell assets or take loans to pay Evans, where he left the marriage with \$102,000 in cash, but will have to pay Evans over \$650,000 within one year of the entry of the dissolution decree.

This result is inconsistent with binding precedent limiting the compensation a spouse receives for supporting the higher-earning spouse during the marriage. And this matter bears no resemblance to leading long-term maintenance cases, in which the spouse receiving maintenance is ill and cannot work, and the spouse paying maintenance received a disproportionate share of the assets from which to pay maintenance. This award is untenable and unjust. This Court should reverse.

ASSIGNMENTS OF ERROR

1. The trial court erred in unequally dividing the assets and awarding maintenance in the Decree of Dissolution. CP 74-86.
2. The court erred in entering the Decree of Dissolution. CP 74-86.
3. The court erred in including Hughes' separate-property parcels known as Mann Road and Maupin Road in the property distribution. CP 60, 61, FF 2.9, 2.10.¹
4. The court erred to the extent that it found that Hughes intended his separate property to provide retirement income for the community. CP 60, FF 2.9.
5. The court erroneously awarded Evans maintenance in the amount \$1.217 million for 18 years, \$12,000 per month until age 55, and \$10,000 per month until age 66. CP 65, FF 2.29; CP 66, FF 11.
6. The court erred in finding that Evans has not improved her skills or working ability during the marriage. CP 65, FF 2.29.

¹ The Findings of Fact, Decree of Dissolution, and all relevant statutes are attached.

7. The court erred in ordering Hughes to pay a \$654,490 equalizing award. CP 67-68, FF 20.

8. The court erred in entering the Order on Reconsideration denying Hughes' motion for reconsideration and awarding Evans \$2,500 in attorney fees. CP 121-22.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Is the maintenance award far too high and too long, where Hughes will have to work in his physically demanding profession until he is nearly 70 years-old, to provide Evans a six-figure income so that she can live a life of luxury while working part-time?

2. After correctly awarding Hughes his separate-property farm shares, whose only real value is the income they produce, did the trial court erroneously offset its correct award by: (1) awarding Evans \$1.217 million in maintenance over an 18-year term; (2) including Hughes' separate property, Mann Road and Maupin Road, valued at \$197,100, in the asset distribution; and (3) awarding Evans 60% of the assets?

STATEMENT OF THE CASE

A. Background.

Michelle Evans (*f.k.a.* Hughes) and Robert Hughes divorced in 2011, after a 25-year marriage. 03/12 RP 22.² They have three adult daughters. *Id.* at 22-23. For much of the marriage, Evans stayed at home with the children, working periodically, while Hughes worked for his family's business, Hughes Farm, Inc. 03/12 RP 23, 28, 43-44; 03/13 RP 167-68. Hughes' family has been farming in the Skagit Valley since the 1920s, when his grandfather, Lowell, moved from Iowa to start a dairy business. CP 627. Lowell soon expanded to farming vegetables. *Id.*

Hughes' father, a vegetable farmer, took over Lowell's business in the 1970s. *Id.* In 1981, Hughes' father combined his farming business with those operated by his two oldest sons, incorporating Hughes Farms. *Id.* Soon after, Hughes and another brother joined the business. *Id.*

Hughes Farms currently operates 4,000 acres, including fallow land. *Id.* The farm's primary crop is potatoes. 03/13 RP 21, 168-69. Farming is undeniably a difficult business, due in large part

² The Report or Proceedings begins new pagination on each day, so this brief uses dates to avoid confusion.

to numerous variable conditions, including fluctuating crop prices and unpredictable weather patterns. 03/14 RP 31-32. There are good years, and bad. *Id.*

B. Hughes works very hard for his family farm, often performing demanding physical labor.

Hughes began working on his family farm when he was just eight-years old. 03/13 RP 167. He worked primarily for the farm throughout the marriage – and throughout his life. 03/12 RP 43-44; 03/13 RP 167. When the parties first married, Hughes worked for Brunt Hower Sheet Metal to supplement his farm income. 03/12 RP 43. Over the years, he took various odd jobs for Skagit County and worked as a volunteer firefighter. *Id.* But his primary occupation has always been working for the farm. *Id.* 43-44.

The current principals in the farm are Hughes, his mother, his three brothers, and his nephew who is taking over his father's position. 03/13 RP 167; 03/14 RP 4. Farm ownership is currently heading into its fifth generation. 03/13 RP 90.

When Hughes' parents incorporated the farm in 1981, they were the sole shareholders. 03/13 RP 81; Ex 109. Hughes (and his brothers) initially invested in Hughes Farms in exchange for some farm shares. 03/15 RP47. For more than 20 years, ending in

2007, Hughes' parents both gifted to each of their children the maximum permitted under the annual gift-tax exclusion. 03/13 RP 82. These gifts were to the Hughes boys only, not to their spouses. 03/13 RP 82; 03/14 RP 5. Hughes never purchased any farm shares from his parents. 03/13 RP 168; 03/14 RP 5.

Hughes performs many tasks for the farm, including clearing ditches, plowing fields, cleaning out old dairy farms, and tearing down old barns. 03/14 RP 78. He does some electrical, refrigeration and mechanical work, drawing from his degree in automotive mechanics. *Id.* In addition to his own tasks, he fills in for employees who are out sick. *Id.*

Hughes works hard, typically 40-hour weeks in the spring, summer, and winter, and more in the late summer and fall. *Id.* at 79. During the wheat harvest, he has worked such long hours that he would just sleep on a couch at the farm. *Id.* Hughes' body is getting "tired out" – it is growing harder for him to put in such long hours. *Id.* He would like to retire "some day." *Id.*

C. Evans also worked for the farm, becoming a valuable employee.

Evans also worked on the farm periodically when the children were young. 03/12 RP 23. When the parties' third child

was born, Evans opened an at-home daycare, operating it for about five years. *Id.* at 24-25. Hughes was always supportive of Evans staying home with the children, and he too participated in their activities. 03/12 RP 28; 03/14 RP 77-78. Of course, Hughes was also very busy on the farm. 03/12 RP 28; 03/14 RP 79. Together, the parties “shuffle[d]” a lot. 03/12 RP 28.

Evans began working for the farm again in January 2006. *Id.* at 35. At first, Evans handled the farm-safety and plant-safety programs and some human-resources work. *Id.*; 03/13 RP 4-5; 03/14 RP 12. In that capacity, Evans mainly handled L&I claims. 03/13 RP 4-5; 03/14 RP 12. She also took over the plant audits, requiring her to spend time in the field as well as in the office. 03/14 RP 12.

As time went on, Evans took on many additional tasks, big and small. 03/12 RP 35; 03/13 RP 5. On the smaller side, Evans worked with employees to help keep “everyone . . . happy,” took over administration of the farm’s health-benefits plan, and became the “front person” for farm insurance. 03/13 RP 5; 03/14 RP 12-13.

On the bigger side, Evans took over the farm’s food-safety-audit-assurance program and the licensing and oversight of temporary-worker housing. 03/12 RP 35; 03/13 RP 5. Fines had

previously been levied against the farm, but Evans brought them into compliance. 03/13 RP 5; 03/14 RP 12. By all accounts, Evans was a valuable employee. 3/14 RP 13, 75.

D. The parties lived well during the marriage.

While Hughes initially held a second job to supplement his farm income, the farm began to grow in the early 1990s, as did Hughes' income. 03/12 RP 43, 50. Evans "budgeted" \$5,000 per month for food and utilities. *Id.* at 78. The parties' house was quickly paid in full. *Id.*

Evans spent about \$20,000 per year on clothing for herself and the girls. *Id.* The family spent \$40,000 per year on travel, including family trips to Maui, Mexico, Disneyland, California, and Florida; trips abroad for one daughter's soccer and rugby tournaments; trips abroad for school; and frequent trips around the country for horse shows in which the girls competed. 03/12 RP 78-80; 03/13 RP 32. They spent over \$100,000 each year just on the horses, horse equipment, and horse shows. 03/12 RP 80-81.

The parties bought each of their three daughters a new car when they obtained their drivers' licenses. *Id.* at 81. They paid cash for their college tuition, and paid for their living expenses,

including rent, cell phones and phone bills, auto repairs and insurance, and clothing. 03/12 RP 85.

E. The parties spent everything they had, purchasing real property for their retirement savings.

The parties spent Hughes' entire income every year, so had saved no cash for retirement when they separated. 03/12 RP 47; 03/14 RP 75-76; 03/15 RP 65. They instead purchased farm land, quickly paying off any mortgages, intending that the rental income from these community assets would provide for them in retirement. 03/14 RP 75-76; 03/15 RP 65-66. Hughes never told Evans that rental income from his separate property – purchased before the marriage – would also provide for their retirement. 03/14 RP 76.

Evans claims that Hughes told her that his farm shares would produce \$150,000 annually after he retired. 03/12 RP 56-57. Hughes does not get paid if he does not work, and denies ever telling Evans otherwise. 03/14 RP 76. His only income once he retires will be approximately \$60,000 per-year in rental income. *Id.* at 76-77.

F. Evans quit working for the farm after filing for dissolution.

Evans quit working for the farm in December 2011, after filing for dissolution. 03/12 RP 42. She claims that she was

effectively forced to quit, accusing Hughes of becoming “threatening” and “unpredictable” at work. *Id.* at 40-42. Hughes denies Evan’s claims, stating that he was “in the office hardly at all in the month of December.” 03/14 RP 75. No one corroborated Evans’ version of events. 03/13 RP 11; 03/14 RP 13-14, 73-75. She never reported anything or sought a protection or retaining order. *Id.* The farm did not and would not have terminated Evans. 03/14 RP 13, 75.

After quitting the Farm, Evans applied online for a job at Boeing, and applied for a couple of jobs at the Skagit and Snohomish County Clerk’s offices. 03/13 RP 8. About a week before trial, Evans started a job as the market-stand manager for Sakuma Brothers, a Skagit-Valley berry farm. 03/12 RP 53, 55. The job is seasonal and part-time. *Id.* Evans is uninterested in any schooling or job training. 03/13 RP 8.

G. Evans spent nearly \$184,000 in the 16 months between the parties’ separation and their divorce.

When the parties separated, they evenly divided Hughes’ remaining income, leaving each party with a little more than \$102,000. 03/12 RP 58-59; 03/13 RP 15. Evans also received other funds, including a \$28,000 lump-sum temporary-maintenance

payment, \$18,831 in Farm income, and \$35,400 from a truck sale, totaling \$189,000. 03/13 RP 15-16. In 16 months, Evans spent \$184,000. 03/12 RP 86; 03/13 RP 16.

Evans did not make a down payment on a home or put anything away for retirement. 03/13 RP at 16, 18. Hughes paid \$15,000 for Evans' attorney fees. *Id.* at 16. Evans claims that she spent \$184,000 on rent, utilities, and other intangibles. *Id.* at 17-18.

Evans began living with her boyfriend, Tony Anderson, immediately after the parties separated. 03/15 RP 3-4; CP 624. Anderson does not pay any rent or utilities, contributing only \$500 per month to groceries. 03/12 RP 104-05; 03/13 RP 48. Evans explains that Anderson pays \$7,500 per month maintenance to his ex-wife, so he cannot contribute more. 03/13 RP 17.

Since the separation, Evans traveled to Mexico, Wisconsin, Oregon, Pullman, and Leavenworth, often with Anderson. *Id.* at 42. She made "improvements" to her boat, spending \$2,500 on lighting and stereo upgrades so the children could wakeboard in the evening. *Id.* at 42-43. She considers that to be "an investment." *Id.* at 43.

H. Procedural History.

The parties separated on January 7, 2011, and Evans petitioned for dissolution less than one month later. 03/13 RP 3-4; CP 169. Other than Hughes' separate-property farm shares, the only major assets were community and separate real property. CP 72-73. The parties had already divided their cash. *Id.*

The parties agreed that Hughes would retain his farm shares and all of the real properties, farm parcels rented to Hughes Farms. 03/15 RP 57, 116. They agreed that Hughes would pay Evans cash for her share of these assets, but disagreed on the amount. 03/15 RP 116. Evans asked the court to award her 50% of all assets, community and separate, including real property Hughes purchased before the marriage, and the farm shares Hughes received from his parents. 03/12 RP 9, 65, 66; 03/15 RP 116-17. By her estimate, this would have totaled \$1,130,262. CP 588.

Evans also asked for \$20,000 per month in maintenance, for the rest of her life. 03/12 RP 93-94. She acknowledged that this was more than the expenses listed in her pretrial declaration and more than her monthly expenses. *Id.* She asked for a horse, a car, and a Hawaiian condo, claiming that they were all gifts. 03/12 RP 76. She asked for the pool table for "entertainment," even though

Hughes was formerly a tournament pool-player, and asked for the hot tub, even though it is hardwired. 03/13 RP 33-35. She even asked for Hughes' dog, Duke. *Id.* at 32-33.

The trial court adopted the parties' agreed values for the real property rented to Hughes' Farms. CP 58. Per the parties' request, the court awarded all of the farm parcels to Hughes. CP 59, FF 2.6. But in calculating Evans' transfer payment, the court included the value of Hughes' separate-property farm parcels, Mann Road (\$122,100) and Maupin Road (\$75,000). The court gave two reasons for doing so: (1) "Hughes testified . . . that the real estate that was owned by the parties, was essentially their retirement plan, and that the income from those rental parcels was intended to provide retirement income to the parties"; and (2) the court excluded the farm shares from the property distribution. CP 60-61, FF 2.9. 2.10.³ The court awarded Evans 60% of the value of all farm parcels, community and separate, totaling \$662,815. CP 59, FF 2.6.⁴

³ As discussed below, the court excluded the farm shares from the property distribution to avoid double-dipping, among other reasons.

⁴ The value totaled \$662,815 but the court subtracted \$8,325 for separate expense incurred by Evans but awarded to Hughes, thus the total award to Evans is \$654,590. *Id.*

Hughes' first payment, \$250,000, was due six months after the decree was entered, and his second payment, \$404,490 will be due one-year after the decree was entered. *Id.* But Hughes left the marriage with only \$102,000 in cash. 03/13 RP 15.

The only major asset with a disputed value at trial was Hughes' farm shares. CP 62-64. The court valued these shares at \$900,000, a compromise between the values proposed by each party's expert. *Id.* Hughes does not challenge this valuation.

Despite valuing the farm shares, the court correctly held that their real value was that they produced income for Hughes that exceeded what he would make "doing the same work . . . for some other farm in the community." CP 61-62, FF 2.14. While Hughes makes between \$350,000 to \$400,000 per year, the market value of his services is about \$85,000. 03/13 RP 101, 136-37; 03/22 RP 9-10; CP 61-62, FF 2.14-2.16. The difference is not passive income in the traditional sense – Hughes does not get paid if he does not work. 03/14 RP 76-77.

The court found that the farm shares were Hughes' separate property, and excluded them from the property distribution. CP 61. Again, Hughes acquired the vast majority of his farm shares through gift from his parents, often before the marriage. 03/13 RP

81-82; 03/14 RP 5; Ex 109. The court found that it “was pretty clear” that Hughes Farms was intended to be maintained as a family farm, passed from generation to generation. CP 61. The parties “clearly” maintained the farm shares as Hughes’ separate property throughout the marriage. *Id.*

To compensate Evans for the farm-share income Hughes will receive, the court awarded Evans \$12,000 per-month maintenance for seven years, and \$10,000 per-month maintenance for 11 years. CP 62, 2.15; CP 65, FF 2.29; 03/22 RP 11. The present-day value of this 18-year maintenance award is \$1.217 million. CP 99.

In short, although the court awarded Hughes his separate farm shares, it offset the award by: (1) including Hughes’ separate-property Mann Road and Maupin Road, valued at \$197,100, in the asset distribution; (2) awarding Evans 60% of the assets; and (3) awarding Evans \$1.217 million in maintenance for 18-years. CP 60-61, 65. Hughes timely appealed. CP 128.

ARGUMENT

The court’s maintenance award and asset distribution leaves the parties in grossly disparate circumstances. Evans left the marriage with about \$189,000 in cash, and spent nearly all of it.

Hughes left the marriage with about \$102,000 in cash to pay all of his living expenses, but must pay Evans \$654,490. To do so, Hughes will have to take loans or sell the assets he was awarded, whose value form the basis of the equalizing payment.

Under the 18-year, \$1.217 million maintenance award, Hughes must continue to work long hours in his physically demanding job. For Evans, working will be optional – she will enjoy a six-figure income regardless of whether she chooses to work.

This unfair, and indeed untenable, situation cannot be chalked up to trial court discretion, however broad. There are limits.

The appellate courts have long recognized that a spouse who contributed to the other spouse's superior earning capacity should be compensated, but that such compensation is limited, and may even be achieved during the marriage. *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). Our courts have also long recognized that long-term maintenance awards, such as the one at issue here, arise when one spouse is ill and cannot work, and the other receives most of the assets, often permitting that spouse to pay maintenance without working. *Infra*, *Hadley*, *Morrow*, *Tower*, and *Bulicek*.

But this case exemplifies a concerning trend in Washington case law – 15+ year maintenance awards, in matters lacking any of the earmarks of *Hadley* (*infra*) and its progeny, seemingly just because the marriage is “long-term.” *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007), *rev. denied*, 163 Wn.2d 1055 (2008). The duration of the marriage should not be the ultimate trump card, particularly in light of our Supreme Court’s wise counsel in *Washburn*, that often a spouse who assists the other in achieving a higher earning capacity is sufficiently compensated during the marriage.

The 60/40 asset distribution compounds this untenable maintenance award. Awarding Evans 60% of the community and separate-property farm parcels is untenable in light of the massive maintenance award. This Court should reverse.

A. Standards of review.

This Court will reverse findings that are not supported by substantial evidence. *In re Marriage of Bernard*, 165 Wn.2d 895, 903, 204 P.3d 907 (2009). “Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.”

Rockwell, 141 Wn. App. at 242 (quoting *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002)).

“The award of maintenance is within the discretion of the trial court.” *In re Marriage of Sheffer*, 60 Wn. App. 51, 53, 802 P.2d 817 (1990). A trial court abuses its discretion if its decision is based on untenable grounds or untenable reasons. *Sheffer*, 60 Wn. App. at 53. This Court will reverse a maintenance award that is based on untenable reasons. *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004); *In re Marriage of Zahm*, 138 Wn.2d 213, 227, 978 P.2d 498 (1999).

The trial court also has discretion to fashion a “just and equitable” asset distribution. *Rockwell*, 141 Wn. App. at 242. The court’s asset distribution is guided by RCW 26.09.080, which requires the court to consider the following factors: (1) the nature and extent of all property, community and separate; (2) the duration of the marriage; and (3) the economic circumstances of each spouse when the division is to become effective. 141 Wn. App. at 242; RCW 26.09.080. This Court will reverse where the trial court’s discretion was exercised on untenable grounds. *Rockwell*, 141 Wn. App. at 243 (citing *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005)).

B. The maintenance award is too long and too high, particularly where Evans is young, healthy, and perfectly capable of gainful employment.

The trial court's 18 year, \$1.217 million maintenance award goes far too far in attempting to offset the income Hughes' separate property farm shares produce. While Hughes will have to perform hard labor until he is nearly 70 years-old, Evans will enjoy a six-figure income, working part time, if at all. This is neither fair nor just. This Court should reverse.

Maintenance is "a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time." *In re Marriage of Bulicek*, 59 Wn. App. 630, 635, 800 P.2d 394 (1990) (quoting *Washburn*, 101 Wn.2d at 179). A maintenance award must be just and fair in light of: (1) the financial resources of the spouse seeking maintenance; (2) the time needed for the spouse seeking maintenance to become self-sufficient; (3) the standard of living during the marriage; (4) the duration of the marriage; (5) each parties' age, and physical and emotional health; and (6) the obligor spouse's ability to meet his own needs while paying maintenance. RCW 26.09.090; *Sheffer*, 60 Wn. App. at 53-54.

But maintenance is not a "matter of right." *Sheffer*, 60 Wn. App. at 54. Maintenance is intended to support a spouse until she

becomes self-supporting. *In re Marriage of Irwin*, 64 Wn. App. 38, 55, 822 P.2d 797 (1992). It is not intended to be a “perpetual lien on the other spouse’s future income.” *Sheffer*, 60 Wn. App. at 54; *In re Marriage of Coyle*, 61 Wn. App. 653, 657, 811 P.2d 244 (1991) (lifetime maintenance is rare and is generally disfavored).

Evans works part-time, earning \$1,723 per month. CP 64. Hughes’ farm shares produce, on average, \$30,747 per month. *Id.* Although he must work for the farm to receive this income, most of it is not truly earned income, where market compensation for Hughes’ services would be about one-quarter of his income. CP 61-62. Nor is Hughes’ income truly passive – he does not get paid if he does not work. 03/14 RP 76.

The court awarded Evans \$12,000 per month for seven years, and \$10,000 per month for an additional 11 years, totaling an 18-year maintenance award with a present value of \$1.217 million, adjusted for federal income tax. CP 65, FF 2.29; CP 66, FF 11; CP 99-103. The court’s primary reason was the parties’ 25-year marriage. CP 65, FF 2.29. The court was also persuaded that during the marriage, Evans contributed to Hughes’ ability to improve his income, without improving her skills or working ability. CP 65, FF 2.29. But this does not mean that Evans should

continue to live, financially speaking, as if the parties were married, when they are not.

1. **During the marriage, Evans benefited substantially from Hughes' higher earnings – 18 years of additional compensation is unreasonable and unjust.**

The trial court correctly found that for at least 20 years, if not longer, Evans has enjoyed the benefit of Hughes' superior earning capacity. CP 62, FF 2/15. Eighteen years of "extra compensation" is untenable, particularly where Evans is young, healthy, and plainly capable of gainful employment. *Washburn*, 101 Wn.2d at 181. This Court should reverse.

Washburn is the seminal case addressing the concept that one spouse should be compensated for contributing to another spouse's higher earning potential during the marriage. 101 Wn.2d at 173-74. There, the court addressed if and how to compensate a wife who supported her husband through graduate school, but divorced before the husband's education produced the income increase the parties anticipated:

The cases at bar are representative of a situation which is so familiar as to be almost a cliché. A husband and wife make the mutual decision that one of them will support the other while he or she obtains a professional degree. The educational years will be lean ones for the family not only because of heavy educational expenses, but also because

the student spouse will be able to earn little or nothing. Moreover, the supporting spouse may be called upon to postpone his or her own education or forgo promotions and other valuable career opportunities in order to find a job near the student spouse's school. These sacrifices are made in the mutual expectation that the family will enjoy a higher standard of living once the degree is obtained. But dissolution of the marriage intervenes. Because the family spent most of its financial resources on the degree, there may be few or no assets to be distributed. The student spouse has the degree and the increased earning potential that it represents, while the supporting spouse has only a dissolution decree.

Washburn, 101 Wn.2d at 173-74. The problem this familiar situation created was that the "student spouse" left the marriage with a higher earning capacity, resulting from community effort, while the "supporting spouse" had forgone educational and career opportunities. 101 Wn.2d at 173-74. This disparity in earning capacity was exacerbated by the fact that the community often had few if any assets, which had been expended on the student spouse's education. *Id.*

After addressing several approaches from different jurisdictions, the **Washburn** Court held that a trial court, where appropriate, could "compensate" the "supporting spouse" with a disproportionate award of assets under RCW 26.09.080, or, if there were insufficient assets, a maintenance award under RCW 26.09.090:

We have said that the supporting spouse may be compensated through a division of property and liabilities. In many cases, however, the wealth of the marriage will have been spent towards the cost of the professional degree, leaving few or no assets to divide. Where the assets of the parties are insufficient to permit compensation to be effected entirely through property division, a supplemental award of maintenance is appropriate.

101 Wn.2d at 178. The supporting spouse's contribution to the student spouse's higher education, with the mutual expectation of future financial benefit, is simply one factor in making a fair and equitable property distribution and/or maintenance award. *Id.*

But the **Washburn** Court correctly noted that the supporting spouse's compensation is limited:

We point out that where a marriage endures for some time after the professional degree is obtained, the supporting spouse may already have benefited financially from the student spouse's increased earning capacity to an extent that would make extra compensation inappropriate.

Id. at 181. For example, if the student spouse had "enjoyed a high standard of living for several years," additional compensation might be "inappropriate." *Id.*

The **Washburn** court set forth four factors for the court's consideration in determining the amount of the student spouse's compensation: (1) the cost of the education; (2) the amount the community would have earned if the student spouse had worked rather than pursued an education; (3) any educational or career

opportunities the supporting spouse gave up; and (4) each spouse's earning capacity. *Id.* at 179-80. Here, the first two are irrelevant, as they are directly related to obtaining a professional education. *Id.* The community did not spend any money so that Hughes could work on his family farm or give up any income in this endeavor. Hughes has always earned a good income for his family, and for the vast majority of the marriage, earned considerably more than market compensation. CP 61-62.

The third factor – career opportunities the supporting spouse gave up – militates against any “extra compensation” for Evans. ***Washburn***, 101 Wn.2d at 180. The trial court correctly recognized that Evans is a skilled employee, with the capacity to work full time and to grow her income:

[Evans'] income is going to go up over time. . . . Hughes's probably won't. His is probably going to stay about the same over the rest of his working life. Hers is under her control. She's worked part time now. She has the ability to work full time. And from the description of David Hughes and her work for Hughes Farms, Inc., she's a valuable employee. She has a lot of skills . . . so she is able to earn more. She will be earning more as time goes on.

CP 64, FF 2.28. Indeed, working at Hughes Farms gave Evans the job skills she has for her current employment. CP 64, FF 2.28; 03/12 RP 54; 03/13 RP 5. This correct finding that Evans possesses the job skills to increase her income contradicts the trial

court's incorrect finding that Evans gave up the opportunity to "improve[] her skills or working ability" to support Hughes. Compare CP 64, FF 2.28 with CP 65, FF 2.29.

The last factor, each spouse's earning capacity, supports some maintenance award, but not for 18 years and \$1.217 million. **Washburn**, 101 Wn.2d at 180. Again, the **Washburn** Court correctly recognized that "extra compensation" may be inappropriate where one spouse has already benefited financially from the other spouse's superior earning capacity. 101 Wn.2d at 181. The trial court correctly recognized that for at least 20 years, if not for the entire marriage, Evans benefited greatly from Hughes' superior earning capacity. CP 62, FF 2.15. It is untenable to require Hughes to continue supporting Evans for another 18 years.

2. This matter is incomparable to typical long-term maintenance cases, in which one spouse is ill and unable to work, and the other converted or is awarded most of the marital assets.

Maintenance terms exceeding ten years are rare and typically arise only in extraordinary circumstances that are not present here. In **Hadley**, for example, the trial court dissolved a ten-year marriage, in which the wife had multiple sclerosis, leaving her "totally disabled, requiring full-time nursing care and other

medical attention.” *In re Marriage of Hadley*, 88 Wn.2d 649, 651, 565 P.2d 790 (1977). The court awarded the wife \$480,000 in maintenance over a 10-year term, and \$545,000 in community property. *Hadley*, 88 Wn.2d at 651-52. The husband’s award was about nine times greater than the wife’s award, including maintenance. 88 Wn.2d at 652. The Supreme Court affirmed. *Id.* at 659.

In *Morrow*, the trial court dissolved a 23-year marriage, in which the wife’s vision problem rendered her temporarily blind, preventing her from working. *In re Marriage of Morrow*, 53 Wn. App. 579, 581, 586-88, 770 P.2d 197 (1989). The husband, a skilled accountant, had converted large amounts of community property for his separate use. *Morrow*, 53 Wn. App. at 581, 586-88. This court upheld \$2,200 per-month lifetime maintenance award, based in large part on the husband’s breach of fiduciary duty. 53 Wn. App. at 587-88. Although the maintenance award was slightly more than one-half of the income the husband disclosed, the court held that his income was likely “several times that amount.” *Id.* at 588. And the husband had previously paid maintenance (and many other personal expenses) out of his accounting practice. *Id.* Perhaps most significant though, was the

Husband's ability to pay maintenance with the interest on just some of the community assets he converted. *Id.* at 587.

In **Tower**, the trial court dissolved a 19-year marriage in which the wife had multiple sclerosis that substantially limited her activities. *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989). This Court affirmed a lifetime maintenance award of one-third of the husband's income, where the husband received 63% of the property, all of which was community. **Tower**, 55 Wn. App. at 698-99.⁵

Finally, in **Bulicek**, the trial court dissolved a 26-year marriage in which the wife had numerous health problems requiring constant medical care. **Bulicek**, 59 Wn. App. at 631. The wife possessed limited job skills and experience, and the husband's income surpassed hers nearly three-times over. 59 Wn. App. at 634-35. This Court affirmed a \$400-per month maintenance award terminating when the husband retired, at most 13 years from trial.

⁵ The award was at first maintenance and child support combined, but the maintenance component increased as the child support obligation ceased upon the children's emancipation. *Id.* The total amount, regardless of its composition, was always approximately one-third of the husband's income at the time of trial. *Id.*

59 Wn. App. at 635.⁶ Maintenance brought the wife's income to less than half of the husband's. *Id.* at 631.

In short, 10-plus-year maintenance awards typically involve two situations: (1) a party receiving maintenance requires medical care and cannot work due to disability; and (2) a party paying maintenance (a) committed economic waste, converted community property, or otherwise depleted community assets; (b) has substantial separate property from which to pay maintenance; and/or (c) received a disproportionate community property award. Even so, none of the maintenance and property awards in these cases equalized the parties' incomes – they do not even come close:

- ◆ In ***Hadley***, the wife's total award – property and maintenance – was nearly nine-times less than the husband's award. ***Hadley***, 88 Wn.2d at 652.
- ◆ In ***Morrow***, the wife's maintenance award was a small fraction of the husband's suspected income, which he refused to disclose. 53 Wn. App. at 587-88.
- ◆ In ***Tower***, the wife received 40% of the parties' property and her maintenance payment was approximately one-third of the husband's income. ***Tower***, 55 Wn. App. at 698-99.
- ◆ In ***Bulicek***, the maintenance award brought the wife's income to less than half of the husband's income. 59 Wn. App. at 631.

⁶ The award was \$500 per month for 1 year, and \$400 per month thereafter. *Id.* at 633.

Unlike the wives in *Hadley*, *Morrow*, *Tower*, and *Bulicek*, Evans is young, healthy, and plainly capable of gainful employment. CP 64, FF 2.23, 2.28. As the trial court put it, she “has a lot of good working years ahead of her.” CP 65, FF 2.29. The court correctly recognized that she is a “valuable employee,” who possess “a lot of skills,” and will earn more over time. CP 64, FF 2.28.

Hughes did not waste, convert, or deplete community assets. *Morrow*, 53 Wn. App. at 581, 586-88. He was not awarded more assets than Evans – the court awarded Evans 60% of the community assets and 60% of Hughes’ separate property, worth \$197,100. *Hadley*, 88 Wn.2d at 652; *Tower*, 55 Wn. App. at 698-99.

Nor was Hughes awarded assets from which he can pay maintenance. *Supra*, *Hadley* and *Morrow*. Rather, Hughes must continue working for the farm – and Hughes is no gentleman farmer. Hughes drives a tractor, plows fields, harvests crops and clears ditches. Under this maintenance award, he will have to do so until he is almost 70-years old. And Hughes will still have to sell property or take loans to satisfy the property and maintenance awards to Evans. 03/14 RP 76-77; CP 68, 96.

3. **The 18-year, \$1.217 million maintenance award, cannot stand on the single fact that the parties had a long-term marriage.**

The court's primary reason for this massive maintenance award is the duration of the parties' marriage, 25 years. CP 65, FF 2.29; see RCW 26.09.090(d). This is only one of six statutory factors and cannot substantiate the otherwise unfair and unjust maintenance award.

In **Rockwell**, this Court stated that when the trial court dissolves a long-term marriage – 25 years or more – the “court’s objective is to place the parties in roughly equal financial positions for the rest of their lives.” 141 Wn. App. at 243 (citing 2 WASH. STATE BAR ASS’N, Family Law Deskbook, § 32.3(3), at 32-17 (2d. ed. 2000) and **Sullivan v. Sullivan**, 52 Wash. 160, 164, 100 P. 321 (1909)). The Deskbook relies principally on Judge Robert Winsor’s 1982 Bar News article discussing maintenance awards in short, mid-term, and long-term marriages. Deskbook, *supra* (citing Winsor, *Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions*, WASH. ST. B. NEWS, Jan, 1982, at 14, 16). **Sullivan** says nothing about equalizing the parties’ post-dissolution standards of living “for the rest of their lives,” or even for a lengthy period, but states that in dissolving a long-term marriage “the

ultimate duty of the court is to make a fair and equitable division under all the circumstances.” *Sullivan*, 52 Wash. at 164.

The trial court impermissibly treated the duration of the marriage as a trump-card. CP 65, FF 2.29. *Rockwell* does not compel this result, which plainly contradicts numerous cases stating that the “paramount concern” is not the duration of the marriage, but the parties’ relative post-dissolution economic positions. *In re Marriage of Vander Veen*, 62 Wn. App. 861, 867, 815 P.2d 843 (1991); *In re Marriage of Stenshoel*, 72 Wn. App. 800, 812-13, 866 P.2d 635 (1993).

The fact this is a long-term marriage means that it is quite likely, as our Supreme Court wisely noted in *Washburn*, that Evans has already been significantly compensated for her contributions to the community. Hughes agrees that some maintenance is justified. But the maintenance award is too long and too high. This Court should reverse.

C. The trial court erroneously devalued Hughes’ separate property interest in Hughes Farms by (1) awarding Evans \$1.217 million in maintenance; (2) including Mann Road and Maupin Road in the asset distribution; and (3) awarding Evans 60% of the assets.

The trial court correctly awarded Hughes his separate-property farm shares, where Hughes acquired the shares through

gifts from his parents, and clearly maintained the separate character of this asset throughout the marriage. It was equally appropriate to distribute the remaining assets and award maintenance in a fashion that offset – to some extent – this separate-property award to Hughes. But the trial court went too far, awarding Evans \$1.217 million in maintenance, including separate property in the asset distribution, and awarding Evans 60% of the assets. This Court should reverse.

- 1. The court's extraordinarily high maintenance award is a double-dip, even though the court intended to avoid double-dipping.**

The primary value of Hughes' separate-property farm shares is that they produce income that far exceeds Hughes' fair market compensation. CP 61-62, FF 2.14. The trial court correctly recognized that it would be an impermissible double dip to divide the value of the farm shares, and to also use the income they produce to calculate maintenance. CP 62, FF 2.16. But the trial unintentionally double-dipped anyway, awarding extraordinarily high maintenance (1) to compensate Evans for awarding Hughes his separate-property farm shares; and (2) using the income the farm shares produce to calculate maintenance. CP 61-62, FF 2.14-2.16. This Court should reverse.

Understanding the nature of Hughes' farm shares is crucial to this argument. The "primary value" of Hughes' separate-property farm shares is that they provide Hughes an annual income between \$350,000 and \$400,000, while the fair market value of his services is about \$85,000. 03/13 RP 101, 136-37; 03/22 RP 9-10; CP 61-62, FF 2.14-2.16. Although the trial court placed a monetary value on the farm shares (\$900,000), the court correctly found that their real value is their "ability to generate compensation for the officers above what the market would pay for [their] services." CP 61-62, FF 2.14.

The trial court intended to award Hughes his farm shares "without any credit" to Evans, correctly finding that the farm shares were clearly Hughes' separate property and that Evans had already benefited from the income the farm shares produce for at least 20 years. CP 61-62, FF 2.14, 2.15; CP 64, FF 2.24. The trial court agreed that it would be "double dipping" to divide the value of the farm shares, \$900,000, between the parties, and also order maintenance based upon the income they produce. CP 62, FF 2.16. Thus, the trial court awarded Hughes the farm shares, excluded their value from the 60/40 asset distribution, and intended

to use maintenance to account for the farm shares' real value – the disproportionate income they produce. *Id.*

Although the trial court agreed that double-dipping was unfair and inequitable, its award is an impermissible double-dipped. Again, the court correctly found that it could not divide Hughes' separate-property farm shares, whose only value is the income they produce, and also use the farm-share income to calculate maintenance. CP 62, FF 2.16. But the court's award effectively accomplishes the same undesirable result, where the court awarded Evans extraordinary maintenance to offset the award of the farm shares to Hughes, but also used the farm-share income to calculate maintenance. CP 62, FF 2.16, 64, FF 2.29, 65 FF 11; 03/22 RP 11, 17. This parallels the impermissible double dip the court sought to avoid.

2. The trial court erroneously included Mann and Maupin Roads in the pool of assets that was distributed.

The trial court erroneously divided the value of Hughes' separate property, Mann Road and Maupin Road. No evidence supports the court's finding that Hughes intended that rental income from his pre-marital separate assets would provide for the parties' retirement. CP 60-61, FF 2.19. In any event, it is untenable to

divide Mann and Maupin Roads to compensate Evans for awarding Hughes his separate-property farm shares, where the maintenance award is alone far more than adequate compensation. This Court should reverse.

Separate property is property acquired before marriage or after marriage by gift, bequest, devise, or descent. ***In re Marriage of Chumbley***, 150 Wn.2d 1, 5, 74 P.3d 129 (2003) (citing RCW 26.16.010, .020; ***Brown v. Brown***, 100 Wn.2d 729, 737, 675 P.2d 1207 (1984)). Our courts are protective of separate property, presuming that it remains separate once its separate character is established. ***In re Estate of Borghi***, 167 Wn.2d 480, 484, 219 P.3d 932 (2009). This is because “the right of the spouses in their separate property is as sacred as is the right in their community property” ***Chumbley***, 150 Wn.2d at 6 (alteration in original) (quoting ***In re Dewey’s Estate***, 13 Wn.2d 220, 226-27, 124 P.2d 805 (1942) (quoting ***Guye v. Guye***, 63 Wash. 340, 352, 115 P. 731 (1911))); see also ***In re Marriage of Shui***, 132 Wn. App. 568, 584, 125 P.3d 180 (2005), *rev. denied*, 158 Wn.2d 1017 (2006).

Although the trial court correctly found that Mann Road (valued at \$122,100) and Maupin Road (valued at \$75,000) were Hughes’ separate property, the court included both properties in the

60/40 asset distribution. CP 60, FF 2.9. The court gave two reasons for doing so: (1) “Hughes testified . . . that the real estate that was owned by the parties, was essentially their retirement plan, and that the income from those rental parcels was intended to provide retirement income to the parties”; and (2) the court excluded the farm shares from the property distribution. CP 60-61, FF 2.9. 2.10. The first reason is inherently flawed as to Mann and Maupin, as they are Hughes’ pre-marital separate property. The second reason goes too far in offsetting the farm-share award to Hughes.

Hughes testified that the parties invested for retirement by purchasing farm land and leasing it to Hughes Farm. 03/14 RP 75-76; 03/15 RP 65-66. Of course, any property the parties purchased during the marriage, and any rental income therefrom, was their community property. But Hughes never told Evans that rental income from Mann and Maupin – his separate property – would also provide for their retirement. *Compare* 03/14 RP 76 *with* CP 60, FF 2.9.

The “parties” did not “own[]” Mann and Maupin – Hughes owned an interest in these parcels that he acquired before the marriage. *Compare* CP 60, FF 2.9 *with* 03/13 RP 170-72; Exs 104,

105.⁷ There is no evidence that Hughes gifted these parcels to the community, and “[t]he law does not presume a gift.” *Plath v. Mullins*, 87 Wash. 403, 409, 151 P. 811 (1915); CP 60, FF 2.9. Thus, the court’s rationale for including Mann and Maupin in the asset distribution is untenable.

Including Mann and Maupin in the asset distribution also goes far too far in offsetting the farm-share award to Hughes. Again, the court awarded Evans \$1.217 million in maintenance to offset the award of the farm shares to Hughes and used the farm-share income to calculate maintenance. CP 62, 65; 03/22 RP 11. It is untenable to also include Mann and Maupin, with a \$197,100 combined value, to effectuate the same purpose, which had already been more than achieved. CP 61, FF 2.10.

3. The 60/40 asset distribution is unjust, in light of the extraordinarily high maintenance awarded, particularly as the court included separate property in the asset distribution.

Hughes readily agrees that his separate-property interest in his family’s fifth-generation farm provides him an income that greatly exceeds Evans’ income. This disparity might certainly

⁷ Evans mistakenly thought that Mann Road was community property, but acknowledged that Maupin Road was Hughes’ separate property. 03/12 RP 63-64.

justify a 60/40 distribution of community assets with some maintenance. But a 60/40 distribution of community *and separate* assets, plus an 18-year \$1.27 million maintenance award is an abuse of discretion.

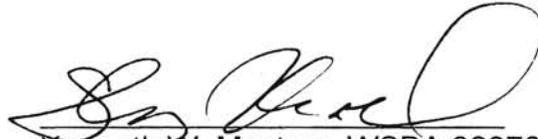
Under this award, Hughes will have to work for the farm, plowing, harvesting, and the like, until he is nearly 70-years old. Evans, on the other hand, will enjoy a six-figure income, in addition to a \$654,000 cash payment, working part time, if at all. This Court should reverse.

CONCLUSION

The trial court's discretion, while broad, is not limitless. The 18-year, \$1.217 million maintenance award is untenable, requiring Hughes' to work in his physically demanding occupation to provide Evans a six-figure income while she works part-time, if at all. The property award is also untenable, requiring Hughes to pay Evans \$654,490 in cash he does not have. This Court should reverse.

RESPECTFULLY SUBMITTED this 12th day of December,
2012.

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

A handwritten signature in black ink, appearing to read "Ken Masters", written over a horizontal line.

Kenneth W. Masters, WSBA 22278
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CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 12th day of December 2012, to the following counsel of record at the following addresses:

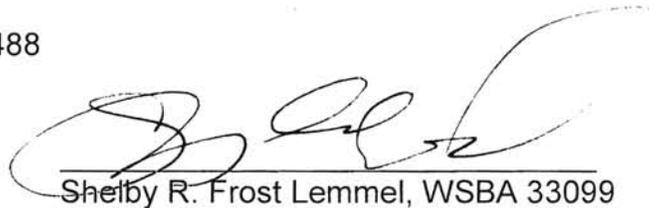
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

In re the Marriage of:

No.: 11-3-00079-2

MICHELLE HUGHES,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Petitioner,

and

ROBERT HUGHES,

Respondent

I. HEARING

1.1. TRIAL.

A trial was held before the Honorable Susan K. Cook on March 12, 13, 14 and 22, 2012.

1.2. BASIS.

The findings are based on the March 22, 2012 oral ruling of Honorable Susan K. Cook which followed a trial that occurred on March 12, 13 and 14, 2012. The following parties testified at trial:

Petitioner

Steven Kessler, CPA, on behalf of Petitioner

Respondent

Tony Leung, CPA, on behalf of Respondent

Brian Clark, Attorney for Hughes Farms, Inc., on behalf of Respondent

David Hughes, Respondent's brother, on behalf of Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

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1.3. ATTENDANCE.

The following people attended the trial: Petitioner; Petitioner's counsel; Michelle Lambert Evans; Respondent and Respondent's counsel, Kenneth E. Brewe.

II. FINDINGS OF FACT

Based on the testimony and exhibits admitted into evidence, the court finds as follows:

- 2.1 The parties were very helpful in simplifying this proceeding by identifying all of the real estate and agreeing on the values of said real estate. The court finds that all of the real property is community property with the exception of the Maupin Road parcel and the Mann Road parcel. Those parcels are both Mr. Hughes' separate property. The Court will accept the values that were stipulated to by the parties in writing and characterize the parcels as community with the exception of Maupin Road and Mann Road, which are both Mr. Hughes' separate property. With respect to the other pieces of property that need to be dealt with, there are two Hawaii condominiums. The parties agreed on the values of said condominiums. The Hawaii condominiums are characterized as community property.
- 2.2 The vehicles that we are dealing with include a 2009 Ford pickup truck, a 2008 Audi, a horse trailer and a boat trailer, all of which are community property. The Ford truck is valued in the amount of the sale proceeds received by Wife in the amount of \$35,400. The Court finds Ms. Hughes sold said vehicle in a commercially reasonable manner. It had mechanical problems, which affected her getting any more money for it. The Audi is valued at \$23,000. The horse trailer is valued at \$10,000. The boat and trailer were agreed to be worth \$12,500.
- 2.3 There is a horse, Gambling on Charlie. The horse is valued at \$25,000. Mr. Hughes agreed that the vet bill could be deducted from that. The vet bill was \$8,972. So Gambling on Charlie has a net value of \$16,028.
- 2.4 There is also land rent for 2011 and Mr. Hughes' post-separation wages in the trust account of Brewe Layman, P.S. The wages in the trust account of \$107,574.66 are Mr. Hughes' post-separation earnings and are his separate property. The land rent in the trust account of \$54,067.00 is community property.
- 2.5 There is a quad runner that is valued at \$3,000.

~~2.6 Everybody is responsible for their post separation obligations (except as described below). There is a bill to or from Hughes Farms, Inc. in the amount of \$8,325.00 for certain records subpoenaed by wife's counsel. The court will divide the property 60/40 in favor of the~~

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 2

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1 2.6 The court considered the statutory factors under CW 26.09.080 in making a just and
2 equitable division of the marital estate including the two previously defined separate
3 property parcels of the husband as described above (Mann and Maupin). Everybody is
4 responsible for their post separation obligations (except as described below). There is a
5 bill to or from Hughes Farms, Inc. in the amount of \$8,325.00 for certain records
6 subpoenaed by wife's counsel. The court will divide the property 60/40 in favor of the
7 wife. The court awards all of the real estate to Mr. Hughes, including the family home
8 and the farm parcels. It awards the larger Hawaii condominium and the quad runner to
9 Mr. Hughes. Ms. Hughes is awarded the smaller Hawaii condominium; the sales
10 proceeds (\$35,400) from the sale of the Ford truck; the 2008 Audi A-4, the horse trailer;
11 the boat and trailer; and the horse, Gambling on Charlie. In addition, the \$54,067.00 land
12 rent proceeds accumulated in trust should be split in the same fashion, 60/40. The
13 equalizing transfer payment from Mr. Hughes to Ms. Hughes is \$662,815 based on a
14 60/40 split. Mr. Hughes is going to be responsible for paying the \$8,325 bill to Hughes
15 Farms, Inc. for the subpoenaed records. The Court finds that the bill is Ms. Hughes'
16 separate obligation, but that Mr. Hughes is probably going to have more success in
17 dealing with the bill, and it's going to be less awkward for him to do it, so the Court is
18 going to require him to pay it. But he gets a credit for that amount against the transfer
19 payment. So the net result is that Mr. Hughes owes Ms. Hughes \$654,490 as an
20 equalizing transfer payment. Said equalizing award should be payable by Mr. Hughes to
21 Ms. Hughes as follows:

- 13 A. \$250,000.00 within six (6) months following entry of the Decree of
14 Dissolution (interest free if paid timely).
15 B. The remaining \$404,490 is due one (1) year from entry of the
16 Decree of Dissolution (interest free if paid timely).
17 C. Interest to accrue at 6% on the unpaid balance in the event of
18 default on either payment.

17 2.7 The only personal property that really is still at issue is the personal property that was
18 listed on trial Exhibit 33. Mr. Hughes will be keeping from that list on Exhibit 33 the dog
19 (Duke), the pool table, the hot tub, and the generator. Everything else on Exhibit 33 goes
20 to Ms. Hughes, except for those four items.

20 ~~2.8 The Court has not separately valued items like the guns and gun safe. The Court has not
21 separately valued the tack or the buggies, or things of that nature. It appears that the
22 parties have done a good job of dividing their personal property in a pretty fair way. The
23 Court is not going to get out a sharp pencil and go through the pennies here on those
24 kinds of items. All of the items on Exhibit 33, with the exception of the above four items,~~

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wife. The court awards all of the real estate to Mr. Hughes, including the family home and the farm parcels. It awards the larger Hawaii condominium and the quad runner to Mr. Hughes. Ms. Hughes is awarded the smaller Hawaii condominium; the sales proceeds (\$35,400) from the sale of the Ford truck; the 2008 Audi A-4, the horse trailer; the boat and trailer; and the horse, Gambling on Charlie. In addition, the \$54,067.00 land rent proceeds accumulated in trust should be split in the same fashion, 60/40. The equalizing transfer payment from Mr. Hughes to Ms. Hughes is \$662,815 based on a 60/40 split. Mr. Hughes is going to be responsible for paying the \$8,325 bill to Hughes Farms, Inc. for the subpoenaed records. The Court finds that the bill is Ms. Hughes' separate obligation, but that Mr. Hughes is probably going to have more success in dealing with the bill, and it's going to be less awkward for him to do it, so the Court is going to require him to pay it. But he gets a credit for that amount against the transfer payment. So the net result is that Mr. Hughes owes Ms. Hughes \$654,490 as an equalizing transfer payment. Said equalizing award should be payable by Mr. Hughes to Ms. Hughes as follows:

- A. \$250,000.00 within six (6) months following entry of the Decree of Dissolution (interest free if paid timely).
- B. The remaining \$404,490 is due one (1) year from entry of the Decree of Dissolution (interest free if paid timely).
- C. Interest to accrue at 6% on the unpaid balance in the event of default on either payment.

2.7 The only personal property that really is still at issue is the personal property that was listed on trial Exhibit 33. Mr. Hughes will be keeping from that list on Exhibit 33 the dog (Duke), the pool table, the hot tub, and the generator. Everything else on Exhibit 33 goes to Ms. Hughes, except for those four items.

2.8 The Court has not separately valued items like the guns and gun safe. The Court has not separately valued the tack or the buggies, or things of that nature. It appears that the parties have done a good job of dividing their personal property in a pretty fair way. The Court is not going to get out a sharp pencil and go through the pennies here on those kinds of items. All of the items on Exhibit 33, with the exception of the above four items, will go to Ms. Hughes. Ms. Hughes will keep what is otherwise currently in her possession. Mr. Hughes will keep everything else that is currently in his possession with respect to personal property.

2.9 The 60/40 property division includes Mr. Hughes' two separate parcels of real estate: Maupin Road valued at \$75,000 and Mann Road valued at \$122,100. There are a couple of reasons the Court is so ruling. Number one, Mr. Hughes testified, and the Court finds, that the real estate that was owned by the parties, was essentially their retirement plan, and that the income from those rental parcels was intended to provide retirement income to the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 3

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1
2 2.10 The two separate property parcels of Mr. Hughes (Maupin Road and Mann Road) are
3 included in the 60/40 valuation. The Court is not dividing Mr. Hughes' interest in Hughes
4 Farms, Inc. between the parties. The Court is awarding all of his interest in Hughes Farms,
Inc. entirely to Mr. Hughes as his separate property. Having done that, the Court feels that
it is appropriate to include the other two separate real estate parcels (Maupin Road and
Mann Road) in the property division between the parties and make that division 60/40.

5 2.11 There are other considerations in the Court arriving at the 60/40 property division. One of
6 those is that as the parties go forward Mr. Hughes is in a position to have a great deal more
7 control over his income because he negotiates with Hughes Farms the rental income that he
8 receives from the real estate. And he also is dealing with family members in negotiating
9 that. Mr. Hughes also is part of the decision making process with respect to how much rent
he will get from those parcels and how much income he will get from the corporation being
a part owner and officer in that corporation. Mr. Hughes has input into what his own
income will be. So he's in a uniquely powerful position with respect to his controlling his
own destiny vis-à-vis the finances.

10 2.12 Another consideration is Mr. Hughes is going to keep all of the real estate, and said real
11 estate is already positioned as an income earning asset. He already has contracts with
12 Hughes Farm, Inc. for that real estate to produce income. He doesn't have to go out and
13 find tenants. He doesn't have to find something to invest money like Ms. Hughes will have
14 to do. She is going to be taking cash. But in order for that cash to produce income for her
15 she has to find something to invest it in. Mr. Hughes already has an investment in place,
earning a good return. The testimony was that the farm probably paid more than fair
market value in rent for the real estate to Mr. Hughes and to all of the other property
owners that they lease from. For those reasons, the Court has established a 60/40 property
division and included two of Mr. Hughes' separate parcels of real property (Mann Road
and Maupin Road) in the 60/40 property division split.

16 2.13 With respect to the personal property, the Court does not find either party produced
17 adequate proof of gift allocations to any piece of personal property. There were allegations
18 that certain items were gifts back and forth from one to the other. But in terms of the legal
requirements to establish a gift, the Court does not find either party met that burden.

19 2.14 The Court values Mr. Hughes' interest in Hughes Farms, Inc. at \$900,000, and finds that it
20 is Mr. Hughes' separate property. It is not been included in the 60/40 property division, first
21 of all, because the asset was very clearly Mr. Hughes' separate property. It was maintained
22 as his separate property throughout the marriage. It was pretty clear from the testimony
that those shares and that the entire corporation were intended to be maintained as a family
farm from generation to generation in the Hughes family. The Court also finds that, rather
uniquely, this asset's primary value is its ability to generate compensation for the officers

23 FINDINGS OF FACT AND CONCLUSIONS OF LAW - 4

24 CP 61

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1 above what the market would pay for those services out there in the real world. It was
2 pretty clear to the court from CPA Kessler's testimony that what Hughes Farms, Inc. pays
3 its officers, including Mr. Hughes, is far more than what they could earn doing the same
4 work out in the community for somebody else. The primary value of this asset to Mr.
Hughes, at least, is the fact that he can work for it and make maybe four times what he
would be making doing the same work for, say, Sakuma Brothers or for some other farm in
the community.

5 2.15 The community has already benefitted to a great extent from that pattern, for 20 some
6 years, perhaps not during the first 5 years of the marriage, but certainly thereafter the
7 community benefitted substantially from Mr. Hughes' position with the corporation and the
8 ability to receive compensation above what his services are worth on the open market.
9 Based on the maintenance that the Court is awarding, Ms. Hughes will continue to benefit
from that unique high earning position that Mr. Hughes has with the Hughes Farms, Inc.
corporation. For that reason the Court chose not to divide Hughes Farms, Inc. in the
property division. ✕

10 2.16 The other reason is a matter of fairness. Mr. Brewe (on behalf of Mr. Hughes) made the
11 argument that if the Court were to divide the Hughes Farms, Inc. corporation and then go
12 on to order maintenance based on what the corporation can produce for Mr. Hughes that
13 the Court would essentially be double dipping. In other words, dividing the asset then using
14 the asset as the basis for awarding maintenance. And there is some merit to that argument.
The Court is not sure it's a dollar for dollar double dipping, but it is a double dip of some
sort. And if the Court divides that asset what the Court is going to be doing is affecting the
party's respective incomes going into the future. Because the Court has chosen to award a
significant amount of maintenance in this case it did not seem that it was a fairly divided
asset.

15 2.17 The parties' experts presented two different approaches for valuing the husband's 16.418%
16 interest in Hughes Farms, Inc. Each approach has strengths and weaknesses. Because of
17 that, the Court cannot accept either approach 100 percent and values Mr. Hughes' 16.418%
18 interest in Hughes Farms, Inc. at \$900,000 using a fair market value analysis ultimately.
19 The Court has gone somewhere in the middle. Mr. Kessler used the net asset approach, and
20 he clearly used the appropriate discount for lack of control. He explained why he chose
21 25%. The court believes that 25% was a reasonable discount to use under the
22 circumstances. Mr. Hughes is not an outsider to this corporation. He's an insider. And no
23 officer has more than 50 percent. So there can be alliances within the officers to make
24 decisions. Mr. Hughes has some control within the corporation and decision making power.
The Court does not believe the high end lack of control discount is appropriate. Mr.
Kessler used the right one. (NCO)

✕ In order to address the disproportionate economic

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 5

Circumstances the parties will be left in and
because the court is awarding the husband his
interest in Hughes Farms Inc. CP 62 is an asset
of significant value with the ability to provide
income to husband the court

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market estate.

- 1 2.18 The other thing Mr. Kessler did that was a strength was that he recognized Hughes Farms'
2 officer compensation is greatly in excess of what the market can support. He also used six
3 years of income history to do his analysis, which, as he said, was appropriate because you
4 need to use a peak to peak or trough to trough time period in order to capture patterns of the
5 corporation.
- 6 2.19 The weaknesses in Mr. Kessler's approach was that he had to make assumptions about the
7 value of the equipment, the vehicles, and the building in order to do his net asset approach.
8 He didn't have appraisals. He did have to rely on an assumptions as to the value of those
9 items. That was one of the weaknesses in Mr. Kessler's approach. Mr. Kessler also didn't
10 make any adjustment for lack of marketability or illiquidity, and the Court understands the
11 reason why he didn't. Mr. Kessler points out that the asset is not changing hands at this
12 point. It's going to stay right where it is. Mr. Hughes is going to continue to own it, and
13 nobody is going to put it on the market. Nobody is going to sell it. Illiquidity is not
14 something the Court ought to be taken into consideration.
- 15 2.20 The problem with that, for the Court, is that ultimately the value of this corporation to Mr.
16 Hughes is going to be when he does exchange it for money. At some point in the future he's
17 going to have to do that. If he wants to realize any money from it in terms of its value
18 above and beyond what it gives you in salary he's going to have to sell it. He's going to
19 have to do something with it to achieve any return. And so eventually the market is going
20 to have to say something about what this corporation is worth to him. And the fact that it's
21 not as liquid as a stock-on-stock exchange would be something that does affect its value.
22 He has very few places he can actually sell it. So the Court thinks that does need to be
23 taken into consideration and Mr. Kessler did not ~~do that~~ take that into consideration. (K) (M)
- 24 2.21 Mr. Leung used a fair market analysis approach. His approach has some weaknesses too.
The Court frankly doesn't think there probably is a perfect way of doing this known to
anybody no matter how expert. Mr. Leung used comparables that were so shockingly
different from Hughes Farms that it undermined the Court's ability to accept his analysis.
When you take a multinational food corporation that not only raises product but sells it,
cans it, packs it, ships it, and markets it for Safeway all around the world you've got a
whole different kind of corporation than Hughes Farms. Hughes Farms, Inc. is not little,
but they are not Dole. So it just is very hard to accept Mr. Leung's approach from that basis
alone.
- 2.22 The other thing the Court found that was a weakness in Mr. Leung's approach was that he
didn't make any adjustment at all for the fact that this corporation is paying its officers way
more than the market would for it. And as he acknowledged, if he did that, his value of the
corporation would go up. The Court believes he should have done that.

* In making its maintenance award the court considered the factors of RCW 26.09.020 including the fact that the husband was awarded his separate property interest in the family corporation off the top which is an asset of high value that produces substantial income for the husband and his dependents that the maintenance to wife is just and equitable

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2.23 There were a lot of factors that had to be taken into consideration. And the property division that the Court decided on had to be taken into consideration as well as other factors. The wife is 47 years old and will soon be 48 coming up here in a few months. She has high a school education. The husband is 50 years old. He has an Associate Degree. Both are in good health. Both are capable of working full time. They were married for over 25 years and had a relationship that was even longer than that. During their marriage they had a relatively high standard of living. The husband's employment at Hughes Farms, Incorporated is all but guaranteed for the rest of his work life. There is very little that would put his employment at that corporation at risk. *

2.24 The wife's employment situation is a lot less secure. She doesn't have a family corporation to employ her and pay her more than the market would bear. And at this point she's just starting out really again in the employment world. She's going to have to work her way up to permanent full-time employment. The Court also has to take into consideration that the Hughes Farms corporation shares are Mr. Hughes' separate property. And those have been awarded to the husband without any credit to the wife.

2.25 In terms the maintenance issue, the Court has decided to use Mr. Hughes' income without including the rental income (\$54,067 in 2011) from the farm parcels. The reason the Court has done that is because those farm parcels have already been divided 60/40 in favor of the wife, including two of Mr. Hughes' separate property parcels (Maupin and Mann Road).

2.26 Having done that, it is not then equitable to attribute 100 percent of the earnings interest, those same parcels provide to Mr. Hughes. Ms. Hughes is going to have money. She can invest it and earn a return on it, just like Mr. Hughes is going to be able to earn from the parcels. So the Court has not included the rental income in the maintenance analysis.

2.27 The Court averages Mr. Hughes' wages over the years 2009 to 2012. The Court picked those years because they include two good years and two lean years. The Court's goal was to do a pretty middle of the road average for what he could make, taking into consideration both good years and bad years. That's what farming is all about. So what the Court has established is that Mr. Hughes' wages at essentially \$30,747 (gross) a month on average during that time period. Ms. Hughes, on the other hand, earns quite a lot less. Her average income over the same time period is about \$1,723 a month. *That will be a 94% difference in the future income regardless of the total court property distribution*

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2.28 The other thing, though, the Court has to take into consideration is that Ms. Hughes' income is going to go up over time. Mr. Hughes's probably won't. His is probably going to stay about the same over the rest of his working life. Hers is under her control. She's worked part time now. She has the ability to work full time. And from the description of David Hughes and her work for Hughes Farms, Inc. she's a valuable employee. She has a lot of skills, even though she doesn't have more than a high school education; so she is able to earn more. She will be earning more as time goes on.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 7

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2.29 Ms. Hughes will be paid \$12,000 a month in maintenance to age 55 and then a \$10,000 a month maintenance thereafter to age 66. That is a lot of money. It's not enough money to equalize the party's income. Mr. Hughes is going to have all of the rental income that's not even been included in this, and this doesn't equalize the income, even in these figures, and even taking that into consideration. Ms. Hughes is 47. Ms. Hughes has a lot of good working years ahead of her. And she has the ability to earn more and she will. This is a long period of maintenance for Mr. Hughes, a long time, a lot of money. And the reason for it is primarily because he's been married for more than 25 years. Mr. Hughes earns a lot of money. His wife has contributed to your ability to do that. And in the meantime she hasn't improved her skills or working ability. *On the other hand because of the price of the parties during the marriage including the fact that the raised the parties daughter she has not improved her skills or working*

2.30 There should be life insurance securing maintenance. Ms. Hughes will need to pay for that. Mr. Hughes needs to cooperate in obtaining the life insurance coverage. There would need to be COBRA health insurance for six months following the divorce decree. Each party is in a position to pay their own attorney's fees.

2.31 Maintenance will terminate upon remarriage.

2.32 In terms of investment income Ms. Hughes is going to derive from the settlement amount \$654,390.00. The Court assumes that she will be making half what Mr. Hughes has been producing as rental income once she gets invested.

2.33 The Court's values and manner of distribution of the property is set forth on Exhibit "A" attached hereto.

3. RESIDENCY OF PETITIONER

The Petitioner is a resident of the state of Washington.

4. NOTICE TO RESPONDENT.

The respondent has appeared, responded and was personally served a copy of the Summons and Petition for Dissolution of Marriage on the 2nd day of February, 2011.

5. BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT.

The facts below establish personal jurisdiction over the respondent.

The respondent is currently residing in Washington.
The parties lived in Washington during their marriage and the petitioner continues to reside in this state.

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ability beyond that she now possess

1 The parties may have conceived a child while within Washington.

2 6. DATE AND PLACE OF MARRIAGE.

3 The parties were married on June 15, 1985 at Mount Vernon, Washington.

4 7. STATUS OF THE PARTIES.

5 Husband and wife separated on January 7, 2011.

6 8. STATUS OF THE MARRIAGE.

7 The marriage is irretrievably broken and at least 90 days have elapsed since the date the
8 petition was filed and since the date the summons was served or the respondent joined.

9 9. SEPARATION CONTRACT OR PRENUPTIAL AGREEMENT.

10 There is no written Separation Contract or Prenuptial Agreement.

11 10. COMMUNITY/SEPARATE PROPERTY.

12 The parties have real or personal community and separate property which should be
13 apportioned and divided as set forth in Exhibit "A" attached hereto and hereby incorporated
14 by this reference and as set forth in Exhibit "A" of the Decree of Dissolution.

15 11. MAINTENANCE/ALIMONY.

16 Beginning April 1, 2012, Respondent should pay Petitioner \$12,000.00 per month in
17 maintenance/alimony until such time as Petitioner has reached the age of fifty-five (55).
18 Thereafter, Respondent should pay Petitioner \$10,000.00 per month in
19 maintenance/alimony until Petitioner reaches age sixty-six (66). Maintenance should be
20 paid on the first day of each month it is due.

21 The obligation to pay maintenance is modifiable per statute and terminated upon the death
22 of either party, the remarriage of the party receiving maintenance, or at such time as
23 Petitioner reaches age sixty-six (66), whichever occurs first.

24 The maintenance obligation should be secured by sufficient declining balance life
 insurance to fully secure the obligation. Petitioner should be responsible for all costs
 associated with said life insurance coverage. Respondent should cooperate to the best of
 his ability in the process of Petitioner obtaining said life insurance coverage.

1 Maintenance should be deductible for obligor and included amongst obligee's income for
2 Internal Revenue Service purposes.

3 12. CONTINUING RESTRAINING ORDER.

4 Does not apply.

5 13. PROTECTION ORDER.

6 Does not apply.

7 14. FEES AND COSTS.

8 There is no award of fees or costs because each of the parties has sufficient property,
9 income or resources available to pay his or her own respective attorney fees and costs.

10 15. PREGNANCY.

11 The wife is not pregnant.

12 16. DEPENDENT CHILDREN

13 Does not apply.

14 17. PARENTING PLAN.

15 Does not apply.

16 18. CHILD SUPPORT.

17 Does not apply.

18 19. COBRA. Petitioner should be entitled to COBRA health insurance coverage for six (6)
19 months following entry of the Decree of Dissolution. Respondent should be responsible
20 for all costs associated with said COBRA coverage for said six (6) months.

21 20. EQUALIZING AWARD. Respondent should pay Petitioner Six Hundred Fifty Four
22 Thousand Four Hundred Ninety and No/100 Dollars (\$654,490.00) as an equalizing award,
23 paid as follows: Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) payable
24 within six (6) months of entry of the Decree of Dissolution, interest free. The remaining
obligation of \$404,490.00 is due and owing within twelve (12) months following entry of
the Decree of Dissolution (interest free if paid timely). Interest should accrue at 6% on any

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 10

CP 67

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1 portion of the above obligations not timely paid. Respondent's obligation should be
2 represented by a Promissory note and Deeds of Trusts on the real property awarded to him,
3 provided, however, that Respondent should be able to borrow against said real properties in
4 order to satisfy the equalizing award in favor of Petitioner. The Husband should execute
5 the Promissory Note attached as Exhibit "C" and secure the same with Deeds of Trusts on
6 all of his real estate.

7 III. CONCLUSIONS OF LAW

8 The court makes the following conclusions of law from the foregoing findings of fact:

9 3.1 JURISDICTION.

10 The court has jurisdiction over the parties, subject matter, and, property and obligations of
11 the parties and to enter a decree in this matter.

12 3.2 DECREE.

13 The parties should be granted a decree of dissolution of marriage

14 3.3 PREGNANCY.

15 Does not apply.

16 3.4 DISPOSITION.

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

3.5 CONTINUING RESTRAINING ORDER.

Does not apply.

1 3.6 PROTECTION ORDER.

2 Does not apply.

3 3.7 ATTORNEY'S FEES AND COSTS.

4 Each party should bear their own professional and legal fees and costs.

5 3.8 NAME CHANGE.

6 The Petitioner's name should be changed to Michelle Evans.

7 3.9 SEPARATION CONTRACT.

8 Does not apply.

9 3.10 PROPERTY TO BE AWARDED.

10 The parties' community and separate property should be awarded and divided as set forth
11 in Exhibit "A" attached hereto and hereby incorporated by this reference and Exhibit "A"
to the Decree of Dissolution.

12 3.11 DEBTS AND OBLIGATIONS.

13 The parties' debts should be divided in accordance with Exhibit "A" attached hereto and
14 hereby incorporated by this reference and Exhibit "B" to the Decree of Dissolution.

15 3.12 MAINTENANCE/ALIMONY.

16 Beginning April 1, 2012, Respondent should pay Petitioner \$12,000.00 per month in
17 maintenance/alimony until such time as Petitioner has reached the age of fifty-five (55).
18 Thereafter, Respondent should pay Petitioner \$10,000.00 per month in
19 maintenance/alimony until Petitioner reaches age sixty-six (66). Maintenance should be
20 paid on the first day of each month it is due.

21 The obligation to pay maintenance is modifiable per statute and terminated upon the death
22 of either party, the remarriage of the party receiving maintenance, or at such time as
23 Petitioner reaches age sixty-six (66), whichever occurs first.

24 The maintenance obligation should be secured by sufficient declining balance life
insurance to fully secure the obligation. Petitioner should be responsible for all costs

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 12

CP 69

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1 associated with said life insurance coverage. Respondent should cooperate to the best of
2 his ability in the process of Petitioner obtaining said life insurance coverage.

3 Maintenance should be deductible for obligor and included amongst obligee's income for
4 Internal Revenue Service purposes.

5 3.13 PARENTING PLAN.

6 Does not apply.

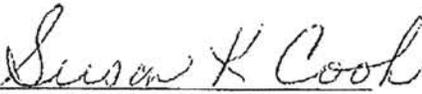
7 3.14 ORDER OF CHILD SUPPORT.

8 Does not apply.

9 3.15 COBRA. Petitioner should be entitled to COBRA health insurance coverage for six (6)
10 months following entry of the Decree of Dissolution. Respondent should be responsible
11 for all costs associated with said COBRA coverage for said six (6) months.

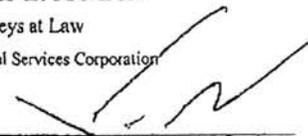
12 3.16 EQUALIZING AWARD. Respondent should pay Petitioner Six Hundred Fifty Four
13 Thousand Four Hundred Ninety and No/100 Dollars (\$654,490.00) as an equalizing
14 award, paid as follows: Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)
15 payable within six (6) months of entry of the Decree of Dissolution, interest free. The
16 remaining obligation of \$404,490.00 is due and owing within twelve (12) months
17 following entry of the Decree of Dissolution (interest free if paid timely). Interest should
18 accrue at 6% on any portion of the above obligations not timely paid. Respondent's
19 obligation should be represented by a Promissory Note and Deeds of Trusts on the real
20 property awarded to him, provided, however, that Respondent should be able to borrow
21 against said real properties in order to satisfy the equalizing award in favor of Petitioner.
22 The Husband should execute the Promissory Note attached as Exhibit "C" and secure the
23 same with Deeds of Trusts on all of his real estate.

24 DONE IN OPEN COURT this 11 day of May, 2012.

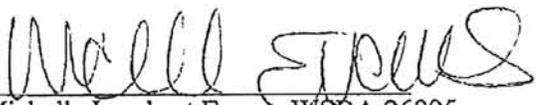

JUDGE SUSAN K. COOK

1 Presented by:

2 BREWE LAYMAN
3 Attorneys at Law
4 A Professional Services Corporation

5 By 
6 Kenneth E. Brewe, WSBA 9220
7 Attorney for Respondent

8 Copy Received, Approved by Entry,
9 Notice of Presentation Waived:

10 By 
11 Michelle Lambert Evans, WSBA 26095
12 Attorney for Petitioner

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 14

CP 71

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EXHIBIT "A" TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

**Hughes Dissolution
Asset/Debt Worksheet**

Ex. #	Categories	Item Description	Market Value	Liens	Husband's Separate Credit	Wife's Separate Credit	Net Equity - Prior to Separate Credits	To Be Awarded to Husband	To Be Awarded to Wife
	Real Property								
		19864 Dry Slough Road, Mount Vernon (family home located on 26.88 acres - value per 3/12/12 Stipulation Re Values for Trial - community property)	\$ 536,000.00	\$0			\$ 536,000.00	\$ 536,000.00	
		20.28 acres of land - Tellesbo property in Skagit County (value per 3/8/12 Stipulation Re Values for Trial - community property)	\$ 105,000.00	\$0			\$ 105,000.00	\$ 105,000.00	
		42.2 acres of land - Maupin Road - Butterfield property (20% interest = \$75,000 - husband was gifted property prior to marriage- owned free and clear - value per 3/8/12 Stipulation Re Values for Trial - husband's separate property)	\$ 75,000.00	\$0	\$0		\$ 75,000.00	\$ 75,000.00	
		40 acres - Moore Road - Telesbo Middle property (25% interest = \$80,625 - value per 3/12/12 Stipulation Re Values for Trial - community property)	\$ 80,625.00	\$0			\$ 80,625.00	\$ 80,625.00	
	CP 72	33 acres - Mann Road - Lorenzen property in Skagit County (50% interest = \$122,100 - husband acquired pre-marriage - value per 3/12/12 Stipulation Re Values for Trial - husband's separate property)	\$ 122,100.00	\$0	\$0		\$ 122,100.00	\$ 122,100.00	
		87.69 acres - Fir Island Road - Solseth property in Skagit County (25% interest = \$135,510 - balance owing of \$122,309.34 as of 12/5/11 - value per 3/12/12 Stipulation Re Values for Trial - community property)	\$ 135,510.00	\$ 30,577.34			\$ 104,932.66	\$ 104,932.66	
		55.84 acres - Skagit City Road - Paul Place in Skagit County (25% interest = \$105,151 - value per 3/12/12 Stipulation Re Values for Trial - community property)	\$ 105,151.00	\$0			\$ 105,151.00	\$ 105,151.00	
		Whaler Time Share at Kaanapali Beach, Maui, Hawaii 510/512D (value per Stipulation Re Values for Trial dated 3/10/12 - community property)	\$ 47,500.00	\$0			\$ 47,500.00	\$ 47,500.00	
		Whaler Time Share at Kaanapali Beach, Maui, Hawaii 216E (value per Stipulation Re Values for Trial dated 3/10/12 - community property)	\$ 15,000.00	\$0			\$ 15,000.00		\$ 15,000.00
	Business Entities								
		Hughes Farms, Inc. (husband owns 16.418% or 8,209 shares- all shares gifted to husband by his parents or acquired prior to marriage - no shares purchased during marriage - husband's separate property)	\$ 900,000.00		\$ 900,000.00		\$ 900,000.00	\$ 900,000.00	
	Vehicles								
		2009 F-350 Ford Deisel truck (wife sold truck in a commercially reasonable manner on 10/28/11 for \$35,400 and retained net proceeds)	\$ 35,400.00	\$0			\$ 35,400.00		\$ 35,400.00
		2008 Audi A-4	\$ 23,000.00	\$0			\$ 23,000.00		\$ 23,000.00
		2005 20' Sundowner three stall horse trailer	\$ 10,000.00				\$ 10,000.00		\$ 10,000.00

Ex. #	Categories	Item Description	Market Value	Liens	Husband's Separate Credit	Wife's Separate Credit	Net Equity - Prior to Separate Credits	To Be Awarded to Husband	To Be Awarded to Wife
		1995 MB Boat (value per Stipulation Re Values for Trial dated 3/8/12)	\$ 12,500.00				\$ 12,500.00		\$ 12,500.00
		Quadrunner	\$ 3,000.00				\$ 3,000.00	\$ 3,000.00	
		1966 16' hunting trailer (husband - no value)						X	
		1982 14' aluminum boat (husband - no value)						X	
		2004 Volkswagen Jetta (to daughter, Alyssa per Stipulation Re Values for Trial dated 3/8/12)							
		2007 Volkswagen Jetta (to daughter, Kinsey per Stipulation Re Values for Trial dated 3/8/12)							
Personal Property									
		Wife shall be awarded all personal property listed on trial exhibit 33, with the exception of the following, which shall be awarded to Husband: Dog (named Duke), Pool Table and Sticks, Hot Tub and Generator.							
		Wife's saddles/tack/equipment/carts/harnesses - to wife							X
		Guns and safe - to husband						X	
		Seasonal decorations - split equally upon agreement						X	X
Miscellaneous									
		Horse - Deno Park (to daughter, Kinsey per Stipulation Re Values for Trial dated 3/10/12)							
		Horse - TGIF (to daughter, Alyssa per Stipulation Re Values for Trial dated 3/10/12)							
		Horse - Gambling on Charlie (stipulated value of \$25,000 less vet bill of \$8,972)	\$ 16,028.00				\$ 16,028.00		\$ 16,028.00
		Funds held in Brews Layman Trust Account (husband's 2011 post-separation earnings/ husband's separate property)	\$ 107,574.66		\$ 107,574.66		\$ 107,574.66	\$ 107,574.66	
		Rental property income held in Brews Layman Trust - Account community property to be divided 60/40	\$ 54,067.00				\$ 54,067.00	\$ 21,626.80	\$ 32,440.20
		Debts							
		Husband to pay wife's outstanding invoice from Attorney Brian Clark in the amount of \$8,325.00 for the Subpoena wife's counsel issued for records.							
		Equalizing payment to Wife from Husband	\$ 654,490.00				\$ 654,490.00		\$ 654,490.00

CP 73

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

In re the Marriage of:

MICHELLE HUGHES,

 Petitioner,

 and

ROBERT HUGHES,

 Respondent

No.: 11-3-00079-2

DECREE OF DISSOLUTION

I. JUDGMENT/ORDER SUMMARIES

1.1 RESTRAINING ORDER SUMMARY:

Does not apply.

1.2 REAL PROPERTY JUDGMENT SUMMARY:

Real Property Judgment Summary is set forth below:

To Respondent:

- a. 19864 Dry Slough Road, Mount Vernon, Washington; Skagit County Tax Parcel Nos. 15727, 15721, 15747
- b. 20.28 Acres of Land; Skagit County Tax Parcel No. 114995
- c. 42.2 Acres of Land on Maupin Road; Skagit County Tax Parcel Nos. 15945, 15946
- d. 40 Acres of Land on Moore Road; Skagit County Tax Parcel Nos. 15718, 15714
- e. 33 Acres of Land on Mann Road; Skagit County Tax Parcel No. 16074

DECREE OF DISSOLUTION - 1

OPPOSING COUNSEL

CP 74

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A Professional Services Corporation

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- 1 f. 87.69 Acres of Land on Fir Island Road; Skagit County Tax Parcel Nos. 15818,
15829, 15834, 15837, 15839, 15826, 15835
2 g. 55.84 Acres of Land on Skagit City Road; Skagit County Tax Parcel Nos. 15785,
15757

3 1.3 MONEY JUDGMENT SUMMARY:

4 Does not apply.

5 **II. BASIS**

6 Findings of Fact and Conclusions of Law have been entered in this case.

7 **III. DECREE**

7 *It Is Decreed that:*

8 3.1. STATUS OF MARRIAGE.

9 The marriage of the parties is dissolved.

10 3.2. PROPERTY TO BE AWARDED THE HUSBAND.

11 The husband is awarded as his sole and separate property the property set forth in Exhibit
12 "A". This exhibit is attached hereto and incorporated by this reference as part of this
decree.

13 3.3. PROPERTY TO BE AWARDED THE WIFE.

14 The wife is awarded as her sole and separate property the property set forth in Exhibit "A".
15 This exhibit is attached hereto and incorporated by this reference as part of this decree.

16 3.4. LIABILITIES TO BE PAID BY THE HUSBAND.

17 The husband shall pay the community or separate liabilities set forth in Exhibit "B". This
18 exhibit is attached hereto and incorporated by reference as part of this decree.

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

20 3.5. LIABILITIES TO BE PAID BY THE WIFE.

21 The wife shall pay the community or separate liabilities set forth in Exhibit "B". This
22 exhibit is attached hereto and incorporated by reference as part of this decree.

23 DECREE OF DISSOLUTION - 2

24 CP 75

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

3 3.6. HOLD HARMLESS PROVISION.

4 Each party shall indemnify and hold the other party harmless from any collection action
5 relating to separate or community liabilities set forth above, including reasonable attorney's
6 fees and costs incurred in defending against any attempts to collect an obligation of the
7 other party.

8 3.7. CONTINUING RESTRAINING ORDER.

9 Does not apply.

10 3.8. PROTECTION ORDER.

11 Does not apply.

12 3.9. JURISDICTION OVER THE CHILDREN.

13 Does not apply because there are no dependent children.

14 3.10. PARENTING PLAN.

15 Does not apply.

16 3.11. POST SECONDARY SUPPORT.

17 Does not apply.

18 3.12. MAINTENANCE.

19 Beginning April 1, 2012, Respondent shall pay Petitioner \$12,000.00 per month in
20 maintenance/alimony until such time as Petitioner has reached the age of fifty-five (55).
21 Thereafter, Respondent shall pay Petitioner \$10,000.00 per month in
22 maintenance/alimony until Petitioner reaches age sixty-six (66). Maintenance shall be
23 paid on the first day of each month it is due.

24 The obligation to pay maintenance is modifiable per statute and terminated upon the
death of either party, the remarriage of the party receiving maintenance, or at such time
as Petitioner reaches age sixty-six (66), whichever occurs first.

The maintenance obligation shall be secured by sufficient declining balance life
insurance to fully secure the obligation. Petitioner shall be responsible for all costs

1 associated with said life insurance coverage. Respondent shall cooperate to the best of
2 his ability in the process of Petitioner obtaining said life insurance coverage.

3 Maintenance shall be deductible for obligor and included amongst obligee's income for
4 Internal Revenue Service purposes.

5 3.13. HOW SUPPORT PAYMENTS SHALL BE MADE.

6 Maintenance shall be paid via a timely check from Respondent to Petitioner.

7 3.14. ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

8 Each party shall bear their own professional and legal fees and costs.

9 3.15. NAME CHANGES.

10 The Petitioner's name shall be changed to Michelle Evans.

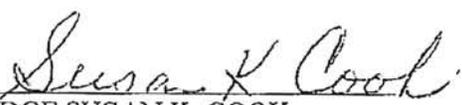
11 3.16. SEPARATION CONTRACT.

12 Does not apply.

13 3.17. REVOCATION OF LIFE INSURANCE POLICY BENEFICIARY DESIGNATIONS.

14 Each party is hereby cancelled as beneficiary and barred from collection of proceeds of any
15 insurance policies covering the life of the other party for which the most recent beneficiary
16 designation was made prior to execution of this decree EXCEPT if otherwise specifically
17 ordered that an insurance policy shall be used as security for an outstanding child support
18 obligation, maintenance obligation or other specifically designated obligation/judgment. If
19 no further designation of such proceeds is made subsequent to execution of this Decree, all
20 such proceeds shall be distributed in the manner prescribed by the life insurance policy
21 when no designated beneficiary exists.

22 DONE IN OPEN COURT this 11 day of May, 2012.

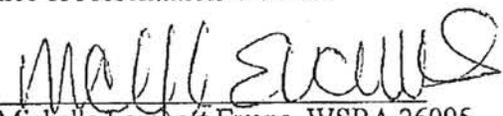
23 
24 JUDGE SUSAN K. COOK

1 Presented by:

2 BREWE LAYMAN
3 Attorneys at Law
4 A Professional Services Corporation

4 By 
5 Kenneth E. Brewe, WSBA 9220
6 Attorney for Respondent

6 Copy Received, Approved by Entry,
7 Notice of Presentation Waived:

7 By 
8 Michelle Lambert Evans, WSBA 26095
9 Attorney for Petitioner

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DECREE OF DISSOLUTION - 5

CP 78

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1 E. The sum of Six Hundred Fifty Four Thousand Four Hundred Ninety and
2 No/100 Dollars (\$654,490.00) as an equalizing award paid by Respondent as follows: Two
3 Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) payable within six (6) months of entry
4 of the Decree of Dissolution, interest free. The remaining obligation of \$404,490.00 is due and
5 owing within twelve (12) months following entry of the Decree of Dissolution (interest free if paid ^{ME}
6 timely). Interest shall accrue at 6% on any portion of the above obligations not timely paid. ^{MEB}
7 Respondent's obligation shall be represented by a Promissory Note and Deeds of Trusts on the real
8 property awarded to ^{Respondent} ~~Petitioner~~, provided, however, that Respondent shall be able to borrow against
9 said real properties in order to satisfy the equalizing award in favor of Petitioner. The Husband
10 shall execute the Promissory Note attached as Exhibit "C" and secure the same with Deeds of
11 Trusts on all of his real estate.

12 F. All proceeds received from the sale of the 2009 Ford F-350 Truck
13 (\$35,400.00).

14 G. 2008 Audi A-4, and any underlying obligations thereon.

15 H. 2005 20' Sundowner Three-Stall Horse Trailer, and any underlying
16 obligations thereon.

17 I. 1995 MB Boat and trailer, and any underlying obligations thereon.

18 J. The following personal property as listed on trial Exhibit "33":

- 19
- 20 • Picture, black & white charcoal above couch (black, white charcoal of
21 Dutch women above red couch)
 - 22 • Gardening supplies
 - 23 • Back pack weed sprayer
 - 24 • Rocking horse

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- Twin white head and foot board for bed (brass head board, footboard – should be in little house)
- Moms antique sewing machine
- Half of Xmas decorations and lights
- Girls memento in wicker basket
- Copies of daughters photos
- All horse blankets
- Nut crackers from Germany
- Horse buggies

K. Wife's saddles, tack, equipment, carts and harnesses.

L. Horse named Gambling on Charlie.

M. The sum of Thirty-Two Thousand Four Hundred Forty and 20/100 Dollars (\$32,440.20) from the Brewe Layman Trust Account, which represents 60% of the 2011 land rent income. Petitioner has received payment of said funds, in full.

N. Any property acquired since the date of the parties' separation with Wife's separate funds, and except as otherwise specifically awarded to Husband.

2. Property Awarded to Husband. The Husband shall be awarded as his sole and separate property, free and clear of any liens, claims, interests, or encumbrances of the Wife the following:

A. All bank/investment accounts and insurance policies (including riders) currently in Husband's name, except as otherwise specifically awarded to Wife.

B. All employment-related benefits in Husband's name, including all rights and benefits which have been derived as a result of past or present employment, union affiliations, military service, or United States, state or other citizenship (except rights the parties are entitled to

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1 receive by virtue of this relationship); and further including but not limited to sick leave benefits,
2 life/health/disability insurance, educational benefits and grants, health or welfare plans and all
3 other contractual, legislated or donated benefits, whether vested or unvested, and whether directly
4 or indirectly derived through the activity of the parties, along with all rights and benefits to which
5 he is entitled by state or federal law, including Social Security benefits, as well as any pension,
6 retirement, profit sharing, 401-K, IRA or Keogh benefit in his name except as otherwise
7 specifically awarded to Wife herein.

8 C. All property currently in Husband's possession; including, but not limited
9 to, clothing, jewelry, personal effects, furniture, furnishings, household adornments, and tools,
10 except as otherwise specifically awarded to Wife.

11 D. All of Husband's separate property interest (16.418%) in Hughes Farms,
12 Inc., including any and all equipment, bank accounts, receivables, goodwill, debts, accounts,
13 claims, leasehold, and assets associated therewith. Husband shall assume all liabilities associated
14 with said business entity and shall hold Wife fully harmless, defend and indemnify her therefrom.

15 E. The following community real property, subject to any underlying
16 mortgages, liens or encumbrances thereon:

- 17 i. 19864 Dry Slough Road, Mount Vernon, Washington; Skagit
County Tax Parcel Nos. 15727, 15721, 15747
- 18 ii. 20.28 Acres of Land; Skagit County Tax Parcel No. 114995
- 19 iii. 40 Acres of Land on Moore Road; Skagit County Tax Parcel
20 Nos.15718, 15714
- 21 iv. 87.69 Acres of Land on Fir Island Road; Skagit County Tax Parcel
Nos. 15818, 15829, 15834, 15837, 15839, 15826, 15835

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v. 55.84 Acres of Land on Skagit City Road; Skagit County Tax Parcel Nos. 15785, 15757

F. The following separate real property, subject to any underlying mortgages, liens or encumbrances thereon:

i. 42.2 Acres of Land on Maupin Road; Skagit County Tax Parcel Nos. 15945, 15946

ii. 33 Acres of Land on Mann Road; Skagit County Tax Parcel No. 16074

G. The Whaler Timeshare at Kaanapali Beach, Maui, Hawaii, units 510/512D.

H. 2002 Suzuki 400 Quadrunner, and any underlying obligations thereon.

I. The sum of Twenty-One Thousand Six Hundred Twenty Six and 80/100 Dollars (\$21,626.80) from the Brewe Layman Trust Account, which represents 40% of the 2011 land rent income. Respondent has received payment of said funds, in full.

J. The sum of One Hundred Seven Thousand Five Hundred Seventy Four and 66/100 Dollars (\$107,574.66) from the Brewe Layman Trust Account, which represents 100% of Respondent's 2011 post-separation earnings, which are his separate property. Respondent has received payment of said funds, in full.

K. The following items of personal property:

- Dog (Duke) without being fixed or altered in any way
- Pool table and sticks
- Hot tub
- Generator
- Guns and gun safe
- One-half seasonal decorations, which are to be divided upon agreement

1 L. Any property acquired since the date of the parties' separation with
2 Husband's separate funds, and except as otherwise specifically awarded to Wife.

3 3. Miscellaneous.

4 A. The 2004 Volkswagen Jetta and horse named TGIF shall be awarded to the
5 parties' daughter, Alyssa.

6 B. The 2007 Volkswagen Jetta and horse named Deno Park shall be awarded
7 to the parties' daughter, Kinsey.

8 C. COBRA. Petitioner shall be entitled to COBRA health insurance coverage
9 for six (6) months following entry of the Decree of Dissolution. Respondent shall be responsible
10 for all costs associated with said COBRA coverage for said six (6) months.

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EXHIBIT "B"
Liabilities of the Parties

1. **Liabilities of Both Parties.** Each party agrees to assume, pay, and hold the other harmless respecting any liens or obligations owing on property awarded, respectively to him or her. Each party further agrees to assume and guarantee payment of any and all charge/credit card balances as to such cards as are in the possession of and are utilized by the respective guarantors. If either party defaults in the performance of any of the terms, provisions, or obligations, set forth herein, and it becomes necessary to institute legal proceedings to effectuate the performance of any provisions of this then the party found to be in default shall pay all expenses, including, but not limited to, reasonable attorneys' fees, incurred in connection with such enforcement proceedings.

2. **Liabilities of Wife.** The Wife shall assume, defend, pay, indemnify (including attorney fees), keep current, and hold the Husband fully harmless for the following obligations incurred by the parties:

A. All debts, claims or obligations incurred by the Wife since the date of separation of the parties, except as otherwise provided herein.

B. Debts, encumbrances, liens, claims, and mortgages associated with any asset awarded to Wife.

3. **Liabilities of Husband.** The Husband shall assume, defend, pay, indemnify (including attorney fees), keep current, and hold the Wife fully harmless for the following obligations incurred by the parties:

A. All debts, claims or obligations incurred by the Husband since the date of separation of the parties.

1 B. Debts, encumbrances, liens, claims and mortgages associated with any asset
2 awarded to Husband.

3 C. Wife's outstanding invoice from Attorney Brian Clark in the amount of
4 \$8,325.00 for the subpoena Wife's counsel issued to obtain copies of records.

5 D. Husband shall pay Wife Six Hundred Fifty Four Thousand Four Hundred
6 Ninety and No/100 Dollars (\$654,490.00) as an equalizing award, paid as follows: Two Hundred
7 Fifty Thousand and No/100 Dollars (\$250,000.00) payable within six (6) months of entry of the
8 Decree of Dissolution, interest free. The remaining obligation of \$404,490.00 is due and owing
9 within twelve (12) months following entry of the Decree of Dissolution (interest free if paid
10 timely). Interest shall accrue at 6% on any portion of the above obligations not timely paid.
11 Husband's obligation shall be represented by a Promissory Note and Deeds of Trusts on the real
12 property awarded to him, provided, however, that Respondent shall be able to borrow against said
13 real properties in order to satisfy the equalizing award in favor of Petitioner. The Husband shall
14 execute the Promissory Note attached as Exhibit "C" and secure the same with Deeds of Trusts on
15 all of his real estate.

RCW 26.09.080

Disposition of property and liabilities — Factors.

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.

[2008 c 6 § 1011; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

RCW 26.09.090

Maintenance orders for either spouse or either domestic partner — Factors.

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

[2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.]

RCW 26.16.010

Separate property of spouse.

Property and pecuniary rights owned by a spouse before marriage and that acquired by him or her afterwards by gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his or her spouse, and he or she may manage, lease, sell, convey, encumber or devise by will such property without his or her spouse joining in such management, alienation or encumbrance, as fully, and to the same extent or in the same manner as though he or she were unmarried.

[2008 c 6 § 602; Code 1881 § 2408; RRS § 6890. Prior: See Reviser's note below.]

RCW 26.16.020

Separate property of domestic partner.

Property and pecuniary rights owned by a person in a state registered domestic partnership before registration of the domestic partnership or afterwards acquired by gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his or her domestic partner, and he or she may manage, lease, sell, convey, encumber or devise by will such property without his or her domestic partner joining in such management, alienation, or encumbrance, as fully, to the same extent and in the same manner as though he or she were not in a state registered domestic partnership.

[2008 c 6 § 603; Code 1881 § 2400; RRS § 6891. Prior: See Reviser's note following RCW [26.16.010](#).]