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

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In Re the Marriage of:

MASON C. BAILEY

Respondent

and

JACKIE E. BAILEY,

Appellant.



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NO. 69616-5-1

REPLY BRIEF OF APPELLANT

JACKIE E. BAILEY

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## I. Introduction

Jackie incorporates her issues pertaining to the Assignments of Error, herein, as if fully set forth. With little reference to the trial court record, the Guardian's responsive brief relies, almost exclusively, upon the trial court's determination of bad faith in both relationships. In reply to various sections of the Guardian's responsive brief, Jackie shows, based upon the trial court record, her absence of unclean hands and bad faith. Jackie also devotes sections of this reply brief to the valid vehicle transfers, refusal to allow her expert to testify and her request for attorney fees.

## II. Jackie Did Not Exercise Bad Faith, Nor Come to Court with Unclean Hands

Because the trial record does not support that Jackie exercised bad faith or had unclean hands, Jackie concluded and argued, on pages 14-16 of her opening brief, that the trial court was really expressing its views of marital misconduct, i.e. immoral conduct. Jackie cited the case of Marriage of Muhammand, 153 Wn. 2d 795, 800, 108 P. 3d 779 (2005), to support her position.

In his responsive brief, (pages 16-18) the Guardian, generally alleged that Jackie engaged in gross fiscal improvidence, the squandering of marital assets, and the dissipation of certain marital assets. The Guardian made no separate argument that Jackie engaged in the

deliberate and unnecessary incurring of tax liabilities, because no such conduct occurred. Mason did not appear at trial to support his son's allegations. (CP 161)

On page 17, the Guardian also cited In re Marriage of Clark, 13 Wn. App. 805, 808-09, 538 P. 2d 145 (1975) (taking account of how labor or negatively productive conduct created or dissipated certain marital assets is appropriate) (emphasis added). The cite of Clark is appropriate. The Guardian, ignores the many projects to which Jackie provided her labor, community-like funds and community funds to improve Mason's separate home and separate real property. (Opening Brief, pp 24-25) When Jackie moved onto the property, there was no lawn. (RP 163) Jackie's efforts improved the property, rather than dissipated the asset. These efforts Jackie, made over a period of years, exemplify her good faith and clean hands.

### III. The Record Does Not Establish that Jackie Acted in Bad Faith During the Committed Intimate Relationship

In her Opening Brief (pp 15-16), Jackie argues that she did not come to Court with unclear hands, nor act in bad faith, during their relationships.

According to the trial court's oral decision.....I cannot find that Ms. Bailey has in any way been acting with any sort of good faith or in any way within the nature of the relationship that this Court could say would be appropriate to grant her an equitable

share of property that may have been accumulated by the parties prior to their marriage. (RP 287-288)

While there is no specific finding concerning bad faith, a portion of Conclusion of Law 3.8 states:

The wife came before the Court with unclear hands in her request for an equitable division of property acquired by the parties while they lived together before they married; therefore, the Court declined to make such a division. (CP 166)

The trial court made no findings on the issues of bad faith or unclear hands. Furthermore, the trial court record does not provide the evidence necessary to support, the above-stated Conclusions of Law 3.8. (CP 166) “An appellate court reviews a trial court’s conclusions of law de novo to determine if they are supported by the findings of fact.” In re the Parentage of G.W.–F, 170 Wn. App. 631, 637, 285 P. 3d 208 (2012).

In his Responsive Brief, (pp. 4 and 5) the Guardian is concerned with the whether Jackie was there with Mark Bishop at the Scottish Lodge. Jackie testified that Mark Bishop called her from the emergency room for a ride. (RP 155) Jackie picked Mr. Bishop up at the emergency room and took him to the motel. (RP 155) However, this testimony goes to the issue of the existence of the Committed Intimate Relationship. This finding, the existence of the Committed Intimate

Relationship, is already verity of this appeal. See State v. Hill, 123 Wn. 2d 641, 644, 870 P. 2<sup>nd</sup> 313 (1994).

On page 5 of his responsive brief, the Guardian, referenced the trial court's oral ruling, wherein Jackie had testified that she took care of the parties' finances. Yet, there is no evidence in the record that Jackie grossly misused Mason's funds or squandered any assets, i.e. there is no evidence of unclean hands during the parties' Committed Intimate Relationship.

Exhibit 6 shows an outstanding balance of \$0.00 on the U.S. Bank statement for July of 2008. The date of this statement is approximately one month prior to the parties' marriage on August 11, 2008. (CP 162) This exhibit was the only bank statement that was put into evidence, during the time frame of the parties' Committed Intimate Relationship. This evidence, presented by the Guardian, not only fails to show a course of conduct that establishes Jackie's unclean hands, but the substantial evidence, at trial, shows a supportive, committed financial relationship that existed between the parties, prior to their marriage.

Jackie worked throughout the parties' Committed Intimate Relationship. Jackie was working as a realtor when she moved in with Mason. (RP 139) Jackie then went to work for Skywest Airlines. (RP 140), where she worked until October 8, 2007. (RP 141) Jackie then

worked for Cargill (RP 141), where she continued to work until well after her marriage. (RP 142) Both Mason and Jackie contributed to a “slush account” that they used to purchase items for their mutual benefit. (RP 207) In addition, Jackie would pay down the debt on the line of credit and home-improvement loan. (RP 143) Jackie also worked with Mason on improving the house and land. On pages 24 and 25 of her opening brief, Jackie lists the many projects the parties completed to improve Mason’s real property. The substantial evidence supports the fact that Jackie’s efforts improved the assets.

The trial court record does not provide the necessary evidence to support, Conclusion of Law, 3.8, which states that Jackie is not entitled to an equitable division of the property acquired by the parties during their Committed Intimate Relationship because Jackie came to court with unclean hands. This court should remand the case to a different trial court in Whatcom County with instructions to make a just and equitable division of the parties’ community-like assets and the improvements to Mason’s separate home and real property.

#### IV. The Trial Court Erred When It Failed to Distribute the Community-Like Property as Prescribed by the Law of Committed Intimate Relationships

In her Opening Brief (p. 11), Jackie argues that the trial court’s decision does not comply with established case law interpretations. In

his responsive brief, (page 20) the Guardian argues that the trial court has essentially unfettered discretion in its property distribution of a Committed Intimate Relationship because the trial court is not required to apply RCW 26.09.080

The trial court found the existence of a Committed Intimate Relationship. (CP 165) To avoid the unjust results of “the Crestman presumption”, the Court came up with the legal theory of a meretricious relationship. See Connell v. Fancisco, 127 Wn. 2<sup>nd</sup> 339, 347, 898 P. 2d 831 (1995). According to Pennington, “[P]roperty acquired during the relationship should be before the trial court so that one party is not unjustly enriched at the end of such a relationship.” Pennington, supra, 602.

The case cited by the Guardian, in his responsive brief, (p. 20) is the paternity case of Parentage of G.W.–F, supra. This case is concerned with the effect of an oral agreement upon the character of property in a Committed Intimate Relationship. The facts of this paternity case are irrelevant to our case because we have no oral agreement, as to incomes and property.

The Guardian failed to cite any cases which state that all of the community-like property and the improvements to Mason’s separate property can all be awarded to Mason on the basis of bad faith. Indeed,

this award opposes to the very purpose of property distributions in a Committed Intimate Relationship: “To ensure that one party is not unjustly enriched at the end of such a relationship.” Pennington, Id.

Mason was unjustly enriched because he was awarded all of the community-like property and the increased value of his separate property, resulting from the parties’ efforts and community-like funds. The award of all the community-like property and the improvements to Mason’s separate property is an abuse of discretion. As stated in Marriage of Littlefield, 133 Wn. 2d 39, 47, 940 P. 2d 136 (1997)

A trial court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and applicable legal standard; it is based upon untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Based upon Littlefield, supra, the trial court’s award all of the community-like property and the value of all of the improvements to Mason’s separate property is based upon untenable reasons as the decision is based upon an, unrecognized, incorrect standard. This Court should remand the case to a different trial court in Whatcom County with instructions to make a just and equitable division of the parties’ community-like assets and improvements to Mason’s separate real property.

V. The Record Does Not Establish that Jackie's Conduct Constituted Unclean Hands, Nor that She Acted in Bad Faith, During the Marriage.

The trial court abused its discretion in failing to award Jackie any community property because there are no factual findings, nor does the trial court record support, that Jackie acted in bad faith or had unclean hands during the marriage.

In her Opening Brief, (pp 15-16) Jackie argues that she did not come to Court with unclean hands, nor act in bad faith during the marriage. In his responsive brief, (RP 7-9) the Guardian, argues that Jackie acted in bad faith during their marriage. The Guardian provides no explanation as to why Jackie acted differently during the marriage than she did during the Committed Intimate Relationship, from which there is no evidence of bad faith.

In his responsive brief, (p. 7) the Guardian references the fact that Jackie was the spouse who took care of the parties' finances. (RP 158) This was the same practice that the parties followed during their Committed Intimate Relationship. Jackie continued to work throughout the marriage. (RP 142) In addition, Jackie's exhibit 70 shows payments from her account to Mason's line of credit totaling \$4,600.00. Jackie's exhibit 71 shows payments from her account into Mason's line of credit totaling \$10,000.00. To clarify the issue of bad faith or unclean hands

during the marriage, the trial court was asked about the several thousand dollars (Exhibits 70 & 71) that Jackie had paid into the equity account (line of credit). (RP 298) The trial court responded:

That is what parties do when they are married, and that is what is expected during the marriage, parties will pay their community funds to pay community obligations. (RP 298)

The payment of approximately \$14,000.00 from her earnings into Mason's line of credit constitutes Jackie's good faith and clean hands.

The Guardian goes on to include a portion of the trial court's oral ruling, on page 7 of his responsive brief.

“There were large sums of money spent on bills and other things, property, buying merchandise, whatever. That isn't easily determined, because the bills from the American Express card and other don't specify specifically what was purchased. (RP 284) (emphasis added)

Therefore, the evidence at trial, the several statements admitted into evidence, fails to show that Jackie grossly misused Mason's funds or squandered any of Mason's assets by running up Mason's credit card bills. In fact, the trial court stated in its oral ruling at VR 298:

[I]t appears to me from the evidence that those lines of credit had been accessed during the course of the marriage, because the evidence was at the time of the marriage that there was a zero balance on the one and a small balance on the other, and now the balances are much larger, and it is pretty clear that they used some of that money to improve the house, to put in a bathtub, to purchase other items that they used to improve the property.

In its oral ruling, the trial court stated, “She (Jackie) has been employed throughout the course of this relationship and since.” (RP 294) In addition to Jackie’s income, Mason was receiving \$5,840.00 per month in pension and Social Security payments (RP 33), along with additional income. In 2009, the parties’ had an adjusted gross income of \$127,584 (Exhibit 48), and in 2011, Mason’s adjusted gross income was \$96,043. (Exhibit 29)

The debts were awarded to Mason. Excluding Mason’s \$17,000 of post-separation attorney fees, incurred by the Guardian, Mason Bailey’s son, the entire non-mortgage debt was \$42,347. (CP 173) This debt is not extraordinary, considering the parties’ standard of living and the extensive improvements the parties made to Mason’s real property. (RP 163, 176-179, 181-183)

V. (1). The Terms of the Parties’ Wills and Community Property Agreement Exemplify Good Faith

As a part of their estate planning, Mason and Jackie executed wills (RP 149-151, CP 50) and a Community Property Agreement. (RP 152, Exhibit 51). These documents were all executed on October 29, 2009. (Exhibits 50, 51) Concerning wills, the law treats spouses as if they had predeceased one another upon their dissolution of marriage, unless there

is a specific provision in the will providing for a property award, regardless of the dissolution of marriage. RCW 11.12.051.

Had Jackie been conducting herself in bad faith and with unclean hands, she would have insisted upon inserting a provision in the Mason's will that provided for a property distribution to her even though the parties' marriage may possibly be dissolved. Jackie did not insist upon any such provision. No such provision in Mason's will exists.

In terms of a Community Property Agreement, a Court may enforce a Community Property Agreement after the parties' marriage is dissolved, unless there is a provision in the Community Property Agreement which causes the termination of the agreement prior to a party's death. See Estate of Bachmeier, 147 Wn. 2d 60, 52 P. 3d 22 (2002).

In our case, the Community Property Agreement was written to become ineffective upon the dissolution of the parties' marriage. (RP 152-153) (CP 51) Had Jackie been conducting herself in bad faith, she would have insisted that there was no such provision in the Community Property Agreement, revoking the Agreement, upon the dissolution of the parties' marriage.

The lack of a term in Mason's Will to give Jackie Mason's property after a dissolution of their marriage and the term of the Community Property Agreement revoking the Agreement upon the dissolution of the parties' marriage, exemplify that Jackie was conducting herself in good faith, during the marriage.

V. (2) The Trial Entered a Finding that Mason was Competent to Request that the Parties' Marriage be Dissolved, Well After Dr. Wynn's Chart Note

The Guardian referenced the trial court's oral opinion at RP 284 which suggested that Jackie had been taking advantage of Mason's finances after Dr. Wynne's chart notations. In his responsive brief, (p. 6) the Guardian, argues that based upon Dr. Wynne's July 13, 2010, chart note (Exhibit 4), Mason had some mild cognitive impairment on October 26, 2009, and subsequently had moderate cognitive impairment on May 5, 2010. As no testing was done in October of 2009, the information upon which Dr. Wynn was basing his opinion came, in part, from Jackie. (Exhibit 4)

Jackie explained her reasons why she sought a facility like Highgate for Mason, in June of 2012. Mason quickly started deteriorating mentally in March of 2012, (RP 211); Mason began hallucinating; he was talking to an imaginary man in a chair (RP 212); one of the cows was shot (RP 211); the house was full of guns (RP 212); Mason had a

history of domestic violence (RP 213); and Jackie no longer felt safe.

(RP 212)

Mason was able to make reasonable decisions until March of 2012. For example, the trial court did not state that Mason was incompetent to execute his Will and the parties' Community Property Agreement that was drafted by and executed in front of attorney Katherine Resnick, on October 29, 2009.

After his disruptive conduct, Highgate banned the Guardian from their premises. (RP 45) (Exhibit 73) This protection order case also resulted in an Order for Protection, protecting Jackie from Mason Bailey's son. (RP 112, 233) The allegations in the vulnerable adult case were similar to those in the dissolution proceedings.

The Guardian, Mason Bailey's son testified that Mason was susceptible to being led (RP 113). By court order, Jackie essentially lost contact with Mason after Mason left Highgate in July of 2012. (RP 113) The Guardian, sought and obtained permission from the Court, which was the same Court as the trial court (RP 277), to petition the Court to dissolve the marriage between his father and Jackie. In his responsive brief, (p. 12) the Guardian references the Order Approving Filing of Petition, entered on February 4, 2011. Mason was present at this hearing. (I-A) Pursuant to Finding of Fact 9,

Mason Bailey has the capacity to honestly express his wishes and desires without any influence, and the guardianship does not prohibit him from making this type of personal decision.”  
(I-C)

This finding was made approximately 7 months after Dr. Wynne’s chart note, July 13, 2010, and approximately 16 months after Mason’s October 26, 2009, office visit. The evidence does not support undue influence by Jackie over Mason.

V. (3) The Vehicles were Jackie’s Separate Property

In his responsive brief, (p. 20) the Guardian, makes the bald statement, without any reference to the record, that the vehicle transfer was invalid because it occurred through undue influence. The Guardian testified that he had no knowledge of Mason’s competence to transfer the vehicles to Jackie at the time of the transfers. (RP 119) However, Chuck Hamstreet, the owner of Northwest Licensing (RP 118), personally knew Mason and participated in the vehicle transfers. (Exhibits 38 & 39) The Guardian did not challenge Mr. Hamstreet’s veracity.

Regardless of either parties’ prior interest in the vehicles, Mason transferred his interest in those vehicles to Jackie on October 17, 2009 (RP 84, 86; Exhibits 36 and 38) Nowhere in the responsive brief does the Guardian provide an argument, with supporting authority, that one

spouse cannot transfer property to another spouse. See Union Savings and Trust Co. v. Manning, 101 Wash. 274, 281, 172 P. 25 (1918)

The Temporary Restraining Order, which is entered in each dissolution case in Whatcom County, allows a party to dispose of property for the necessities of life. (6-A) In its oral ruling, the trial court stated that Jackie was not making as much money as she needed to maintain herself. (RP 294) Jackie traded the two vehicles for her current vehicle because she could not afford car payments. (RP 193)

Substantial evidence supports the valid transfer of the vehicles to Jackie. The vehicles because Jackie's separate property. The trial court abused its discretion in awarding Mason a judgment of \$41,065 against Jackie for Jackie's separate property, her vehicles. (CP 174)

V. (4) Expenditures Incurred by Jackie During Mason's Stay at Highgate Did Not Constitute Gross Fiscal Improvidence

In his responsive brief, (p. 15) the Guardian, argues that Jackie  
abused her control over Mr. Bailey's finances,  
culminating with extraordinary expenses while he was  
at Highgate.

Without supporting this bald statement with references from the trial court record, the Guardian cites only the trial court's oral ruling at RP 284. The Guardian did, however, supplement the Clerk's Papers with his Exhibit 7, a Verizon bill summary, covering the period of June 21 to

July 20, 2012. (RP 39) At the time this expense was incurred, Mason Bailey's son was not his guardian. The Guardian admitted that he did not know how the parties' money was spent before he became the guardian. (RP 117-118) The Guardian also admitted that his knowledge of the purchases made by the parties was based upon statements he found in the house. (RP 118)

The Guardian's Exhibit 7 is a Verizon bill summary, which did not show any calls. Jackie testified,

I was at work, and Mick was at Highgate, and I was getting up to 10 calls a day from Highgate, and my minutes went way over. (VR 190)

In his responsive brief, (p. 15) the Guardian, refers to the trial court's oral decision concerning the \$1,900 in cash advances, during the time frame that Mason was in Highgate. (RP 43) The parties continued to be married while Mason was at Highgate. It is undisputed that Jackie needed Mason's financial support throughout their relationship. ( RP 194), which started in March of 2004. (RP 139) Jackie was in charge of paying the bills for the couple throughout their relationship. (RP 158-159) This practice stopped when the interim Guardian, Dave Bailey, had the locks changed on their post office box. (RP 188)

The Guardian, provided no evidence that these cash withdrawals were extraordinary in terms of the parties' expenses and standard of living. A one month telephone bill and one month of cash withdrawals, during a period of Mason's transition, does not constitute gross fiscal improvidence.

V. (5) Security

In his responsive brief, (p. 15) the Guardian also refers to the Court's oral decision concerning the security Jackie had employed. Jackie and Mason had talked about installing a security system in the house to protect its contents if something happened to Mason. (RP 185) People in the area knew of the valuable contents in the house. (RP 183) Jackie worked during the day at Cargill. (RP 183, 141-142) Jackie hired Mark Hover to stay on the property until the security system was installed and working. (RP 183)

The amount of \$2,150 to preserve the parties' assets pending the installation of a security system, while no one was at the residence, does not constitute gross fiscal improvidence, nor was the security, hired to protect the parties' assets, the squandering of marital assets.

The substantial evidence supports the trial court's abuse of its discretion when it refused to award Jackie any of the community

property based upon bad faith and unclean hands. According to

Littlefield, supra, Id.

A trial court's decision is manifestly unreasonable if it is outside of the range of acceptable choices, given the facts and the applicable legal standard; it is based upon untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on incorrect standard or the facts do not meet the requirements of the correct standard.

The trial court's determination is based upon untenable grounds because the factual record does not support the trial court's oral ruling of Jackie's unclean hands and bad faith. Littlefield, supra, 47. This Court should remand the case to a different trial court in Whatcom County with instructions to make a just and equitable division of the parties' community and separate assets.

VI. The Trial Court Abused Its Discretion By Not Allowing Jackie's Expert Witness to Testify

In his responsive brief, (p. 13) the Guardian, cites Hickok-Knight v. Wal-Mart Stores, Inc., 170 Wn. App. 279, 310 n. 11, 284 P. 3d 749 (2012) to state that a trial court's evidentiary rulings are reviewed for the abuse of discretion. However, the footnote cited by the Guardian refers to the trial court's comment on the evidence of foot-touching. Jackie is not arguing any comment on the evidence. Therefore, the authority is irrelevant to our case.

In his responsive brief, (p. 24) the Guardian concedes, “Certainly, competent testimony would be relevant....” But, argues that Jackie was required to have her witness ready for trial. What the Guardian fails to state is that the trial court unilaterally moved the scheduled October 9<sup>th</sup> and 10<sup>th</sup> trial date to September 24<sup>th</sup> and 25<sup>th</sup>, 2012, (RP 3) The trial court initially stated it would accommodate time for Jackie’s expert witness to testify. (RP 5) The appraiser was to testify based upon the report that had previously been done. (RP4) The trial court stated that an appraisal admissible in one ER 904 should be admissible in another ER 904. (RP 6)

The Guardian did not challenge Jackie’s argument that her expert witness testimony is proper and necessary given the need to properly value the improvements to the property just as it was determined to be both proper and necessary in Walker v. Bangs, 92 Wn. 2d 854, 858, 601 P. 2<sup>nd</sup> 1279 (1979). After the Court refused to allow Jackie’s expert to testify (RP 259), the trial court ruled that there was no way to determine the increased value of Mason’s separate property. (RP 291) According to Littlefield, supra, Id., a trial court’s decision is manifestly unreasonable if it is outside the range of acceptable choices. The trial court abused its discretion by preventing Jackie’s expert witness to testify and then stating that there was no evidence to support the

increased value of Mason's separate property due to the improvements.

(RP 290-292)

#### VII. Award of Attorney Fees at the Trial Court Level

Jackie requested an award of costs and attorney fees at the trial court level. (RP 234) (Opening Brief pp 30-31) Without citing any legal authority, the Guardian, Mason Bailey's son, argues, in his responsive brief, (p. 24) that because Jackie did not prevail at trial, she is not entitled to an award of costs and attorney fees. To begin with, Jackie filed a counterclaim to establish the existence of the parties' Committed Intimate Relationship. (CP 10-14). In paragraph 2.21 of the Findings of Fact (CP 165), the trial court found the existence of the marriage-like relationship. Therefore, Jackie prevailed upon this issue.

Notwithstanding which party did or did not prevail at trial, attorney fees, in a dissolution of marriage proceeding, are not determined by which party prevails at the trial court level. Rather, RCW 26.09.140 provides for the award of attorney fees, after considering the financial resources of both parties. Therefore, the Guardian's, statement that Jackie is not entitled to an award of costs and attorney fees, at the trial court level, because she did not prevail, is misleading.

In his responsive brief, the Guardian chose not to dispute any of the exhibits and trial testimony Jackie referenced, in her opening brief, to

establish her need for an award of her costs and attorney fees at the trial court level.

The record is undisputed that Jackie was using her credit cards to supplement her income because she did have the means to support herself. (RP 201) Jackie provided three exhibits at trial (Exhibits 61, 62, and 63) which showed the outstanding balances on her credit card bills, totaling \$10,376.89 (RP 201-202) Jackie was working for the Megellan Group (RP 143), earning \$12.00 per hour. (RP 226)

Based upon Jackie's admitted exhibits and undisputed testimony at trial, the trial court stated that Jackie was not currently making as much money as she probably needs to maintain herself. (RP 294) Jackie testified that her family and friends have helped her with her bills since their separation. (RP 243) Jackie's undisputed testimony about her lean financial situation (RP 201-202), her admitted exhibits (credit card statements) ( Exhibits 61, 62 and 63); (financial declaration) (Exhibit 76), and the trial court's determination that Jack's did not make enough money to maintain herself (RP 294) establish Jackie's need for an award of costs and attorney fees at the trial court level.

Again, in his responsive brief, the Guardian chose not to dispute the exhibits and trial testimony Jackie referenced, in her opening brief, to establish her husband's ability to pay her costs and attorney fees at the

trial court level. Mason receives monthly pension and social security income of \$5,840.08, (RP 33) or an annual income of \$70,080.96. In addition to these two sources of income, Mason has other income. Mason's 2011 federal tax return shows an adjusted gross income of \$96,043 (Exhibit 29) (RP 107) Mason's discretionary spending is limited due to his current dementia and schizophrenia. (RP 22) Mason's lifestyle is basically limited to the dictates of his caregiver and the confines of his home. (RP 22) Mason owes a post-separation attorney fee debt of \$17,000, incurred by the Guardian, Mason Bailey's son. (RP 51-56) (P 173) Other than the outstanding mortgage on his home, all community-like and community debt awarded to Mason in the amount of \$42,347, (RP 173) can easily be paid with Mason's substantial annual income.

The record establishes Jackie's need and Mason's ability to pay Jackie's costs and reasonable attorney fees, at the trial court level. This Court should reverse the denial of Jackie's request for an award of her costs and reasonable attorney fees for the dissolution of marriage portion of the case and remand the case to a different trial court in Whatcom County with instructions to the trial court to make a determination of Jackie's costs and reasonable attorney fees, at the trial court level.

### VIII. Jackie's Appeal is Not Frivolous

Without stating any specific reasons, on page 25 of his responsive brief, the Guardian makes the bald argument that Jackie's appeal is frivolous because Ms. Bailey's arguments amount to disagreements with the trial court's discretionary decisions. All property distributions in Committed Intimate Relationships and dissolution of marriage actions are discretionary. See Connell, supra, 351 (Property distribution in a meretricious relationship); In re Marriage of Kraft, 119 Wn. 2d 438, 450, 832 P. 2d 871 (1992). (Property distribution in a dissolution of marriage case). Hence, all appellants are appealing discretionary decisions in these types of cases.

Therefore, by logical extension of the Guardian's argument, because all property divisions in these types of cases are discretionary, all appeals of property divisions are frivolous because all arguments are in disagreement with the trial court's discretionary decision. The depth of reported cases reversing a trial court's discretionary decision in property distribution cases constitutes a silent argument against the Guardian's, unsupported position.

The analysis as to whether an appeal is frivolous is found in footnote 2 of Marriage of Pentry, 119 Wn. App 799, 804, 82 P. 3d 1231 (2004)

[W]e are guided by the following considerations:

(1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous if there are no debatable issues upon which reasonable minds might differ, and is so totally devoid of merit that there was no reasonable possibility of reversal.

The bar for determining an appeal to be frivolous is necessarily set very high. “An appeal is not frivolous, however, if the appellant can cite a case supporting its position.” Schreiner v. Spokane, 74 Wn. App. 617, 625, 874 P. 2d 883 (1994). Aside from stating rules, in her opening brief, Jackie cited at least eight cases to support her position. This Court’s consideration of whether or not a party should be barred from a property distribution in a Committed Intimate Relationship, due to bad faith, appears to be a case of first impression. See Olson v. City of Bellevue, 93 Wn. App. 154, 165-166, 968 P 2d 894 (1998).

Jackie’s appeal is not frivolous.

#### IX. Costs and Attorney Fees on Appeal

Jackie has requested an award of costs and attorney fees on appeal. (Opening Brief pp 32-33) In his responsive brief, (p. 24) the Guardian, makes the premature statement that Jackie is not entitled to an award of costs and attorney fees on appeal because she will not be the prevailing party. The award of attorney fees on appeal is also based

upon RCW 26.09.140. Jackie will be providing her financial declaration ten days prior to the date of the oral argument. RAP 18.1 (c).

In his responsive brief, the Guardian chose not to dispute Jackie's need for costs and attorney fees on appeal. The record establishes and the Guardian fails to dispute, Jackie's need and Mason's ability to pay Jackie's costs and reasonable attorney fees, on appeal. This Court should award Jackie her costs and attorney fees on appeal.

X. Conclusion

The trial court record shows the absence of Jackie's unclean hands and bad faith. This Court should reverse and remand this case to a different trial court in Whatcom County to make a just and equitable division of the parties' community-like, community and separate property, after consideration of the testimony of Jackie's expert witnesses.

Respectfully Submitted this 24<sup>th</sup> day of November, 2013.

A handwritten signature in black ink, appearing to read 'D.G. Porter', written over a horizontal line.

David G. Porter, WSBA #17925  
Attorney for Appellant

## APPENDIX

1. Order Approving Filing of Petition for Dissolution of Marriage and Ratifying Guardian's Acts in Dissolution Action IA-1E
2. Findings of Fact and Conclusions of Law 2A-2I
3. Decree of Dissolution 3A-3I
4. RCW 26.09.140 4
5. RCW 11.12.051 5
6. Temporary Restraining Order 6A-6B

FILED IN OPEN COURT  
2/4/2011  
WHATCOM COUNTY CLERK  
By [Signature]

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

In the Guardianship of:  
MASON C. BAILEY,  
An Incapacitated Person.

Case No. 10-4-00266-2  
ORDER APPROVING FILING OF  
PETITION FOR DISSOLUTION  
OF MARRIAGE AND  
RATIFYING GUARDIAN'S  
ACTS IN DISSOLUTION  
ACTION  
Judge Charles R. Snyder

THIS MATTER came on for trial on January 19, 2011, on the Guardian's Petition for Order Approving Filing of Petition for Dissolution of Marriage, and for Ratification of Guardian's Acts in Dissolution Action.

Petitioner, Brett C. Bailey, Guardian of the Person and Estate of Mason C. Bailey, appeared in person before the Court with his attorney, Barry M. Meyers, of the Elder Law Offices of Meyers & Avery.

The Incapacitated Person, Mason C. Bailey, appeared in person before the Court, and was represented by his attorney, Brian L. Hansen, of Resick, Hansen & Follis.

ORDER APPROVING DISSOLUTION PETITION  
AND RATIFICATION OF GUARDIAN'S ACTS - 1

1-A

102A

ORIGINAL

1 Jacqueline Bailey, spouse of the Incapacitated Person, did not appear in person. She  
2 was represented by counsel, David G. Porter, Attorney at Law.

3 Michelle Geri Farris, Guardian ad Litem, appeared in person before the Court.

4 Having considered the verified Petition filed on behalf of the Guardian, the testimony  
5 of witnesses, remarks of counsel, and the papers and pleadings filed herein, the Court finds as  
6 follows:

7 FINDINGS OF FACT

8  
9 1. Brett C. Bailey was appointed Guardian of the Person and Estate of Mason C.  
10 Bailey on October 8, 2010.

11 2. On October 26, 2010, Mason Bailey, the Incapacitated Person, by and through  
12 his Guardian, filed a Petition for Dissolution of Marriage In re Marriage of Mason C. Bailey  
13 and Jackie E. Bailey, Whatcom County Superior Court No. 10-3-00763-6.

14 3. There have been financial dealings by Jacqueline Bailey, Mason Bailey's  
15 spouse, including the removal of money from accounts and the alienation of assets, which are  
16 detrimental to Mason Bailey's personal and financial well-being,

17 4. It is in Mason Bailey's best interest that he is allowed to reside in his own  
18 home with as much support as he can receive, including paid caregivers.

19 5. The further dissipation of Mason Bailey's assets by Jacqueline Bailey is  
20 clearly not in Mr. Bailey's best interest. The preservation of Mason Bailey's assets for his  
21 future care and comfort is in his best interest.  
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2. The past acts of the Guardian with regard to the dissolution action are ratified.

3. The stay on the dissolution action is lifted.

4. Michelle Geri Farris, the Guardian ad Litem, is discharged. The Guardian ad Litem's additional fees in the amount of \$800.00 for services provided in this matter are found to be reasonable and just, and are approved for payment from the estate of the Incapacitated Person.

5. Brian L. Hansen, Mason Bailey's court-appointed attorney, is discharged. Brian Hansen's additional fees in the amount of \$3,435.40, of which \$16.45 are costs, for the services provided in this matter are found to be reasonable and just, and are approved for payment from the estate of the Incapacitated Person.

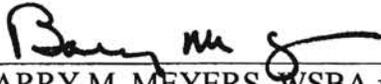
DATED: February 4, 2011

BY THE COURT:

  
SUPERIOR COURT JUDGE

Presented by:

ELDER LAW OFFICES OF MEYERS & AVERY

  
BARRY M. MEYERS, WSBA #22847  
Attorney for Petitioner  
BRETT C. BAILEY

1-0

1 Approved for Entry/Notice of Presentment Waived:

2

3

*Brian L. Hansen*

4

BRIAN L. HANSEN, WSBA #7643  
Attorney for Incapacitated Person  
MASON C. BAILEY

5

6

7

*APPROVED BY TELEPHONE*

MICHELLE G. FARRIS, WSBA #34343  
Guardian ad Litem

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*Copy Received*

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*David G. Porter*

DAVID G. PORTER, WSBA #17925  
Attorney for  
JACQUELINE E. BAILEY

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1-E

FILED IN OPEN COURT  
10-22-20 12  
WHATCOM COUNTY CLERK  
By [Signature]  
Deputy

Superior Court of Washington  
County of WHATCOM

In re the Marriage of:

MASON C. BAILEY

No. 10-3-00763-6

and

Petitioner,

Findings of Fact and  
Conclusions of Law  
(Marriage)  
(FNFCL)

JACKIE E. BAILEY

Respondent.

I. Basis for Findings

The findings are based on trial. The following people attended:

Petitioner's *Guardian per D of [Signature]*

Petitioner's Lawyer.

Respondent.

Respondent's Lawyer.

Other:

Brett Bailey, son and guardian of the person and estate of petitioner Mason Bailey

II. Findings of Fact

Upon the basis of the court record, the court  *Finds*:

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

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**2.2 Notice to the Respondent**

The respondent was served in the following manner:

Per the Declaration of Service filed herein November 3, 2010

**2.3 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.

**2.4 Date and Place of Marriage**

The parties were married on August 11, 2008 at Bellingham, Whatcom County, Washington.

**2.5 Status of the Parties**

Husband and wife separated on February 23, 2010.

**2.6 Status of Marriage**

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

**2.7 Separation Contract or Prenuptial Agreement**

There is no written separation contract or prenuptial agreement.

**2.8 Community Property**

The parties have real or personal community property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these findings.

**2.9 Separate Property**

The husband has the following real or personal separate property: See under other.

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The wife has the following real or personal separate property: See under other.

Other:

The husband has the following real or personal separate property:

- 01. Residence located at 642 Wiltse Lane, Bellingham, WA
- 02. Household furnishings, personal property, vehicles and farm equipment
- 03. Retirement accounts
- 04. Social Security
- 05. Checking and savings accounts in his name
- 06. All other items described as "Mick's property" and "Gun collection" in Exhibit "A" attached hereto, also known as Exhibit 79 at trial.

The wife has the following real or personal separate property:

- 01. Household furnishings and personal property, including personal vehicle
- 02. Retirement accounts
- 03. Checking and savings accounts in her name
- 04. All other items described as "Jackie's property" on page 1 in Exhibit "A" attached hereto, also known as Exhibit 79 at trial; namely, 4 bookcases, 1 upstairs, 1 in master bedroom and 2 in basement, John Grisham book collection, miscellaenous books, Jackie's Pet Shop sign, Nintendo player and games, 100 vinyl records, large mirror and Singer sewing machine.

**2.10 Community Liabilities**

The parties have incurred the following community liabilities: See under other.

Other:

Costco American Express card in the amount of \$13,372

**2.11 Separate Liabilities**

The husband has incurred the following separate liabilities: See under other.

The wife has incurred the following separate liabilities: See under other.

2 - C 163

1 The husband has incurred the following separate liabilities:

2 01. Peoples Bank mortgage on residence located at 642 Wiltse Lane, Bellingham, WA, in  
3 the approximate amount of \$203,619.

4 02. U.S. Bank LOC loan in the approximate amount of \$7,982

5 03. U.S. Bank Equiline loan in the approximate amount of \$20,995

6 04. Elder Law Office of Barry Meyer, Esq. legal fees in the \$17,000

7 Wife's separate liabilities are ~~unknown~~.

*American Express - \$2,500 on  
10/17/10*

8 Each party is liable for all debts incurred since February 23, 2010 and for all obligations for any  
9 property awarded to them.

### 9 2.12 Maintenance

10 Maintenance should not be ordered because:

11 This is a short one and one half (1 1/2) year marriage. Wife is able to work to provide  
12 for her needs. During the marriage, wife accessed, utilized, and took the value of  
13 \$41,065 of the husband's separate property.

### 13 2.13 Continuing Restraining Order

14 Does not apply.

### 15 2.14 Protection Order

16 The antiharassment Order for Protection is currently in effect in the petitioner's  
17 guardianship case.

### 18 2.15 Fees and Costs

19 There is no award of fees or costs.

### 20 2.16 Pregnancy

21 The wife is not pregnant.

### 22 2.17 Dependent Children

23 The parties have no dependent children of this marriage.

### 24 2.18 Jurisdiction Over the Children

25  
Findings of Fact and Conclusions of Law (FNFL) - Page 4 of 6  
WPF DR 04.0300 Mandatory (6/2012) - CR 52; RCW 26.09.030;.070(3)

1 Does not apply because there are no dependent children.

2 **2.19 Parenting Plan**

3 Does not apply.

4 **2.20 Child Support**

5 Does not apply.

6 **2.21 Other:**

7 The parties lived together for a <sup>short</sup> period before they were married and accumulated <sup>in a marriage-like relationship</sup> property. During the parties' marriage, the wife accessed, utilized and took \$41,065 <sup>of</sup> worth of the husband's separate property without his permission and not for his benefit.

9 **III. Conclusions of Law**

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

11 **3.1 Jurisdiction**

12 The court has jurisdiction to enter a decree in this matter.

13 **3.2 Granting a Decree**

14 The parties should be granted a decree.

15 **3.3 Pregnancy**

16 Does not apply.

17 **3.4 Disposition**

18 The court should determine the marital status of the parties, consider or approve  
19 provision for maintenance of either spouse, make provision for the disposition of  
20 property and liabilities of the parties, make provision for the allocation of the child as  
21 federal tax exemptions, make provision for any necessary continuing restraining orders,  
and make provision for the change of name of any party. The distribution of property  
and liabilities as set forth in the decree is fair and equitable.

22 **3.5 Continuing Restraining Order**

23 Does not apply.

24 **3.6 Protection Order**

25 A Vulnerable Adult Order for Protection entered in Whatcom County Superior Court is

adequate to protect the petitioner for the next three years, and the court reserves the right to issue an order post-dissolution should the facts warrant.

**3.7 Attorney Fees and Costs**

Attorney fees, other professional fees and costs should be paid by by each party

**3.8 Other**

The wife came before the court with unclean hands in her request for an equitable division of property acquired by the parties while they lived together before they married; therefore, the court declined to make such a division.

The husband should be awarded a judgment against the wife for the \$41,065 worth of his separate property that she accessed, utilized and took for her own benefit without his permission.

Dated: October 24, 2012

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

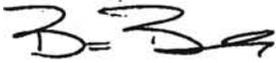
Presented by:

~~Approved for entry:~~  
~~Notice of presentation waived:~~

*Copy Received*

  
Patricia S. Woodall 10/15/12  
Signature of Party or Lawyer/WSBA No. Date

David Porter 17925 10/24/12  
Signature of Party or Lawyer/WSBA No. Date

  
BRETT BAILEY GUARDIAN OF THE  
PERSON AND ESTATE OF MASON  
C. BAILEY

Jackie's Property	Jackie	Mick
4 bookcases, 1 upstairs, 1 in master bedroom and 2 in basement	\$200	
John Grisham book collection	\$500	
Misc books	\$100	
Jackie's Pet Shop Sign	\$500	
Nintendo payer and games	\$300	
100 vinyl records	\$500	
Large Mirror	\$1,000	
Singer Sewing Machine	\$200	
	<b>SUB TOTAL</b>	<b>\$0</b>
<b>Items Purchased during our relationship</b>		
China Buffet	\$150	
8 trickle chargers		\$150
3 large battery chargers		\$100
Safe 4ft. X 3ft.	\$300	
ADT Security System		\$2,150
1 hay poker attachment for tractor		\$200
Coin and stamp collection - US Presidents and States		\$10,000
1 large flat screen tv in the living room		\$3,000
John Deere riding lawn mower with bag catcher, replacement blades and misc parts	\$800	
New Holland Tractor with 1 hay poker		\$35,000
Patio Furniture	\$150	
Christmas decorations and outdoor lights	\$300	
Recliner/rocker (my chair)	\$200	
Ottoman	\$150	
Automated recliner (heated) (Mick's chair)		\$1,500
Automated Skeet Shooter	\$900	
Musical clock	\$400	
Air compressor		\$600
Grass Spreader	\$200	
Beverage machine		\$200
Older freezer in basement		\$50
Slot machine		\$1,500
2 ice cream makers	\$50	
Gun safe in basement	\$3,000	
Tuff Shed 8 x 10 upper pasture		\$250
Run-in Shed - upper pasture		\$5,000
Curio upstairs with duck collection		\$3,500
Fuel for diesel tractor storage tank		\$800
Ammo for weapons	\$3,500	
Corvette car collection		\$2,500
Gun collection	\$77,100	
	<b>SUB TOTAL</b>	<b>\$66,500</b>

Jackie's Property	Jackie	Mick
Mick's property		
King size sleigh bed		\$2,500
1 newer large freezer		\$500
1 newer freezer	\$500	
2 large ladders		\$500
large couch downstairs		\$75
couch main floor		\$50
large desk in computer room 1 bookcase in computer room		\$75
Referigerator/freezer in garage		\$75
Referigerator/freezer in kitchen		\$500
Washer/dryer in laundry room		\$500
Playboy magazine collection		\$250
Generator-garage		\$250
Welding torch		\$500
Log Splitter		\$500
4 cuckoo decks in bassement		\$500
Swing chair		\$350
Smoker	\$50	
Wagon - pulls behind quad	\$50	
John Deere mower - old		\$350
Neon signs	\$5,000	
3 - tv's		\$75
Dining Room table		\$40
1 - curio cabinet in master bedroom with Corvette collection		\$4,188
1 - curio cabinet in master bedroom with China music boxes	\$4,188	
2 - curio cabinets in living room with figurines		\$20,000
Massey Ferguson Tractor.		\$2,500
Bush Hog		\$1,500
Re-load equipment fro ammo	\$3,500	
Roto tiller fits behind both tractors		\$1,500
6 rolls of chain link fencing		\$900
Bucket for tractor		\$1,500
Army truck - military - arena		\$1,000
Toyota pick up		\$1,000
1 ton Ford pickup		\$800
Juke Box full of records - basement	\$3,500	
Barn - tools and misc. equipment		\$10,000
Black gun powder	\$2,000	
Household dishes and cookware		\$2,000
Caprice		\$5,000
Little toyota 4 wd pick up		\$5,000
Honda ATV	\$6,000	

Jackie's Property	Jackie	Mick	
Spare ATV		\$5,000	
Flat Bed trailer (title in Jacqueline Bailey's name)	\$3,000		
	<b>SUB TOTAL</b>	<b>\$27,788</b>	<b>\$69,478</b>
	<b>Total</b>	<b>\$118,288</b>	<b>\$135,978</b>

FILED IN OPEN COURT  
10-24-20  
WHATCOM COUNTY CLERK  
By W  
Deputy

Superior Court of Washington  
County of WHATCOM

In re the Marriage of:

MASON C. BAILEY

No. 10-3-00763-6

Petitioner,

Decree of Dissolution (DCD)

and

(Marriage)

JACKIE E. BAILEY

Respondent.

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 the husband, the real property located at 642 Wiltse Lane, Whatcom County, Bellingham, WA 98225; BAKERVIEW ADDITION TO BELLINGHAM E1/2 BLK88 ASSESSOR'S PARCEL 380202369221.

1.3 Money Judgment Summary:

Judgment Summary is set forth below:

Decree (DCD) (DCLSP) (DCINMG) - Page 1 of 6  
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)

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1	A.	Judgment Creditor	Mason C. Bailey	
	B.	Judgment Debtor	Jackie E. Bailey	
2	C.	Principal judgment amount		\$41,065.00
	D.	Interest to date of Judgment		\$
3	E.	Attorney fees		\$
	F.	Costs		\$
4	G.	Other recovery amount		\$
	H.	Principal judgment shall bear interest at 12% per annum		
5	I.	Attorney fees, costs and other recovery amounts shall bear interest at % per annum		
6	J.	Attorney for Judgment Creditor	Patricia S. Woodall	
	K.	Attorney for Judgment Debtor	David Porter	
7	L.	Other:		

**End of Summaries**

**II. Basis**

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

**III. Decree**

**It Is Decreed** that:

**3.1 Status of the Marriage**

The marriage of the parties is dissolved.

**3.2 Property to be Awarded the Husband**

The husband is awarded as his separate property all the property set forth in Exhibit A, *except for the items of property listed on page 1 under heading "Jackie's property"; namely the following items which are awarded to wife:* 4 bookcases, 1 upstairs, 1 in master bedroom and 2 in basement, John Grisham book collection, miscellaenous books, Jackie's Pet Shop sign, Nintendo player and games, 100 vinyl records, large mirror and Singer sewing machine. This exhibit is attached or filed and incorporated by reference as part of this decree.

The husband is awarded as his separate property the additional following property: See under Other

Other:

01. Residence located at 642 Wiltse Road, Bellingham, Whatcom County, Washington

02. Any and all general household furnishings, furniture, appliances, vehicles, farm

1 machinery, and tools currently in his possession or under his direct control

2 03. Any and all personal property currently in his possession or under his direct control;

3 *On Except for that identified in 3.2 Dwp*  
04. Any and all life insurance policies currently in his name or under his direct control;

4 05. Any and all bank accounts, investment accounts and JC Penney stock currently in his  
5 name or under his direct control;

6 06. All rights, benefits, property, tangible and intangible, acquired by him connection with  
7 his employment; including but not limited to profit sharing plans, pension and retirement  
8 plans, including his Longshoreman's Retirement, and/or benefits including employer and  
9 employee contributions, group insurance benefits, his Social Security benefits, or any  
10 other employee rights, provided however, nothing contained herein shall affect rights  
11 vested in the non-employee party by the laws of the United States regulating Social  
12 Security Benefits.

### 13 3.3 Property to be Awarded to the Wife

14 The wife is only awarded as her separate property the property in Exhibit A as set forth  
15 under the heading "Jackie's Property" namely: 4 bookcases, 1 upstairs, 1 in master  
16 bedroom and 2 in basement, John Grisham book collection, miscellaenous books,  
17 Jackie's Pet Shop sign, Nintendo player and games, 100 vinyl records, large mirror and  
18 Singer sewing machine. This exhibit is attached or filed and incorporated by reference  
19 as part of this decree.

20 The wife is also awarded as her separate property the following property: See under  
21 Other.

22 Other:

23 01. Any and all general household furnishings, furniture, appliances, vehicles, and tools  
24 currently in her possession or under her direct control

25 02. Any and all personal property currently in her possession or under her direct control;

03. Any and all life insurance policies currently in her name or under her direct control;

04. Any and all bank accounts currently in her name or under her direct control;

05. All rights, benefits, property, tangible and intangible, acquired by her connection with her  
employment; including but not limited to profit sharing plans, pension and retirement plans or  
benefits including employer and employee contributions, group insurance benefits, Social  
Security rights, or any other employee rights, provided however, nothing contained herein shall  
affect rights vested in the non-employee party by the laws of the United States regulating Social  
Security Benefits.

### 3.4 Liabilities to be Paid by the Husband

Decree (DCD) (DCLSP) (DCINMG) - Page 3 of 6  
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)

1 The husband shall pay the following community or separate liabilities: See under  
2 Other.

3 Other:

- 4 01. Peoples Bank mortgage on residence located at 642 Wiltse Lane, Bellingham,  
5 Whatcom County, Washington, in the approximate amount of \$203,619
- 6 02. U.S. Bank LOC in the approximate amount of \$7,982
- 7 04. U.S. Bank loan in the approximate amount of \$20,995
- 8 05. Elder Law Office of Barry Meyer, Esq. legal fees in the approximate amount of \$17,000
- 9 06. Costco American Express in the approximate amount of \$13,372

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

12 **3.5 Liabilities to be Paid by the Wife**

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

15 **3.6 Hold Harmless Provision**

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

20 **3.7 Maintenance**

21 Does not apply.

22 **3.8 Continuing Restraining Order**

23 Does not apply.

24 **3.9 Protection Order**

25 The court reserves the right to enter an order post-dissolution if the facts so warrant.

1 **3.10 Jurisdiction Over the Children**

2 Does not apply because there are no dependent children.

3 **3.11 Parenting Plan**

4 Does not apply.

5 **3.12 Child Support**

6 Does not apply.

7 **3.13 Attorney Fees, Other Professional Fees and Costs**

8 Attorney fees, other professional fees and costs shall be paid as follows:

9 Each party shall pay his or her own attorney fees, other professional fees and costs.

10 **3.14 Name Changes**

11 ~~Does not apply.~~ *Jacqueline Edith Hill pm*  
*Dist*

12 **3.15 Other**

13 The husband is awarded a judgment in the amount of \$41,065 against the wife for the  
14 value of his separate property which she accessed, utilized, and took without his  
15 permission.

16 Dated: *October 24, 2012*

*[Signature]*  
17 Judge/Commissioner

18 Petitioner or petitioner's lawyer:  
A signature below is actual notice of this order.

Respondent or respondent's lawyer:  
A signature below is actual notice of this order.

19 Presented by:  
20 Approved for entry:

21 *Patricia S. Woodall*  
22 *6470 10/15/12*  
23 Patricia S. Woodall Date  
Signature of Petitioner or Lawyer/WSBA No.

*David Porter*  
22 *17925 10/24/12*  
23 David Porter Date  
Signature of Respondent or Lawyer/WSBA No.

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Brett Bailey, Guardian of the Person  
and Estate of Mason C. Bailey

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Jackie's Property	Jackie	Mick
4 bookcases, 1 upstairs, 1 in master bedroom and 2 in basement	\$200	
John Grisham book collection	\$500	
Misc books	\$100	
Jackie's Pet Shop Sign	\$500	
Nintendo payer and games	\$300	
100 vinyl records	\$500	
Large Mirror	\$1,000	
Singer Sewing Machine	\$200	
<b>SUB TOTAL</b>	<b>\$3,300</b>	<b>\$0</b>
<b>Items Purchased during our relationship</b>		
China Buffet	\$150	
8 trickle chargers		\$150
3 large battery chargers		\$100
Safe 4ft. X 3ft.	\$300	
ADT Security System		\$2,150
1 hay paker attachment for tractor		\$200
Coin and stamp collection - US Presidentds and States		\$10,000
1 large flat screen tv in the living room		\$3,000
John Deere riding lawn mower with bag catcher, replacement blades and misc parts	\$800	
New Holland Tractor with 1 hay paker		\$35,000
Patio Furniture	\$150	
Christmas decorations and outdoor lights	\$300	
Recliner/rocker (my chair)	\$200	
Ottoman	\$150	
Automated recliner (heated) (Mick's chair)		\$1,500
Automated Skeet Shdoter	\$900	
Musical clock	\$400	
Air compressor		\$600
Grass Spreader	\$200	
Beverage machine		\$200
Older freezer in basement		\$50
Slot machine		\$1,500
2 ice cream makers	\$50	
Gun safe in basement	\$3,000	
Tuff Shed 8 x 10 upper pasture		\$250
Run-in Shed - upper pasture		\$5,000
Curio upstairs with duck collection		\$3,500
Fuel for diesel tractor storage tank		\$800
Ammo for weapons	\$3,500	
Corvette car collection		\$2,500
Gun collection	\$77,100	
<b>SUB TOTAL</b>	<b>\$87,200</b>	<b>\$66,500</b>

Jackie's Property	Jackie	Mick
Mick's property		
King size sleigh bed		\$2,500
1 newer large freezer		\$500
1 newer freezer	\$500	
2 large ladders		\$500
large couch downstairs		\$75
couch main floor		\$50
large desk in computer room 1 bookcase in computer room		\$75
Refrigerator/freezer in garage		\$75
Refrigerator/freezer in kitchen		\$500
Washer/dryer in laundry room		\$500
Playboy magazine collection		\$250
Generator-garage		\$250
Welding torch		\$500
Log Splitter		\$500
4 cuckoo clocks in basement		\$500
Swing chair		\$350
Smoker	\$50	
Wagon - pulls behind quad	\$50	
John Deere mower - old		\$350
Neon signs	\$5,000	
3 - tv's		\$75
Dining Room table		\$40
1 - curio cabinet in master bedroom with Corvette collection		\$4,188
1 - curio cabinet in master bedroom with China music boxes	\$4,188	
2 - curio cabinets in living room with figurines		\$20,000
Massey Ferguson Tractor		\$2,500
Bush Hog		\$1,500
Re-load equipment fro ammo	\$3,500	
Roto tiller fits behind both tractors		\$1,500
6 rolls of chain link fencing		\$900
Bucket for tractor		\$1,500
Army truck - military - arena		\$1,000
Toyota pick up		\$1,000
1 ton Ford pickup		\$800
Juke Box full of records - basement	\$3,500	
Barn - tools and misc. equipment		\$10,000
Black gun powder	\$2,000	
Household dishes and cookware		\$2,000
Caprice		\$5,000
Little toyota 4 wd pick up		\$5,000
Honda ATV	\$6,000	

Jackie's Property	Jackie	Mick	
Spare ATV		\$5,000	
Flat Bed trailer (title in Jacqueline Bailey's name)	\$3,000		
	<b>SUB TOTAL</b>	<b>\$27,788</b>	<b>\$69,478</b>
	<b>Total</b>	<b>\$118,288</b>	<b>\$135,978</b>



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# WASHINGTON STATE LEGISLATURE

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[26.09.138](#) << 26.09.140 >> [26.09.150](#)

## RCW 26.09.140

### Payment of costs, attorneys' fees, etc.

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

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

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

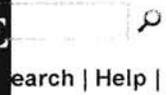
[2011 c 336 § 690; 1973 1st ex.s. c 157 § 14.]

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# WASHINGTON STATE LEGISLATURE



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### RCW 11.12.051

## Dissolution, invalidation, or termination of marriage or domestic partnership.

(1) If, after making a will, the testator's marriage or domestic partnership is dissolved, invalidated, or terminated, all provisions in the will in favor of or granting any interest or power to the testator's former spouse or former domestic partner are revoked, unless the will expressly provides otherwise. Provisions affected by this section must be interpreted, and property affected passes, as if the former spouse or former domestic partner failed to survive the testator, having died at the time of entry of the decree of dissolution or declaration of invalidity. Provisions revoked by this section are revived by the testator's remarriage to the former spouse or reregistration of the domestic partnership with the former domestic partner. Revocation of certain nonprobate transfers is provided under RCW [11.07.010](#).

(2) This section is remedial in nature and applies to decrees of dissolution and declarations of invalidity entered before, on, or after January 1, 1995.

[2008 c 6 § 910; 1994 c 221 § 11.]

### Notes:

**Part headings not law -- Severability -- 2008 c 6:** See RCW [26.60.900](#) and [26.60.901](#).

**Effective dates -- 1994 c 221:** See note following RCW [11.94.070](#).



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SCANNED 2

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WHATCOM COUNTY  
WASHINGTON  
BY CW

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY**

In re the Marriage of: MASON C. BAILEY	Petitioner	No. <b>10 3 00763 6</b>
and JACKIE E. BAILEY	Respondent	TEMPORARY RESTRAINING ORDER (TMRO)
		<b>CHARLES R. SNYDER</b>

**I. NOTICE TO PARTIES**

1.1 An action has been started in this court that affects your marriage. Both husband and wife are now required to obey the following order unless the court changes it. Either of you may ask the court to change or clarify this order. The court has the power to punish violations of this order and to require the violator to pay attorneys' fees to the other party for having to bring the violation before the court.

**II. ORDER**

**IT IS ORDERED:**

**2.1 TEMPORARY ORDERS FOR ALL PARTIES**

- (a) Both parties are restrained from transferring, removing, encumbering, concealing, damaging or in any way disposing of any property except in the usual course of business or for the necessities of life or as agreed in writing by the parties. Each party shall notify the other of any extraordinary expenditure made after this Order is issued.
- (b) Both parties are restrained from assigning, transferring, borrowing, lapsing, surrendering or changing entitlement of any insurance policies of either or both parties or of any dependent children, whether medical, health, life or auto insurance, except as agreed in writing by the parties.
- (c) Unless the court orders otherwise, both parties are responsible for their own future debts whether incurred by credit card, loan, security interest or mortgage, except as agreed in writing by the parties.
- (d) Both parties must have access to all tax, financial, legal, and household records. Reasonable access to records shall not be denied without order of the court.
- (e) Within 30 days after the filing of any general appearance, answer or other responsive pleading, each party shall provide the other party with a completed Financial Declaration (WPF DR 01.0550) and a Verified Statement of Assets and Liabilities (form available from the Whatcom County Superior Court Clerk's Office). Each party shall then file a Declaration of Delivery showing that these documents have been provided to the other party within the time limit. In all cases involving a request for child support, maintenance or attorneys' fees, the Financial Declaration shall also be filed with the court. All parties have a duty to supplement the financial information when additional information becomes available.

*M*

## 2.2 TEMPORARY ORDERS FOR PARTIES WITH MINOR CHILD(REN)

- (a) Both parents are restrained from changing the residence of the child(ren) until further court order, except as agreed in writing by the parties.
- (b) Each parent shall have full access to the child(ren)'s educational and medical records, unless otherwise ordered by the court.
- (c) Each parent shall insure that the child(ren) are not exposed to negative comments about the other parent. Neither parent shall make negative comments about the other parent in the presence of the child(ren).
- (d) Except as provided in 2.2(e) below, within 30 days of filing an appearance, answer or other responsive pleading in this action, both parties shall register for a court-approved parent education program on the effects of family transitions on children. Each party shall attend the seminar within 60 days of registering. Upon completion of the seminar, each party shall file with the court the seminar completion certificate provided by the sponsoring agency or provider.
- (e) If domestic violence has occurred in the relationship, the parties shall individually attend a court-approved parenting program that includes the effects of family violence on children. For purposes of this order, domestic violence has occurred in the relationship if (1) a domestic violence restraining order or protection order (excluding ex-parte orders) involving the parties has been entered by a court at any time within the previous 12 months; (2) a domestic violence no contact order exists pursuant to RCW 10.99; or (3) the court upon motion makes a finding that domestic violence has occurred between the parties and that such abuse would interfere with arms length mediation. The parties shall register for the seminar within 30 days of the filing of an appearance, answer or other responsive pleading and shall attend the seminar within 60 days of registering. Upon completion of the seminar, each party shall file with the court the seminar completion certificate provided by the sponsoring agency or provider.
- (f) Within 14 days of completing the above-ordered parent education program, each parent shall provide the other parent with a Proposed Parenting Plan, if they have not already done so.

## 2.3 MEDIATION AND SETTLEMENT CONFERENCE

If the parties are not able to agree on the final terms of their Decree, they may be required to participate in mediation of unresolved disputes. Mediation is not required for child support disputes nor in cases involving domestic violence. If a case is to be tried before a judge, the parties must also participate in a settlement conference and exchange settlement offers. Mediation and settlement conference requirements are available in Local Rule WCSPR 94.08 and from the Superior Court Family Law Facilitator.

## 2.4 EFFECTIVE DATE OF ORDER

The Petitioner is subject to this Order from the time of filing the Petition. **The Petitioner shall serve a copy of this on Respondent.** The Respondent is subject to this Order from the time that it is served. This Order shall remain in effect until further court order.

Dated:           OCT 26 2010          

  
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Judge/Commissioner

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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In Re the Marriage of: )  
MASON C. BAILEY, )  
Respondent, )  
and )  
JACKIE E. BAILEY, )  
Appellant. )

No. 69616-5-I

DECLARATION OF SERVICE

NOV 15 2013

I, David G. Porter, hereby declare, under penalty of perjury, under the laws of the State of Washington, that the following statements are true and correct to the best of my information and belief.

I am the attorney for the Appellant. On the 25<sup>th</sup> day of November, 2013, I personally served a copy of Reply Brief of Appellant and Appellant's Second Supplemental Designation of Clerk's Papers on the law office of Respondent's attorney, Philip T. Buri, located at 1601 F Street, Bellingham, Washington.

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Dated this 25<sup>th</sup> day of November, 2013, in Bellingham, Washington.



David G. Porter, WSBA 17925  
Attorney for Appellant