

NO. 35924-3-II

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

FILED
CLERK OF COURT
CLARK COUNTY
WASHINGTON
SEP 18 2007

IN RE THE MARRIAGE OF:

DARLENE M. TEHENNEPE,

Appellant

v.

BERNARD G. TEHENNEPE,

Respondent

THE HONORABLE JUDGE EDWIN POYFAIR
JUDGE OF THE SUPERIOR COURT
OF CLARK COUNTY, STATE OF WASHINGTON

APPELLANT'S BRIEF

SUZAN L. CLARK, WSBA #17476
Attorney at Law
1101 Broadway Street, Suite 250
Vancouver, WA 98666
(360) 735-9434

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I. ASSIGNMENTS OF ERROR

- A. Assignment of Error Number One : The trial court erred in denying reconsideration of the property distribution.
- B. Assignment of Error Number Two: The trial court erred in failing to order sufficient maintenance for the wife on reconsideration.
- C. Assignment of Error Number Three: The trial court erred in utilizing an expedited trial procedure and not admitting any evidence on the record.
- D. Assignment of Error Number Four: The trial court erred in entering Finding of Fact Number 2.8 relating to community property.
- E. Assignment of Error Number Five: The trial court erred in entering Finding of Fact Number 2.9 relating to separate property.
- F. Assignment of Error Number Six: The trial court erred in entering Finding of Fact Number 2.12 as relating to spousal maintenance.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the use of an “expedited” trial procedure leave the trial court’s findings as to property distribution and maintenance unsupported by sufficient evidence in the record?
2. Did the trial court properly characterize \$480,000 of the Yacolt house value as Bernard’s separate property?
3. Did Bernard provide sufficient evidence to trace the value of his retirement and annuity accounts to his separate property?

4. Did the trial court adequately consider the statutory factors in setting maintenance in this case?

III. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Darlene and Bernard Tehnnepe married on April 2, 1992. (CP-1) For ease of reference herein the parties will be referred to by first name to avoid the confusion engendered by sharing a common surname.

The couple met and began dating in 1989. (RP-51) They married in 1992 after he finalized the divorce from his first wife. (RP-51) Bernard's first wife received the lion's share of the marital assets in the divorce. (RP-51) Bernard told Darlene that they would need to work to build up assets during their marriage to help recoup what he lost in the divorce from his first wife. (RP-52)

Darlene came into the marriage debt free. (RP-52) After Bernard and Darlene married, the couple moved into a house on 199th Street in Ridgefield, Washington and they lived in that residence until 1996. (RP-52) Bernard controlled access to all the money and assets the couple accrued during the marriage. (RP-52)

Bernard doled money out to Darlene in \$10 and \$20 increments, thus forcing her to spend the money she made as a hairdresser to pay household

expenses or she had to charge those expenses. (RP-53) She made little money as a hairdresser, eventually having to close down her shop and work out of a small shop in her house due in part to insolvency of the business and due in part to the couple's move to a rural location. (RP-53)

When she worked out of the house, Darlene's income from hairdressing dropped significantly because few customers wanted to drive out to the house. (RP-54) Darlene suffered a ruptured disc in her back which necessitated back surgery and other health problems related to the physical toll her vocation takes on the body. (RP-54) She earned at most \$1500 per month as a beautician. (RP-44) At the time of trial Darlene was 59 years old. (RP-44)

During the marriage, Bernard owned and operated a machine shop near the Clark County Fairgrounds until he retired in 2003 and sold the business. (RP-12, 14, 56) That property is undisputed separate property. (RP-15)

The parties built a large residence with a machine shop on the property in Yacolt, Washington and held that property free of a mortgage from 1998 through 2001. (RP-15) The parties stipulated that the Yacolt residence owned by the couple at the time of dissolution was valued at \$730,000 with a \$210,000 mortgage against the property. (RP-10)

In 2001, the couple mortgaged the Yacolt property and used \$170,000 to purchase property on 179th Street. (RP-16) The parties gifted one third of the 179th Street property to Bernard's children. (RP-16) Bernard alleged that nearly \$50,000 of the money acquired from the mortgage went to paying off

community debt. (RP-17)

Bernard sold the parcels of land he owned prior to the marriage and obtained a total of \$562,000. (RP-17) Bernard claims to have paid \$480,000 of separate funds towards the Yacolt residence. (RP-11) Bernard bought Darlene a 2003 Lexus sport utility vehicle with part of the funds also. (RP-19 to RP-20)

Bernard suffered from serious health problems in 2000 and underwent heart surgery as a result of those medical issues. (RP-59) Prior to the heart surgery, Bernard gave Darlene access to the accounts to take care of business while he recuperated. (RP-59)

In 2004 Bernard tried to force Darlene in to signing a separate property agreement. (RP-59) When she refused, he threatened to file for divorce. (RP-59) The parties had a brief period of reconciliation after that and then he again tried to force her to sign the documents. (RP-61)

Bernard owned other real estate prior to marriage that is described in the record that is not disputed. (RP-24 to RP-27) Bernard borrowed money from his machine shop to pay for a one acre parcel and then paid the machine shop back during the marriage. (RP-27) He paid \$40,000 from his income to pay off the one acre parcel during the marriage. (RP-28) Bernard drew a salary from his machine shop in the amount of \$3800 per month and he drew a lease payment from the shop of \$3800 per month which he brought to the marital community. (RP-28)

During the course of this marriage, the parties traveled extensively and

the parties lived a fairly lavish lifestyle. (RP-52)

Bernard owned an IRA, three annuities and a Hartford account and he claimed all were acquired before his marriage to Darlene. (RP-31 to RP-33)

The parties had no premarital agreements as to property. (RP-34)

Bernard claimed a gross monthly income at the time of trial in the amount of \$4153. (RP-39) He denied drawing any income from the annuities or the other retirement funds. (RP-39)

B. STATEMENT OF PROCEDURAL HISTORY.

The parties separated on February 10, 2005 and Bernard filed a petition for dissolution of marriage on February 15, 2005. (CP-1) The matter came before the Honorable Edwin Poyfair for trial before the court on January 23, 2006. (RP-8) The record indicates that the trial judge discussed the possibility of an expedited trial with counsel in chambers. (RP-2)

After a discussion on the record regarding objections to evidence and exhibits, the trial judge attempted to explain the expedited procedure to both Bernard and Darlene, commenting at one point "...[B]oth of you look like deer in the headlights." (RP-8) Darlene responded in the affirmative when the judge asked her if she understood what an expedited trial is and verbally chose an expedited over a formal trial. (RP-8) The judge requested that Bernard's attorney prepare an order stating that the parties stipulated and agreed to an expedited trial. (RP-9) Neither party ever filed this document.

The court then proceeded to allow Bernard's counsel to discuss the assets and liabilities of the parties utilizing a trial aid he prepared. (RP-9 to RP-49) Darlene's counsel then discussed the assets and liabilities of the parties. (RP-51 to RP-109) The parties were sworn (RP-3) and occasionally interjected a comment during the respective attorney's presentations. The court referred to a trial aid throughout, but no exhibits or documents were filed. (RP-109)

This appeal timely follows from the Order Denying Reconsideration entered on January 12, 2007. (CP-89)

IV. ARGUMENT

1. Expedited trial procedure.

In this case, the trial court utilized what the court refers to as an expedited trial. (RP-8) Although he indicated he would be using something of a hybrid between a formal and an expedited trial, the trial judge did indicate that objections to evidence and exhibits could be made. (RP-4 to RP-6) Both Bernard and Darlene were sworn, but the bulk of the information regarding the case came by way of unsworn statements made by trial counsel. (RP-1 through RP-119)

As the trial judge attempted to explain the expedited procedure to both Bernard and Darlene, he commented at one point "...[B]oth of you look like deer in the headlights." (RP-8)

Darlene responded in the affirmative when the judge asked her if she

understood what an expedited trial is and verbally chose an expedited over a formal trial. (RP-8) The judge requested that Bernard's attorney prepare an order stating that the parties stipulated and agreed to an expedited trial. (RP-9) Neither party ever filed this document.

CR 38 defines a trial is "...the judicial examination of the issues between the parties, whether they are issues of law or of fact." The Superior Court Civil Rules do not provide for the procedure utilized by the court in this case and the evidence in the record indicates that the court did not follow the procedure that the parties verbally agreed to because the court failed to admit any exhibits in to evidence. Although the court indicated exhibits and evidence would be admitted (RP-7), Bernard never filed the notebook of documents referred to throughout as a "trial aid." (RP-108 to RP-109)

This court reviews a trial court's decision following a bench trial to determine whether the findings of fact are supported by substantial evidence and whether those findings support the court's conclusions of law. Dorsey v. King County, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). Darlene would respectfully submit that the unsworn statements of counsel together with the courts failure to admit the exhibits into evidence leaves the trial court's findings with respect to maintenance and the property awarded unsupported by sufficient evidence in the record. (See Appendix "A" Findings of Fact and Conclusions of Law, specifically Findings of Fact 2.8 and 2.9)

2. The Yacolt house and Bernard's retirement accounts.

The trial court ruled that the community interest in the Yacolt home was \$150,000. and that the balance of the property was either equitable reimbursement to the husband or separate property. (RP-111) (CP-29) The court awarded all of the retirement accounts in Bernard's name to him. (RP-113) (CP-29) Darlene contends that the evidence in the record is insufficient to establish the separate nature of these assets.

At the expedited trial, Bernard simply provided current statements as to the retirement and annuity accounts, he did not provide full discovery or establish that there was no contribution during marriage. (RP-1 to RP-57)

As to the Yacolt home, Bernard failed to establish and trace his separate property interest in the amount of \$480,000.

The appellate courts accord the trial court broad discretion in a marriage dissolution property distribution. In re Marriage of Olivares, 69 Wn. App. 324, 328, 848 P.2d 1281 (1993).

In exercising its discretion, the court must characterize property as either separate or community. RCW 26.09.080; In re Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). Absent a showing of manifest abuse of discretion regarding the property distribution, the appellate court will affirm the distribution unless no reasonable judge would reach the same conclusion. In the Matter of Marriage of Landry, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985).

In a dissolution of marriage, the trial court must 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.¹

Of foremost concern is the economic condition in which the decree will leave the parties. In re the Marriage of Tower, 55 Wn. App. 697, 700, 780 P.2d 863 (1989) (citing In re the Marriage of Dessauer, 97 Wn.2d 831, 839, 650 P.2d 1099 (1982), overruled on other grounds In re the Marriage of Smith, 100 Wn.2d 319, 669 P.2d 448 (1983)). The trial court considers the parties' relative health, age, education and employability. In re the Marriage of Dessauer, 97 Wn.2d at 839. 'The key to an equitable distribution of property is not mathematical preciseness, but fairness.'

In general, the law favors characterization of property as community property 'unless there is clearly no question of its separate character.' Brewer, 137 Wn.2d at 766-67. 'The asset is separate property if acquired before marriage; acquired during marriage by gift or inheritance; acquired during

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RCW 26.09.080 Disposition of property and liabilities — Factors. In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall, without regard to marital 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; and (4) The economic circumstances of each spouse 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 with whom the children reside the majority of the time.

marriage with the traceable proceeds of separate property; or, in the case of earnings or accumulations, acquired during permanent separation.' In re Marriage of White, 105 Wn. App. 545, 550, 20 P.3d 481 (2001) (citations omitted).

An asset acquired during the marriage is presumed community property. *Supra* `An asset is characterized as of the date of its acquisition, and its character does not change thereafter, . . . regardless of whether the asset is improved, or its value enhanced, by property of a different character.' *Supra* . at 550-51 (citations omitted).

In Marriage of Hurd, 69 Wn. App. 38, 51, 848 P.2d 185 (1993) the court held:

"[T]hat a spouse's use of his or her separate funds to purchase property in the names of both spouses, absent any other explanation, permits a presumption that the purchase or transaction was intended as a gift to the community. We also hold that there must be clear and convincing proof to overcome such a presumption.

The parties built a large residence with a machine shop on the property in Yacolt, Washington and held that property free of a mortgage from 1998 through 2001. (RP-15) The record is unclear whether the Yacolt property was initially subject to a mortgage and Bernard used \$480,000 from the sale of some lots to pay for the Yacolt residence or whether the community took out a mortgage to build the house initially. (RP-14 through RP-20) At the time of trial, the Yacolt house was subject to a mortgage of \$210,000. (RP-10) The parties mortgaged the Yacolt house in 2003 for \$220,000. (RP-16) They used \$170,000 to purchase a rental property which

the court found to be community. (CP-22, 29) The balance of those funds were used to pay community debt. (RP-16)

When Bernard used his separate property to purchase a home in both parties' names, it is presumed, under Hurd, to be a gift to the community. Hurd, 69 Wn. App. at 51. The parties later actions to mortgage the home with community credit to buy the rental property and pay off community debt. further evidences a community property characterization of the enter Yacolt residence. Hurd supra, In re Marriage of Chumbley, 150 Wn.2d 1, 74 P.3d 129 (2003) The trial court also acknowledged that Darlene's beauty shop in the residence and Bernard's machine shop at the residence creates a community interest in the marital residence. (RP-111) The trial court elected to arbitrarily set the community interest in the Yacolt residence at \$150,000. (RP-111) The entire value of the Yacolt should be characterized as community property.

Likewise, the retirement accounts should all be characterized as community property. Bernard owned an IRA, three annuities and a Hartford account and he claimed all were acquired before his marriage to Darlene. (RP-31 to RP-33)

The parties had no premarital l agreements as to property. (RP-34) As to the retirement accounts and annuities, Bernard failed to provide any discovery to Darlene and only presented statements of the current value of those accounts. (RP-72 to RP-75) At trial, Bernard's counsel showed the court a copy of his decree of dissolution of marriage for his first marriage

wherein he was awarded \$117,815 of the Piper Jaffrey account. (RP-95)

Property acquired during the marriage is presumed to be community. RCW 26.16.030 Bernard bears the burden of tracing and establishing the separate nature of the accounts by clear, cogent and convincing evidence. Estate of Madsen v Commissioner, 97 Wn.2d 792, 650 P.2d 196 (1982)

The trial court must distribute the marital property in a just and equitable manner considering, among other relevant factors, the nature and extent of the community property, the nature and extent of the separate property, the duration of the marriage, and the economic circumstances of each spouse when the division becomes effective. RCW 26.09.080; In the Matter of Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

"A fair and equitable division by a trial court `does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of [the] parties.'" In re Marriage of Zahm, 138 Wn.2d 213, 218, 978 P.2d 498 (1999) (quoting In re Marriage of Crosetto, 82 Wn. App. 545, 556, 918 P.2d 954 (1996)).

The trial court's arbitrary determination of the community interest in the Yacolt house, the failure to award Darlene any of the retirement assets and the trial court's decision to set spousal maintenance at \$1250 per month for one year after entry of the decree and \$1000 per month for the second year constitute an abuse of discretion.

3. Spousal maintenance.

By statute, maintenance "shall be in such amounts and for such periods of time as the court deems just." RCW 26.09.090(1). The court must consider certain statutory factors, including the duration of the marriage, the health and age of the party seeking maintenance, the standard of living established during the marriage, the financial resources of the party seeking maintenance, the time necessary for the party seeking maintenance to acquire sufficient education or training to find employment, and the ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance. RCW 26.09.090(1).

Trial courts have broad discretion in awarding maintenance and an award will be disturbed only for a manifest abuse of discretion. In re Marriage of Brewer, Supra at 769; In re Marriage of Bulicek, 59 Wn. App. 630, 633, 800 P.2d 394 (1990).

In the initial ruling of the court, the judge indicated with reference to maintenance:

Missis indicates that she is not making a great deal of money. Mister has indicated that he has income coming in based on retirement and other contributions of over \$4000.

Since it is a 13-year marriage, I believe maintenance is appropriate under the circumstances based on the situation. Mister will pay for the first year \$1,000 per month, and that will be for 12 months. The second year he will pay 750, and

that will be for 12 months. (RP-116)

On reconsideration, the court asked some questions about Bernard's debts and then increased maintenance by \$250 per month over the initial award. (RP-133 to RP-138)

A maintenance award that does not evidence a fair consideration of the statutory factors constitutes an abuse of discretion. In re Marriage of Mathews, 70 Wn.App. 116, 123, 853 P.2d 462 (1993).

When, the disparity in earning power is great, reviewing courts must closely examine a maintenance award "to see whether it is equitable in light of the post-dissolution economic situations of the parties." In re Marriage of Sheffer, 60 Wn. App. 51, 56, 802 P.2d 817 (1990).

The trial court gave cursory consideration to Darlene's health and age, little or no consideration to the standard of living established during the marriage, and made no reference to Darlene's current financial resources or earning ability beyond the property awarded or the time necessary Darlene to acquire sufficient education or training to find employment as required by RCW 26.09.090(1). In evaluating Bernard's ability to meet his needs and financial obligations while meeting those of the spouse seeking maintenance, the court ignored Bernard's substantial retirement funds which Bernard declined to draw on and the court focused solely on his actual monthly income from social security and rents of over \$4000 per month.(RP-116, RP-133 to RP-138).

The trial court abused its discretion by failing to adequately consider

the factors under RCW 26.09.090(1). In re Marriage of Mathews, supra at 123. (1993). The record demonstrates a substantial disparity in earning power of the parties. (RP-116) The trial court's decision displaces her from the marital residence and leaves her with insufficient financial resources to meet monthly living expenses. (RP-125) Darlene would respectfully submit that the maintenance award is not equitable in light of the post-dissolution economic situations of the parties. In re Marriage of Sheffer, supra at 56.

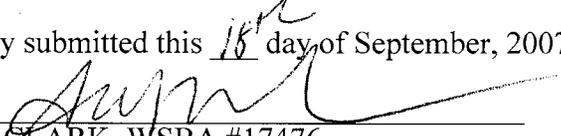
4. Attorney fees

Pursuant to RAP 18.1(b) and RCW 26.09.140, Darlene requests an award of reasonable attorneys fees and costs in this matter. Darlene has had to expend considerable funds to remedy the trial court's errors in this matter.

V. CONCLUSION

For the reasons stated above, Darlene respectfully requests that this court set aside the trial court's findings as to any separate property interest in the marital residence and the retirement funds and remand this matter to the trial court to amend the property distribution to award each party fifty percent of the Yacolt residence and the retirement funds and to determine an appropriate maintenance award or in the alternative, to remand the matter to the trial court for a full trial on the merits of the case.

Respectfully submitted this 18th day of September, 2007.



SUZAN L. CLARK, WSBA #17476
Attorney for the Appellant

APPENDIX "A"

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FILED

MAR 17 2006

JoAnne McBride, Clerk, Clark Co.

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IN THE SUPERIOR COURT FOR CLARK COUNTY, WASHINGTON

In re the Marriage of:)	
)	No. 05-3-00252-0
BERNARD G. TEHENNEPE,)	
)	FINDINGS OF FACT AND
Petitioner,)	CONCLUSIONS OF LAW
)	
and)	(FNFCL)
)	
DARLENE M. TEHENNEPE,)	
)	
Respondent.)	

I. BASIS FOR FINDINGS

The findings are based on the exhibits admitted, arguments of counsel and the testimony elicited at trial before the Honorable Edwin Poyfair on the 23rd day of January, 2006 and the decision announced in open Court on February 16, 2006.

II. FINDINGS OF FACT

Upon the basis of the court record, the court FINDS:

2.1 RESIDENCY OF PETITIONER.

At the time this action was first filed either petitioner and/or respondent was a resident of the State of Washington.

2.2 NOTICE TO THE RESPONDENT.

1 The Respondent appeared and responded to the Petition.

2 2.3 BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT.

3 The Respondent is presently residing in Washington.

4 2.4 DATE AND PLACE OF MARRIAGE.

5 The parties were married on April 2, 1992 at Las Vegas, Nevada.

6 2.5 STATUS OF THE PARTIES.

7 Husband and wife separated on February 15, 2005.

8 2.6 STATUS OF THE MARRIAGE.

9 The marriage is irretrievably broken and at least 90 days have elapsed since the date the
10 Petition was filed and since the date the Summons was served or the Respondent joined.

11 2.7 SEPARATION CONTRACT.

12 There is no written Separation Contract or Prenuptial Agreement.

13 2.8 COMMUNITY PROPERTY.

14 The parties have community property in the form of real estate, vehicles and household
15 furnishings. The community property should be divided equally.

16 The marital residence is community property having been acquired during the marriage.
17 It has a stipulated value of \$730,000 and is subject to a mortgage of \$210,000. Husband
18 contributed \$480,000 of his separate property into the acquisition of the marital residence and in
19 doing so the property was owned without a mortgage for a period of time. Husband's separate
20 property funds came from the sale of real property he had prior to marriage. Subsequently, the
21 parties encumbered the property with a mortgage used to acquire a different parcel of property

1 and pay consumer debt. If the Court were to give full recognition to husband's equitable claim
2 for reimbursement the community equity in the home would be only \$40,000. It is fair and
3 equitable that the Court recognize husband's claim for equitable reimbursement to the point
4 where the community still has an equity interest of \$150,000.
5

6 Husband fully paid for the 2004 Lexus automobile that wife uses on a daily basis with
7 his separate property funds. It has a value of \$29,340 as of the date of separation and is not
8 subject to debt. Husband has a equitable claim for reimbursement for his separate property
9 investment. However, the vehicle should be treated as a community asset.

10 Husband is retired but still maintains assets held in the name of his former business,
11 Gerry's Machine Shop, Inc. The business and the assets held in the name of the business is his
12 separate property. Husband also owns various retirement assets. These are also his separate
13 property. Husband also owns various retirement assets. These are also his separate
14 property.

15 The Court should distribute the community property in the manner set forth in Schedule I
16 attached to the Decree is fair and equitable.

17 The Court does not find that wife created 'waste' or negative productivity as relates to
18 husband's allegations that she gambled or spent improvidently. This allegation was not
19 considered by the Court in making its determination as to debt and asset distribution.
20

21 2.9 SEPARATE PROPERTY.

22 The parties have separate property in the form of household furnishings and jewelry.
23 Wife received a ring of as a gift from husband and said ring is her separate property. Husband
24 has separate property in the form of a fully paid for 2004 Lexus vehicle, real estate, investment
25

26 FNDNGS OF FACT AND CONCL OF LAW (FNFL)

WPF DR 04.0300 (9/2001) (teHennepe/P27) Page 3

CR 52; RCW 26.09.030; .070(3) (2/17/06)

1 and retirement accounts. Each party should be awarded their respective separate property except
2 the Lexus automobile should be awarded to wife.

3 2.10 COMMUNITY LIABILITIES.

4 The parties have incurred community liabilities in the form of a mortgage. There is no
5 specific consumer debt that remains unpaid that is known to the Court.
6

7 2.11 SEPARATE LIABILITIES.

8 The husband has incurred separate debts and liabilities after separation. He should be
9 required to pay those debts.

10 The wife has incurred separate debts and liabilities after separation. She should be
11 required to pay those debts.
12

13 2.12 MAINTENANCE.

14 Maintenance should be ordered on the basis that this is a thirteen year marriage and the
15 husband has the ability to pay and wife has the need for financial assistance. Wife has been
16 consistently employed part time during the marriage as a beautician. Husband's gross annual
17 income is approximately \$4,000 per month.
18

19 2.13 CONTINUING RESTRAINING ORDER.

20 Does not apply.

21 2.14 FEES AND COSTS.

22 Based on the disparity of assets and income, husband should be required to pay wife's
23 attorney's fees in the amount of \$3,000. Payment shall be made on or before April 1, 2006
24 payable to J. R. Yoseph, attorney at law.
25

26 FNDNGS OF FACT AND CONCL OF LAW (FNFCL)

WPF DR 04.0300 (9/2001) (teHennepe/P27) Page 4

CR 52; RCW 26.09.030; .070(3) (2/17/06)

1 The court should determine the marital status of the parties, make provision for a
2 Parenting Plan for any minor children of the marriage, make provision for the support of any
3 minor child of the marriage entitled to support, consider or approve provision for the
4 maintenance of either spouse, make provision for the disposition of property and liabilities of the
5 parties, make provision for the allocation of the children as federal tax exemptions, make
6 provision for any necessary continuing restraining orders, and make provision for the change of
7 name of any party. The distribution of property and liabilities as set forth in the Decree is fair
8 and equitable.
9

10 3.4 CONTINUING RESTRAINING ORDER.

11 Does not apply.

12 ////

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18 FNDNGS OF FACT AND CONCL OF LAW (FNFCL)

19 WPF DR 04.0300 (9/2001) (teHennepe/P27) Page 6

20 CR 52; RCW 26.09.030; .070(3) (2/17/06)

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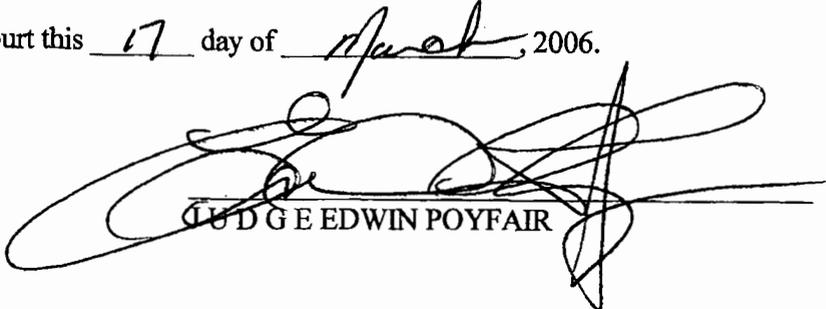
3.5 ATTORNEY'S FEES AND COSTS.

Husband should pay \$3,000 toward wife's attorney's fees on or before April 1, 2006.

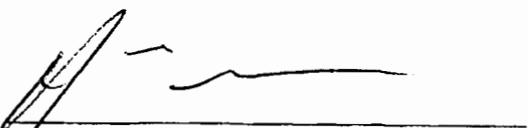
3.6 OTHER:

None.

DONE in Open Court this 17 day of April, 2006.


JUDGE EDWIN POYFAIR

Presented by:


HOWARD H. MARSHACK
Attorney for Petitioner
W.S.B.A. #13762


BERNARD GERRY TEHENNEPE
Petitioner

Form and content approved and
consent to entry given this
_____ day of _____, 2006.


J. R. YOSEPH
Of Attorneys for Respondent
WSBA # 8627


DARLENE TEHENNEPE
Respondent

COURT OF APPEALS
DIVISION II

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

In re the Marriage of,)
)
BERNARD G. TEHENNEPE,)
)
Respondent,)
)
and)
)
DARLENE M. TEHENNEPE,)
)
Appellant.)

No. 35924-3-II

DECLARATION OF MAILING

I, Suzan Clark declare:

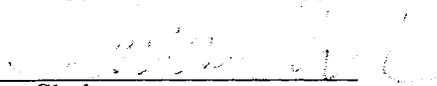
That I am a citizen of the United States of America; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 18th day of September, 2007 declarant deposited in the mails of the United States of America properly stamped and addressed envelopes directed to the following named individuals, to-wit:

Clerk of the Court of Appeals
Division II
950 Broadway, Suite 300
Tacoma, Washington 98402

Mr. Howard Marshack
Attorney at Law
900 Washington Street, Suite 800
Vancouver, WA 98660

Ms. Darlene Tehennepe
P.O. Box 996
Hermiston, OR 97838

said envelope containing a copy of this declaration and a copy of the Brief of Appellant in this matter.



Suzan Clark

SUZAN L. CLARK
ATTORNEY AT LAW
1101 BROADWAY, STE. 250
VANCOUVER, WA 98660
(360) 735-9434