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**COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON
Case No. 36035-7-II**

In Re the Marriage of:

WILLIAM J. BRISKEY,
Respondent/Petitioner,

and

MARY JO BRISKEY,
Appellant/Respondent.

RESPONDENT'S ~~FILE~~ REPLY BRIEF

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I. ASSIGNMENT OF ERROR

None

II. ISSUES

1. Was there sufficient evidence to support the court's finding that the parties did not continuously cohabitate in a stable relationship before they were married?
2. Did the trial court properly conclude that a meretricious relationship did not exist prior to the marriage?
3. Did the trial court properly exercise its discretion in determining spousal maintenance?
 - a. Did the court properly refuse to consider marital misconduct in the award of spousal maintenance?
 - b. Did the trial court properly exercise discretion in awarding spousal maintenance of \$1800 per month for nine months?
4. Was the property division a proper exercise of the court's discretion?
5. Did the trial court properly exercise its discretion in refusing to award Mrs. Briskey attorney's fees?

III. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

The Briskey's were married in July 1997 and separated in 2004. RP 34-35:25-4. Dr. Briskey had lived at his residence in Orting since 1979. RP 34:19-20. Mrs. Briskey had lived with Dr. Briskey for a period of time before the marriage. RP 36:9. Mrs. Briskey stated that she moved in with Dr. Briskey before her prior divorce became final. RP 360:15-24. She began living there a year and a half or two years before the marriage. RP 36:11-13. However, she moved out after about eight months. Rp 37:21-38:2. She was out of Dr. Briskey's home three or four months. RP 41:1.

She moved into an apartment and had a job at Good Samaritan Hospital. RP 38:17-20. They got married after she moved back into the home. RP 41:15-17.

1. Income, Assets, and Debts

Dr. Briskey is a veterinarian. RP 42:5-6. His practice is at his home. RP 43:2-3. Dr. Briskey's income was taken as an average of the years. RP 44:21-22. The house was paid off before the marriage. RP 45:20. At the time they were married, Dr. Briskey had a debt of about \$11,000. That debt had increased to \$114,000 by the time they separated. By the time of

trial Dr. Briskey had paid the debt down to approximately \$99,000. RP 46:20-23. The court allocated this debt to Dr. Briskey. CP 85, FF 3.4 .

Dr. Briskey had an IRA before the marriage; he did not contribute to the IRA during the marriage. Page 64:3-6. All the items on Page 11 of Exhibit A were paid for prior to the marriage. RP 71:10; RP 73:17-19. Mrs. Briskey stipulated to the items No. 14, 15, 16, 17, 18, 22, 23, 24, 25, and 26 as Dr. Briskey's separate property. Page 71:18-21. The business other than the new ultrasound machine was paid for prior to the marriage. RP 73:25. No money was put into the WAMU account since the date of marriage. RP 74:16.

Dr. Briskey paid approximately 90% of the gas through his business. RP 143:8. Dr. Briskey averaged between \$13,000 and \$15,000 gross income per month from his business. RP 243:1. He estimated the value of the equipment and the veterinary practice at \$10,000. RP 248:11-14.

Dr. Briskey estimated the real fair market value of the property in Orting at \$300,000. RP 248:23. The value of 40 acres in Texas was approximately \$6,000. RP 251:9-10. Dr. Briskey sold an Anderson Island property in 2005. He had owned it since he was married to his first wife. RP 263:3-13. Despite the fact that their debts continued to increase, Dr.

Briskey paid a little over \$35,000 toward the credit cards during the marriage. RP 271:18-20.

Dr. Briskey would pay for the upkeep of Mrs. Briskey's daughter if that was not paid for out of the child support that Mrs. Briskey received. RP 318:12-13.

2. **Employment of Mrs. Briskey**

Mrs. Briskey worked at the hospital after they became reacquainted. RP 74:24. She was a phlebotomist. RP 75:3.

Mrs. Briskey occasionally assisted in the veterinary practice during the time of the marriage. RP 111:19.

Mrs. Briskey lived with Kent Strite beginning in January, 2006 up to the time of the trial in January, 2007. RP 213:4. Mr. Strite paid rent to Mrs. Briskey's mother, Ellis Jensen. RP 213:12. Mrs. Briskey cares for her elderly mother. RP 215:1. Mr. Strite did not know of any mental limitations for Mrs. Briskey. RP 226:8.

There was also evidence about Mrs. Briskey's ability to be employed. She had previously been a phlebotomist at a hospital for a few months. RP 75:1-12. Dr. Briskey was not aware of physical limitations on Mrs. Briskey obtaining employment, other than her complaints that her back

was sore at times. RP 76:22-77:5.

After the parties separated, Mrs. Briskey started a job online, but did not disclose that fact to Mr. Peterson, the vocational witness. RP 403:25-404:7.

She also had a number of payments on PayPal, which is an online method of making payments to online businesses. RP 431:6-15. There were seven or eight PayPal transactions on August 30, 2006, RP 431:15; ten or twelve on October 30th, RP 433:2-6.

Mrs. Briskey had deposits into her bank account that did not match the monthly amounts that Dr. Briskey paid her. RP 432:14-433:1. She deposited \$170 on October 31st, RP 432:14; \$725, RP 433; \$300, RP 433:10-12; \$320, RP 434:6-8; \$185 on October 18th, RP 434:20-435:5; \$200, RP 435:14-19; \$60, RP 437:8-12; \$145, RP 437:16-18; \$150 on August 14, RP 439:9-11; another deposit of \$50 on August 14, RP 439:20-23. She did not recall why she made two separate deposits on the same day. RP 439:24-440:1.

There were additional deposits into her account: \$70 on August 2, RP 440:6-8; \$100 on July 27, RP 40:12-16; \$60 on January 9, 2006, RP 449:4-6; \$100 December 21, 2005, RP 450:14-16.

3. **Payments from Dr. Briskey to Mrs. Briskey between separation and finality of the divorce.**

Dr. Briskey paid the \$2,500 toward's Mrs. Briskey's attorneys fees ordered in a temporary hearing. Page 77:6-15. Dr. Briskey paid Mrs. Briskey approximately \$3,000 per month together with incidental payments until he filed for divorce. RP 77:22-25; RP 81:18-21. The court ordered Mr. Briskey to pay, and he did pay, temporary spousal maintenance. The temporary maintenance started at \$2,400 per month and was reduced to \$1,800 per month a few months later. RP 82:9-20.

When allowing evidence as to Mrs. Briskey's relationship with another person before the marriage to Dr. Briskey, the court stated as follows:

“But I am not concerned-let me just make you understand, I am not concerned as to the status of the relationship. . . I am just trying to look at the financial economic basis upon which, one, she was either contributing or paying rent and her proportional share and two, how that relates to what she is seeking now.”

4. **Credibility of Mrs. Briskey**

Mrs. Briskey admitted that she had been untruthful when stated at her deposition that Mr. Strite was a friend of Mrs. Briskey's mother and that her mother had met Mr. Strite through Mrs. Briskey's sister. RP 399:15. She was also untruthful in her description of the reason why she moved up to Everett. RP 401:8-12. She did not disclose to Mr. Peterson, the

vocational counselor, that she had found a job online. RP 403-404:18-7. The portions of the deposition of Mrs. Briskey's mother, Ellis Jensen, were read during the trial. That deposition was taken December 5, 2006. RP 405:16. At the time Mrs. Briskey opposed Dr. Briskey's motion to reduce spousal maintenance, Mrs. Briskey did not disclose that Mr. Strite was residing in the same home as her. RP 411:5-9. While Mrs. Briskey disputed the amount of debt claimed by Dr. Briskey, she did not have any documentation to support otherwise. RP 454:23-25. At the time of her deposition Mrs. Briskey said her health was good. RP 456:13-16.

The court specifically found that Mrs. Briskey was not credible. RP76, FF 2.8.

The Findings of Fact and Conclusions of Law entered by the trial court stated in party:

2.8 CREDIBILITY OF RESPONDENT

The court finds the credibility of respondent at issue numerous times during the trial involving:

1. The computer on-line business that she was active with
2. The relationship she had in Everett after the date of separation
3. Her shopping and spending habits
4. Her non-disclosure of other persons she was residing with when she made a request for spousal maintenance.”

The testimony of respondent's own mother and that of Kent Strite were in direct conflict with that of respondent. The court did not find the respondent credible. RP 76.

The deposition of Mrs. Briskey's mother, Ellis Jensen was published during the trial. RP 528:12. Mrs. Briskey and her friend Kent were living with Mrs. Jensen at the time of the deposition – December 5, 2006. Dep. 9: 24-25. Mrs. Jensen did not believe Mrs. Briskey contributed to the household expenses. Dep. 9:8-12.

B. STATEMENT OF PROCEDURE: THE COURT'S RULING

In this case, the trial court specifically stated that spousal misconduct was not considered in the determination as to maintenance. RP 77, FF 2.10. The court stated at the time of the hearing on her ruling that fault was not a consideration in the decision on maintenance. Ruling, RP 10.

The court found as follows:

2.15 Maintenance

Maintenance should be ordered. The court applied the statutory criteria of RCW 26.09.090. The court witnessed the demeanor of each of the witnesses and the credibility of each of the witnesses. The court reviewed the testimony of the expert, Gary Peterson, regarding his observations and conclusions of the respondent.

The court's observations contrast directly from those of Mr. Peterson. Mr. Peterson was not made aware of the respondent's attempted employment nor did he review any of her medical records. The court does not feel that the assessment by Mr. Peterson is reliable. . . . the respondent's claims that she can not work are not credible. Respondent did not explain with credibility all of the expenses of PayPal and all the computer

use regarding the monies that petitioner paid her since the date of separation.

Spousal maintenance is ordered by the court of \$1800 per month for nine months only . . . CP 79.

In addition to maintenance, the court allocated assets to Mrs. Briskey:

1. Her personal effects and clothing
2. Household goods and furnishings in her possession
3. One-half of any monies recovered from petitioner's son
4. 1999 Ford diesel . . . valued at \$18,000
5. Condominium time share located at the Star Island Resort and Club, Orlando, FL
6. Dresser, mirror, and chest of drawers
7. One-half of the amount in property taxes that the petitioner has paid from the parties date of marriage to the date of separation on all of his separate real property. Said amount totals \$3,045.06. CP 85, FF 3.3.

IV. **ARGUMENT**

A. **Meritricious Relationship**

Was there sufficient evidence for the trial court to find that the parties were not in a stable co-habiting relationship prior to the marriage?

Mrs. Briskey misrepresents that certain facts are undisputed (Brief of Appellant p. 12-13) including the following:

- * Though she states they began living together in 1991, Dr. Briskey stated that it was one-and-one-half to two years before the July 1997 marriage.

It is, on the other hand, clear that the parties separated for a number of months. After the separation, they lived together in Dr. Briskey's home for a few months. Then they were married.

Evidence is substantial if it exists in a sufficient quantum to persuade a fair-minded person of the truth of the matter. When substantial evidence supports the finding, it does not matter that there is contrary evidence.

"This is because credibility determinations are left to the trier of fact and are not subject to review." Burrill v. Burrill, 113 Wn. App. 863, 868, 56 P.3d 993, 996 (2002).

The evidence at trial supported the finding that there was not a stable, cohabiting relationship before the parties were married.

1. **Did the trial court properly conclude that a meretricious relationship did not exist prior to the marriage?**

In analyzing whether a meretricious relationship exists, a court may consider the following non-exclusive factors: (1) continuity of cohabitation; (2) duration of the relationship; (3) purpose of the relationship; (4) pooling of the resources and services to accomplish common goals and projects; and (5) intent of the parties.

Pennington, 93 Wn. App. at 918.

The analysis here focuses on the first two factors, because the court found that there was not a sufficient period of cohabitation to support a conclusion that there was a meretricious relationship. The evidence from Dr. Briskey was that the parties cohabited for several months; then had a gap of several months; then cohabited a few more months before the marriage.

Other courts have held that much longer relationships do not rise to the level of a meretricious relationship, which is seen as a stable, cohabiting relationship. In re Marriage of Pennington, 142 Wn.2d 592, 600, 14 P.3d 764 (2000). Thus in Pennington, the court held that the Pennington's relationship, which spanned the period from 1985 to 1995, did not meet the continuous cohabitation element. The court stated that the sporadic nature and the lack of continuity did not support a finding of a stable cohabiting relationship. Pennington, 142 Wn.2d 603.

In the case at bench, there was a similar lack of a continuous stable relationship. The parties only lived together for a few months before Mrs. Briskey move out. She lived outside the home for several months and then returned a few months before the marriage.

Though Mrs. Briskey argues that State v. Superior Court for Pierce

Cy., 128 Wash. 496, 501, 223 P. 583 (1924) supports a different result, that was a case dealing with reconciliation following an interlocutory order finding that the wife was entitled to a decree of divorce. *Id.* At 503. That case has no application here.

Based on the evidence before the court, the trial court properly found (Finding of Fact 2.9) that a meretricious relationship did not exist before the marriage and this court should affirm that finding.

B. Spousal Maintenance

1. Standard of Review: Findings of Fact

In a divorce proceeding, the standard of review is whether the findings of fact are supported by substantial evidence and, in turn, whether those findings of fact support the conclusions of law. Pennington v. Pennington, 93 Wn. App. 913, 917, 971 P.2d 98, 101 (1999), affirmed 142 Wash.2d 592, 14 P.3d 764 (2000).

When a determination is whether evidence shows that something occurred or existed, it is a finding of fact; when the determination is made by a process of legal reasoning from facts in evidence it is a conclusion of law. State v. Niedergang, 43 Wn. App. 656, 658-59, 719 P.2d 576 (1986).

2. **Did the trial court properly exercise discretion in setting spousal maintenance at \$1800 per month for nine months?**

a. **Standard of Review: Spousal Maintenance**

The determination of maintenance is within the broad discretion of the trial court. The appellate court will find an abuse of discretion only if the trial court bases its decision as to spousal maintenance on untenable grounds or for untenable reasons. In re Marriage of Terry, 79 Wn. App. 866, 869, 905 P.2d 935, 937 (1995).

b. **Spousal Maintenance Factors.**

Spousal maintenance is governed by RCW 26.09.090. That statute has a number of parts that are at issue here:

1. The maintenance order shall be in such amounts and for such periods of time as the court deems just.
2. Maintenance is to be determined without regard to marital misconduct.
3. The court is to consider a number of factors:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to

her, and her ability to meet his needs independently;

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

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

(d) The duration of the marriage;

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

(f) 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.

c. **Did the court refuse to consider marital misconduct in the award of spousal maintenance?**

In this case, the trial court specifically stated that spousal misconduct was not considered in the determination as to maintenance. No error is assigned to this finding and it is verity on appeal. Miles v. Miles, 128 Wn. App. 64, 70, 114 P.3d 671, 674 (2005). At the time the court allowed evidence as to the relationship between Mrs. Briskey and Mr. Strite, the court made it clear that the evidence was being admitted to

understand the financial circumstances of Mrs. Briskey after the separation; the court was not concerned with fault. The court stated again in oral ruling that fault was not a consideration.

C. **The Amount of Maintenance**

As to the remaining factors, the court had before it evidence as to the standard of living during the marriage, the needs and ability to pay of the parties, and the ability of Mrs. Briskey to be employed.

The trial court properly exercised its discretion in setting the amount and duration of maintenance at \$1800 per month for nine months.

One author who has considered the question of standard of living stated: J. Krauskopf, Rehabilitative Alimony: Uses and Abuses of Limited Duration Alimony, 21 Family L. Q. 573, 586 (1988):

“The combination of marriage standard of living and duration of marriage is directly relevant to deciding what extent the expense-income gap should be filled by the payment of alimony. All of the following reasons apply.

1. The longer the marriage, the more both parties have contributed to the jointly maintained standard of living.
2. The longer the marriage, the more both parties have set the standard of living as their own measure of reasonable needs.
3. The longer the marriage, the more homemaker's earning capacity decreases, making either that earning capacity or

mere employability unrealistic as a measure of needs.

4. The longer the marriage, the more homemaker's full responsibility for the home decreased the homemaker's earning capacity and simultaneously benefitted the other spouse by allowing him to have a family and yet devote all productive hours to increasing his earning capacity.”

The Washington Practice Family and Community Property Law chapter on spousal maintenance, chapter 34, analyzes the factor of the duration of the marriage in considering an award of maintenance as follows:

“As a general rule, maintenance following the termination of the marriage will not be awarded in marriages of a short term duration. Exactly how long a marriage must be in duration for the court to consider post-decree maintenance is a matter of the discretion of each judge, with some judges having adopted rules of thumb that are applied by that judge in most cases. Some judges look to a 5 year minimum, some 10, and so forth.

Further, the duration of the maintenance award is often influenced by the duration of the marriage. Again, there is no uniform standard, with the question of duration being a matter of trial court discretion. However, it may be stated as a general rule that the longer the duration of the marriage, the more likely the court will grant maintenance for longer duration of time. Washington Practice vol. 20, chapter 34.7.

Additionally, the duration of the marriage may also influence the amount of the award of maintenance. Often a trial court will less inclined to fully fund a standard of living when the marriage of shorter duration, with the view

being that this will encourage the spouse to sooner get on the road to being self- sufficient. Again, there is no uniform standard, with each decision being a matter of judicial discretion tempered by the philosophy of the particular judge. Washington Practice vol. 20, chapter 34.7.”

If the obligor spouse has no ability to pay maintenance, it is error to order its payment; if there is limited ability to pay maintenance, it is error to order maintenance in excess of the ability to pay. Bungay v. Bungay, 179 Wash. 219 (1934).

Dr. Briskey was be saddled with approximately \$114,000 of community consumer debt from the marriage. This on-going monthly obligation that was considered by the court when determining whether any spousal maintenance should be paid to Mrs. Briskey. Dr. Briskey had already paid his wife more than \$60,000 in support payments since the separation.

Moreover, Mrs. Briskey had admitted to online employment (which she did not disclose to the vocational witness). There was also evidence of online payments that Mrs. Briskey was unable to explain. Finally, Mrs. Briskey failed to show why she could not return to her previous employment as a phlebotomist.

There was no indication that Mrs. Briskey could not continue a

reasonable standard of living. She lived with her mother and Mr. Strite. According to her mother, Mrs. Briskey contributed little or nothing to the household expenses.

Based on those facts, it was within the court's discretion to order maintenance payments of \$1800 for nine months.

D. **Distribution of Property**

Property and Liabilities.

1. **Standard of Review**

Property division in a dissolution is reviewed for abuse of discretion. In re Marriage of Kraft, 119 Wash.2d 438, 450, 832 P.2d 871 (1992).

2. **The property division here was well within the discretion of the court.**

RCW 26.09.080 sets forth the relevant factors in the disposition of property and liabilities as follows:

“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.”

No single statutory factor has greater weight as a matter of law, but rather the trial court should weigh all relevant factors to arrive at a just and equitable division of property. In Re Marriage of Konzen, 103 Wn.2d 470, 693 P.2d 97 (1985).

The statutory factors listed above are not exclusive, and the court should consider all relevant factors when determining how to distribute the

property and debts of the parties. RCWA 26.09.080. The court, for example, may consider the amount of temporary maintenance paid by one spouse to the other during the pendency of the proceeding. In re Marriage of Glorfield, 27 Wn. App. 358, 362, 617 P.2d 1051 (1980).

The trial court has the duty to characterize the property as either community or separate. In re Marriage of Olivares, 69 Wn. App. 324, 329, 848 P.2d 1281, review denied 122 Wn.2d 1009 (1993). To accomplish this, the court may consider the source of the property and the date it was acquired. Olivares, supra.

Property acquired during marriage is presumed to be community in character. The presumption is not rebutted unless direct and positive evidence is presented that the property is separate in character.

An often cited article was written by Judge Robert W. Winsor titled, “Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions” in the Washington State Bar News, vol. 14, page 16 (Jan. 1982). Judge Winsor stated in part that,

“In case of a short marriage [approximately 5 years or less], the marriage has in fact not been the significant event that is normally presumed. Particularly, there has not been a long reliance on the marital partnership. Therefore, the emphasis should be to look backward to determine what the

economic positions of the parties were at the inception of the marriage and then seek to place them back in that position, including provision for interest or inflation, if feasible. After doing that, if there are properties left over, they would presumably be divided about equally. Presumably in a short marriage maintenance would not be paid, except in extraordinary circumstances or perhaps for a very brief adjustment period.”

“In the case of a long marriage [approximately 25 years or more], the goal should be to look forward and to seek to place the spouses in an economic position where, if they both work to the reasonable limits of their capacities, and manage properties awarded to them reasonably, they can be expected to be in roughly equal financial positions for the rest of their lives. Long term maintenance, sometimes permanent, is presumably likely to be used unless the properties accumulated are quite substantial, so that a lopsided award of property would permit a balancing of the positions without (much) maintenance.”

The Briskey marriage was a short term marriage. The emphasis should be to place the parties back to the economic positions they were at at the inception of the marriage. Separate property should not usually be subject to division between the parties. Kenneth W. Weber, 19 Wa.Prac. Family and Community Property Law, section 10.6 (1997); RCW 26.16.010 and .020; and Oliveras, 69 Wn. App at 330. Community contributions to separate property may create a right of reimbursement to the community, but should be offset by the benefits realized by the community. In re Marriage of Pearson-Maines, 70 Wn.App. 860, 855 P.2d 1210 (1993).

The burden is on the party arguing that separate property has been converted into community property to prove the transfer by clear and convincing evidence, usually requiring a writing evidencing intent. In re Marriage of Skarbek, 100 Wn.App. 444, 997 P.2d 447 (2000).

Pension benefits earned before marriage or after separation are separate property and are excluded in the valuation of the pension. In re Marriage of Manry, 60 Wn. App. 146, 803 P.2d 8 (1991).

Mrs. Briskey argues that there should be a segregation of amounts acquired during the marriage. However, the facts show that the marriage did not acquire assets during the marriage. To the contrary, the community was successful in acquiring debt, not assets.

V. ATTORNEY'S FEES

A. Standard of Review

The trial court's decision on whether to award attorney's fees is reviewed for abuse of discretion. Mattson v. Mattson, 95 Wn. App. 592, 605, 976 P.2d 157 (1999).

B. The trial court properly exercised its discretion in denying attorney fees.

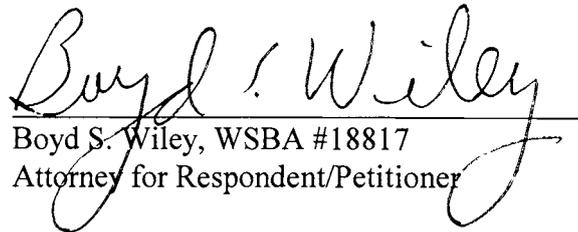
The trial court properly exercised its discretion in refusing to award

attorney's fees. The statute allows for one party to pay the other party's attorney fees after considering the financial resources of both parties. Here, the trial court was aware that Dr. Briskey had already paid over \$60,000 to Mrs. Briskey before the divorce proceedings; he would also be paying an additional \$1800 per month for nine months thereafter. Given the debts that were already allocated to Dr. Briskey, this was a proper exercise of the court's discretion

The appellate court should also deny the request for attorney's fees. An award of attorney fees and costs may be granted in an appellate court's discretion under RCW 26.09.140 . Upon a request for fees and costs under RCW 26.09.140 , courts will consider the parties' relative ability to pay" and the arguable merit of the issues raised on appeal." In re Marriage of Leslie, 90 Wash.App. 796, 807, 954 P.2d 330 (1998). In this case, the appeal lacks merit. Dr. Briskey was saddled with the debt arising from the marriage and was required to pay Mrs. Briskey \$1800 per month for the nine months thereafter. The court found Mrs. Briskey to be employable.

Consequently, she should bear her own attorneys fees.

RESPECTFULLY SUBMITTED this 31 day of October, 2007.


Boyd S. Wiley, WSBA #18817
Attorney for Respondent/Petitioner

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

WILLIAM J. BRISKEY,
Respondent/Petitioner,

and

MARY JO BRISKEY,
Appellant/Respondent.

No. 36035-7-II

**AFFIDAVIT OF
MAILING**

MICHELLE A. LEA, being first duly sworn on oath, deposes and
says:

That on the 31st day of October, 2007, she placed a true copy of
the Respondent's Reply Brief on file in the above-entitled matter, in an
envelope addressed to below stated as follows:

James M. Caraher
Attorney at Law
4301 South Pine Street, Ste. 543
Tacoma, WA 98409

That she placed and affixed proper postage to the said envelope,
sealed the same, and placed it in a receptacle maintained by the United
States Post Office for the deposit of letters for mailing in the City of

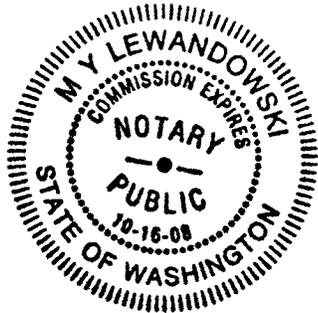
Affidavit of Mailing

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Puyallup, County of Pierce, State of Washington.

Michelle Lea
MICHELLE A. LEA

SUBSCRIBED AND SWORN to before me this 31st day of
October, 2007.



M. Y. Lewandowski
Printed Name: M. Y. Lewandowski
NOTARY PUBLIC in and for the State of
Washington residing at Puyallup
My commission expires 10-16-08