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COURT OF APPEALS
DIVISION II

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NO. 37271-1-II

STATE OF WASHINGTON
BY JW
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MICHELE LYNN SNYDER, now WALPOLE,

Appellant,

vs.

MITCHELL HUGH SNYDER,

Respondent.

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT

BRIEF OF RESPONDENT

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I. ASSIGNMENT OF ERRORS

a. Response to Assignment of Errors

1. The trial court correctly concluded that the Separation Agreement was clear on its face.
2. The trial court correctly concluded that the use of extrinsic evidence in determining the intent of the parties when drafting the Separation Agreement was not needed as the Separation Agreement was clear on its face.
3. The trial court correctly concluded that conducting an evidentiary hearing to determine the intent of the parties was not needed as the Separation Agreement was clear on its face.
4. The trial court correctly concluded that the payment provision contained in paragraph 1(b) of the Separation Agreement was spousal maintenance.
5. The trial court correctly concluded that the payment obligation as forth in paragraph 1(b) of the Separation Agreement was terminated by operation of law when the appellant, Michelle Walpole, remarried.
6. The trial court correctly entered an Order and Judgment Re:
Termination and Overpayment of Maintenance of January 3, 2008.

7. The trial court correctly concluded that it was proper to grant the motion to terminate maintenance.
8. The trial court correctly ordered the Division of Child Support to cease the collection of maintenance and refund any monies collected after the entry of the order.
9. The trial court correctly ordered the appellant, Michele Walpole, to reimburse the respondent, Mitchell Snyder, for any maintenance actually paid from July 1, 2007 through January 31, 2008.

b. Issues Relating to Assignment of Errors

1. Whether the trial court correctly concluded that an ambiguity does not exist in section 1(b) of the Separation Agreement which classifies the character of the payments being made as maintenance.
2. Whether the trial court should have considered extrinsic evidence in determining the intent of the parties where the pertinent provision under the Separation Agreement is not ambiguous.
3. Whether the court should have conducted an evidentiary hearing to determine the intent of the parties when an ambiguity does not exist in the Separation Agreement.
4. Whether the payments provision contained in Section 1(b) of the Separation Agreement is a property division or spousal maintenance.

II. STATEMENT OF THE CASE

1. On September 17, 2002, the parties upon agreement entered a Decree of Dissolution of Marriage and Separation Agreement in the Thurston County Superior Court. CP 22-37.
2. Ms. Michelle Walpole (formerly known as Michelle Snyder) was awarded the real property located at 8111 Deschutes Court SE, Olympia, Washington. CP 29.
3. Mr. Snyder was ordered to pay spousal maintenance to Ms. Walpole under Section 1(a) and 1(b) of the Separation Agreement entitled SPOUSAL MAINTENANCE. CP 27.
4. Under section 1(a) of the spousal maintenance portion of the Separation Agreement, Mr. Snyder was ordered to pay spousal maintenance as follows: from January 2002 until December 2002 the sum of \$1,500.00 per month, from January 2003 until December 2003 the sum of \$1,050.00 per month and from January 2004 until December 2004 the sum of \$700.00 per month. CP 27.
5. The obligation to pay spousal maintenance under section 1(a) was to terminate upon the death of either party, the remarriage of Michelle Snyder or after the payments as set forth above. CP 27.

6. Spousal maintenance terminated under section 1(a) after Mr. Snyder made his December 2004 payment. CR 113. Under section 1(a) of the Separation Agreement Mr. Snyder paid Ms. Walpole \$39,000.00 over a period of three years.
7. Section 1(b) of the Separation Agreement states that “Mitchell Snyder shall pay additional spousal maintenance commencing September 1, 2002, in the amount of \$971 per month.” CR 27.
8. This spousal maintenance was for the purpose of paying a second mortgage that encumbered the home that was transferred to Ms. Walpole. CP 27-29; CP 32-33.
9. The obligation to pay spousal maintenance according to the amortization schedule will continue even if Ms. Walpole satisfied the obligation because the parties assume that Ms. Walpole will replace the mortgage with an obligation to another lender. CP 27-28.
10. The obligation to pay spousal maintenance under section 1(b) “shall be terminated upon the death of either party or after payment of the amount set forth above, whichever first occurs.” CP 28.
11. Section 1(c) states that “The parties agree that spousal maintenance is non-modifiable under either paragraph above.”

12. Ms. Walpole was awarded all of the “liabilities associated with the community real property distributed to her, including but not limited to, the first mortgage, taxes, insurance, dues, assessments or other liabilities related to the property; except for the second mortgage liability distributed to Mitchell Snyder below.” CP 32-33.

13. Ms. Walpole stated in one of her declarations that the \$971.00 Mr. Snyder pays to her is “defined as spousal maintenance. . .” CP 77.

14. In June of 2007, Ms. Walpole remarried.

15. From September 1, 2002, until Ms. Walpole’s remarriage in June of 2007, Mr. Snyder paid Ms. Walpole \$55,347.00 in spousal maintenance under section 1(b) of the Separation Agreement.

16. On October 4, 2007, Mr. Snyder filed a Motion to Terminate Spousal Maintenance under RCW 26.09.170(2) and section 1(b) of the Separation Agreement. CP 112-118.

17. On November 2, 2007, Ms. Walpole filed her response to the motion to terminate spousal maintenance. CP 112-118. In the response Ms. Walpole argued that the court should find that Section 1(b) of the Separation Agreement to be a debt distribution and not a maintenance provision. CP 112-118.

18. On November 9, 2007, Mr. Snyder filed his reply to Terminate Spousal Maintenance. In Mr. Snyder's reply, he specifically asks the court to find that "spousal maintenance terminated by operation of law when Michelle Snyder remarried and for attorney fees." CP 125.
19. On November 13, 2007, the court heard oral argument on the motion calendar. At the hearing, Ms. Walpole asked for an evidentiary hearing. RP 3.
20. On November 26, 2007, the court issued a letter opinion. CP 142-144. The court concluded that "paragraph 1(b) of the Separation Agreement is in fact spousal maintenance, by operation of law the obligation terminated upon remarriage of the Petitioner." CP 144.
21. On January 3, 2008, the trial court entered an Order and Judgment Re: Termination and Overpayment of Maintenance. CP 145-146. The order terminated spousal maintenance as of July 1, 2007, and ordered that Ms. Walpole reimburse Mr. Snyder for maintenance he actually paid from July 1, 2007 until January 31, 2008. CP 145-146.
22. On January 22, 2008, Ms. Walpole filed a Notice of Appeal. CP 147-153.

III. ARGUMENT

A. The Separation Agreement is not ambiguous and any alleged ambiguities in the Separation Agreement are eliminated when the contract is read as a whole.

A court charged with the task of ascertaining the effect of a divorce decree, is limited to examining the provisions of the decree. *Puckett v. Puckett*, 41 Wn. App. 78, 82, 702 P.2d 477, review denied, 104 Wn.2d 1018 (1985). If the divorce decree is unambiguous then it is not open to construction or parol evidence. *Puckett*, at 84. Where a decree is ambiguous, the court looks to the intention behind the document. *Callan v. Callan*, 2 Wn. App. 446, 448-449, 468 P.2d 456 (1970).

An ambiguity exists where a reasonable person taking a word or phrase could assign to that word or phrase two or more reasonable meanings. *McAllister v. Agora Syndicate, Inc.*, 103 Wn.App. 106, 109, 11 P.3d 859 (2000); *Goodwin v. Wright*, 100 Wn. App. 631, 635, 6 P.3d 1 (2000). A contract provision is not ambiguous merely because the parties suggest opposite meanings. *Mayer v. Pierce County Medical Bureau, Inc.*, 80 Wn. App. 416, 421, 909 P.2d 1323 (1995). Where a contract is unambiguous on its face, the meaning of the contract is determined from its language and not from parol evidence. *Messersmith v. Messersmith*, 68

Wn.2d 735, 739, 415 P.2d 82 (1966). The court does not read ambiguity in a contract where it can reasonably be avoided. *McGary v. Westlake Investors*, 99 Wn.2d 280, 285, 661 P.2d 1323 (1995). Further, “an ambiguity will not be read into a contract where it can reasonably be avoided by reading the contract as a whole.” *Green River Valley Foundation, Inc. v. Foster*, 78 Wn.2d 245, 249, 473 P.2d 844 (1970). Therefore, where one construction of the contract would make the contract unreasonable and another equally consistent construction would make the contract reasonable, the court must adopt the interpretation which makes the contract reasonable and probable. *Id.*, at 739(citing *Smith v. Smith*, 56 Wn.2d 1, 4, 351 P.2d 142 (1960)). The determination as to whether a contract is ambiguous is a legal question for the court. *Schwab v. City of Seattle*, 64 Wn. App. 742, 751, 826 P.2d 1089 (1992).

The court in *Thompson v. Thompson*, 82 Wn.2d 352, 357, 510 P.2d 827 (1973), found that an ambiguity exists in a property settlement agreement where the payments have the character of a property division but are designated as alimony. In that case the parties had stipulated that before the property settlement was signed, the provision for support was part of the division of property and the term alimony was used solely for tax purposes. *Thompson*, at 354.

There is no ambiguity in the present case. Ms. Walpole is trying to divert the court from the simple and plain meaning of the Separation Agreement. The language in question is contained on page two (2) of the separation agreement. The heading under this section is entitled:

1. Spousal Maintenance. If the parties had sought to characterize this payment as anything other than spousal maintenance then they would have included this provision under a separate portion of the Separation Agreement. Further, the first sentence of section 1(b) reads as follows:

1. SPOUSAL MAINTENANCE

(b) Mitchell Snyder shall pay additional spousal maintenance commencing September 1, 2002, in the amount of \$971 per month. This spousal maintenance is necessary for the support of Michelle Snyder's household because of a second mortgage that encumbers the residence.

CP 27.

Again if the parties had intended on characterizing these payments as any other type of distribution, they would have used different terms to describe the payments. Instead, the parties intentionally and explicitly called the payments spousal maintenance and the payments were intentionally included under the section entitled Spousal Maintenance.

In reaching a conclusion in the present case the trial court found:

An ambiguity **arguably** exists in this agreement and in the Decree, because on one hand the payments have the character of a property division and on the other hand they are designated as “maintenance”. Reading the property Settlement Agreement as a whole, however, reconciles any ambiguity. (emphasis added)

CP 143.

The court did not find that an ambiguity existed in the Separation Agreement. Any reading of the sentence to the contrary misstates the intent and the meaning of the court’s statement. The court went on to look at the full document and in doing so reconciled any discrepancies. Thus, the court by correctly reading the contract as a whole found no ambiguity. *See Green River Valley Foundation*, at 249; CP 143-144.

i. Other alleged ambiguities.

Ms. Walpole points to several other alleged ambiguities in the Separation Agreement. The next alleged ambiguity occurs, according to Ms. Walpole, because there are two separate types of spousal maintenance. The first award of spousal maintenance under section 1(a) of the Separation Agreement failed to state that Ms. Walpole had a need or that Mr. Snyder had an ability to pay. CP 27. Spousal maintenance under this section was to terminate at the death of either party or after the time period for spousal maintenance as enumerated was reached. CP 27.

The second form of spousal maintenance, enumerated under section 1(b) of the Separation Agreement, stated that spousal maintenance was “necessary for the support of Michelle Snyder’s household because of a second mortgage that encumbers the residence.” CP 27. Under the terms of this provision Mr. Snyder was to pay maintenance at a rate of \$971 per month and shall continue according to the terms of the amortization schedule that applies to the second mortgage that encumbers the home awarded to Ms. Walpole. CP 27. This payment was to continue even if Ms. Walpole sold the home “because the parties assume that she will replace it with an obligation to another lender.” CP 28. This obligation to pay spousal maintenance was to terminate upon the death of either party or after the payment of the amount specified above. CP 28. Thus, this debt was never given to Mr. Snyder outright as Ms. Walpole would still be obligated to pay the second mortgage had she retained the home and had Mr. Snyder died while the amortization schedule was still in effect. CP 28.

Further, the fact that Mr. Snyder was never specifically given the debt as a property distribution under the terms of the Separation Agreement is proof of the parties’ intent that this payment was not intended to be a property distribution. CP 33-34. The fact of the matter is

that Ms. Walpole was given the debt and Mr. Snyder was to pay spousal maintenance to Ms. Snyder in the sum of \$971 per month. However, this payment was to be paid directly to the mortgage company. Once Ms. Walpole sold the residence; Mr. Snyder began making these maintenance payments directly to Ms. Walpole.

Finally, had the second mortgage been a debt distribution as Ms. Walpole alleges, the parties would have likely ordered the payment be made in full upon the death of either of the parties. The fact that the payment ceases at the death of either the party is evidence of the fact that this was a maintenance provision and not a debt distribution.

Next Ms. Walpole alleges that the division of property is somehow unfair on its face. However, prior to the court looking into the final distribution of property it must first determine whether an ambiguity exists in the Separation Agreement. This simply cannot be done.

Regardless, Mr. Snyder would like this court to note that Ms. Walpole was not simply left with a home whose value is negligible, a car and \$12,000.00 of Mr. Snyder's deferred compensation package. CP 77. She also received \$37,800.00 in spousal maintenance from January 2002 through December 2004 under section 1(a) of the Separation Agreement. Further, under section 1(b) of the Separation Agreement Ms. Walpole

received \$971.00 per month from September 1, 2002, until very recently. If the court determines that spousal maintenance should cease at the date of Ms. Walpole's remarriage then she would have received \$55,347.00 under section 1(b) of the Separation Agreement. Further, as a result of the sale of the home in 2004 Ms. Walpole realized a profit of \$11,975.00. CP 78.

Therefore, in the Separation Agreement Ms. Walpole received a car, a home which realized \$11,975.00 at its sale, \$12,000.00 of Mr. Snyder's deferred compensation package and \$93,147.00 in spousal maintenance from January 2002 through June 2007. CP 27-31; CP 78. This is a significant amount of property when compared to the value of the community and the overall length of the marriage.

Mr. Snyder respectfully requests that this court affirm the trial court and find there are no ambiguities in this Separation Agreement when the contract is read as a whole. Therefore, the use of parol evidence in this case would be improper.

B. The trial court was precluded from inquiring into the intent of the parties until it determined that an ambiguity existed.

A reviewing court charged with determining the effect of a divorce decree is ordinarily limited to examining the provisions of the decree.

Puckett, at 82(citing *In re Marriage of Gimlett*, 95 Wn.2d 699, 705, 629 P.2d 450 (1981); *Kirk v. Continental Life & Accident Co.*, 85 Wn.2d 85, 88, 530 P.2d 643 (1975)). “If the divorce decree is unambiguous, it is not open to construction or parol evidence.” *Puckett*, at 84(citing *Kirk*, at 85; *Sutliff v. Harstad*, 5 Wn. App. 539, 542, 488 P.2d 288 (1971)).

The determination as to whether future payments are for maintenance or for property settlement depends on the intent of the parties. *Thompson*, at 356. However, where the contract is unambiguous on its face, the meaning of the contract is determined from its language and not from parol evidence. *Carstens v. Carstens*, 10 Wn. App. 964, 966, 521 P.2d 241 (1974); *Puckett*, at 84(citing *Kirk*, at 85; *Sutliff v. Harstad*, 5 Wn. App. 539, 542, 488 P.2d 288 (1971)). A decree is ambiguous if the payments are designated as spousal maintenance but have the character of a property division. *Thompson*, at 357. When an award is termed “support” and the support provisions are set out apart from the property division provisions it is persuasive of a maintenance award. *Puckett*, at 84(citing *Carstens v. Carstens*, 10 Wn. App. 964, 966-967, 521 P.2d 241 (1974)).

No ambiguity exists in the present case. The award as set out in the divorce decree is set out as maintenance. Both types of maintenance

are described under the heading “Spousal Maintenance”. CP 27. Further, the second mortgage on the family home was never distributed to Mr. Snyder under the liability division section of the Separation Agreement. CP 33. Also Ms. Walpole was given all of the tax and related benefits for paying the second mortgage. CP 35. Had this been a property award, Mr. Snyder would have been able to claim the tax benefits for having to pay the second mortgage on the property.

In *Thompson*, 82 Wn.2d 352, 510 P.2d 827 (1973), the court found that a future payment provision is a property division and not spousal maintenance. However, the *Thompson* case is distinguishable upon its facts. In *Thompson* the court determined that the husband’s obligation to make future payments to the wife of \$500 per month plus the future net income from his business property was not alimony. In making this ruling the court relied heavily on the stipulated facts which showed “that the parties understood and agreed, before the property settlement was signed, that the provision for support of the respondent was a part of the division of property and that the term “alimony” was used solely for tax purposes.” *Thompson*, at 354.

Again the present case is distinguishable. In this case the maintenance provision refers to the monthly payments as “spousal

maintenance” and is not facially ambiguous. Second, there are no stipulated facts that show the parties understood and agreed that the payment was a part of the division of property and the term spousal maintenance was used solely for tax purposes. Third, these provisions do not mention the effect of remarriage but do provide for the termination of the payment upon the death of either party. CP 27. Finally, the spousal maintenance provision is separate and distinct from the community property division. CP 27-34. Therefore, this court should find that the future payment provision was properly treated as an obligation for spousal maintenance.

C. The trial court did not have to conduct an evidentiary hearing.

Ms. Walpole requested an evidentiary hearing in this matter. CP 118. On November 13, 2007, the trial court heard argument as to why an evidentiary hearing should be granted. RP 3. Ms. Walpole petitioned the court for an evidentiary hearing if the court could not determine whether the \$971.00 payment was a property distribution or spousal maintenance. RP 3. The court did not order a evidentiary hearing. On November 26, 2007, the court entered a written ruling finding that the contract was not ambiguous when read as a whole. CP 143-144.

The trial court did not abuse its discretion in finding that the decree was not ambiguous and that an evidentiary hearing was not necessary to determine the payment was spousal maintenance.

D. The payment provision under Section 1(b) of the Separation Agreement is a maintenance provision and terminable by operation of law at the remarriage of Ms. Walpole.

Generally, spousal maintenance is terminated by operation of law when a spouse remarries. RCW 26.09.170(2). However, maintenance can continue after remarriage where the parties agree that spousal support should not stop when a spouse remarries. RCW 26.09.170(2). The termination of maintenance by statute under RCW 26.09.170 is separate and distinct from the modification of maintenance. RCW 26.09.170(1), (2); *In re Marriage of Rufener*, 52 Wn. App. 788, 792, 764 P.2d 655 (1988), *review denied*, 112 Wn.2d 1008 (1989).

RCW 26.09.170 specifically governs the modification and termination of maintenance. RCW 26.09.170 (2) states:

Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

However, parties to a dissolution “may expressly preclude or limit any provision for maintenance . . .” in a separation contract. RCW

26.09.070(7). In construing RCW 26.09.170(2) “courts have held that maintenance terminates upon the death of either party, or at the remarriage of the spouse receiving it, unless the decree contains “specific or manifestly clear and unmistakable” language indicating that the maintenance is to survive these events.” *In re Marriage of Allen*, 78 Wn. App. 672, , 898 P.2d 1390 (1995)(citing *Bird v. Henke*, 65 Wn.2d 79, 82, 2395 P.2d 751 (1964); *Murphy v. Shelton*, 183 Wn. 180, 48 P.2d 247 (1935), *In re Marriage of Williams*, 115 Wn.2d 202, 796 P.2d 421 91990); *In re Marriage of Rufener*, 52 Wn. App. 788, 764 P.2d 655 (1988), *review denied*, 112 Wn.2d 1008 (1989); *In re Marriage of Mason*, 40 Wn. App. 450, 698 P.2d 1104, *review denied*, 104 Wn.2d 1017 (1985)). Statements revoking the termination provision contained in RCW 26.09.170(2) must be stated expressly and not implied or left to inference. *In re Marriage of Main*, 38 Wn. App. 351, 684 P.2d 1381 (1984); *In re Marriage of Allen*, 78 Wn. App. 672 , 898 P.2d 1390 (1995).

The court in *In Marriage of Rufener*, 52 Wn. App. 788, 764 P.2d 655 (1988), *review denied*, 112 Wn.2d 1008 (1989), was to decide whether the former husband was obligated to pay maintenance after the former wife’s remarriage under a separation agreement. The separation agreement specifically provided that maintenance was only to be

terminated upon the death of a party or upon a date certain. The separation agreement also contained a provision that precluded the parties from modifying the maintenance agreement without the written consent of both parties. In terminating maintenance the court found that in order to repeal the mandatory termination language contained in RCW 26.09.170, the separation agreement must specifically include language which states the effect of a maintenance obligation should the receiving party remarry. *Rufener*, at 790. However, the separation agreement failed to state the consequences of the receiving party's remarriage. Therefore, the court ruled that the maintenance provision was terminated by operation of law upon the receiving spouse's remarriage. *Rufener*, at 790.

Similarly, the court in *In Re Marriage of Roth*, 72 Wn. App. 566, 568, 865 P.2d 43 (1994), was to determine whether the husband's obligation to pay spousal maintenance terminated by operation of law when the spouse receiving maintenance remarried. The separation contract entered into between the parties stated the obligation to pay maintenance shall terminate upon the death of either spouse, but failed to state whether the obligation would terminate upon remarriage of the spouse receiving support. *Roth*, at 568. In finding that the obligation to pay maintenance terminated upon the remarriage of the wife, the court

found: “In sum, RCW 26.09.170(2) and *Williams* mean just what they say: “express provision” means use of the word “remarriage”. Here, neither the dissolution agreement nor any other agreement provides that maintenance is to continue past remarriage, therefore terminated the obligation.” *Roth*, at 571.

In the present case this court should find that the maintenance obligation was terminated upon Ms. Walpole’s remarriage. Section (b) of the Snyder separation agreement does not repeal the mandatory language contained in RCW 26.09.170(2). The Snyder language fails to state the effect remarriage would have on spousal maintenance paid to the wife. Therefore, pursuant to RCW 26.09.170(7) and the above contained case law this court must find that maintenance was terminated by operation of law when Michelle Walpole remarried.

E. Attorney Fees.

Mr. Mitchell Snyder is seeking attorney fees for having to respond to this motion pursuant to RCW 26.09.140, RAP 14, and the hold harmless provision under the Decree of Dissolution.

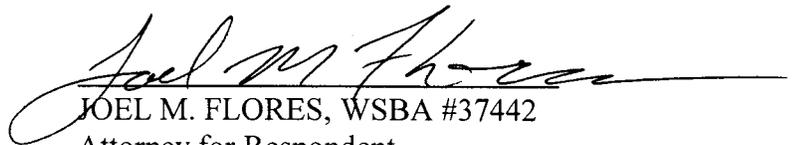
RCW 26.09.140 states that “[u]pon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney’s fees in addition to statutory costs.

Further, RAP 14 states that the “court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review.” Mr. Snyder moves this court for an award of costs pursuant to RCW 26.09.140 and RAP 14 for having to respond to this appeal.

IV. CONCLUSION

Mr. Mitchell Snyder respectfully requests that the Court of Appeals affirm the trial court’s determination that payments under section 1(b) of the parties’ Separation Agreement are spousal maintenance and terminated upon Ms. Walpole’s remarriage in June of 2007. Mr. Snyder also respectfully requests this court award him attorney fees for having to respond to this appeal.

Respectfully submitted this the 6th day of May 2008.


JOEL M. FLORES, WSBA #37442
Attorney for Respondent

FILED
COURT OF APPEALS
DIVISION II

08 MAY -6 PM 4: 30

STATE OF WASHINGTON

BY _____
DEPUTY

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

In re the marriage of

MICHELE LYNN SNYDER,
(now WALPOLE)

Appellant,

and

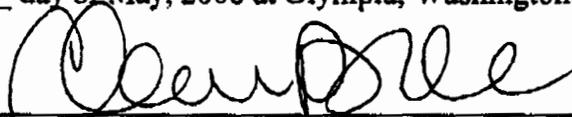
MITCHELL HUGH SNYDER,
Respondent.

No. 37271-1-II

DECLARATION OF SERVICE

I, CHRISTINE E. BELCHER, hereby declare under penalty of perjury under the laws of the State of Washington that on May 6, 2008, I caused to be hand-delivered a true and correct copy of the Respondent's Opening Brief to the Court of Appeals of the State of Washington, Division II (RAP 5.3(a)) to Michele Walpole's attorney of record, Jennifer B. Johnson's office located at 267 NW Center Street, Chehalis, WA 98532.

Signed this 6 day of May, 2008 at Olympia, Washington.



CHRISTINE E. BELCHER, Legal Assistant to
Joel Michael Flores, WSBA # 37442

DECL. OF SERVICE - I

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

In re the marriage of

MICHELE LYNN SNYDER, (now
WALPOLE)

Appellant,

and

MITCHELL HUGH SNYDER,

Respondent.

No. 37271-1-II

DECLARATION OF SERVICE

I, CHRISTINE E. BELCHER, hereby declare under penalty of perjury under the laws of the State of Washington that on May 6, 2008, I caused to be hand-delivered a true and correct copy of the Respondent's Opening Brief to the Court of Appeals of the State of Washington, Division II (RAP 5.3(a)) to Michele Walpole's attorney of record, Jennifer B. Johnson's office located at 267 NW Center Street, Chehalis, WA 98532.

Signed this 6th day of May, 2008 at Olympia, Washington.



CHRISTINE E. BELCHER, Legal Assistant to
Joel Michael Flores, WSBA # 37442

FOSTER FOSTER & SCHALLER LLC

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