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**A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR**

1. Whether the trial court properly considered, in determining whether there was a substantial change in the parties' circumstances to justify a modification of spousal maintenance, Tony's voluntary reduction of income when he chose not to renew a contract for work in a war zone; he began to receive disability benefits; and he chose work closer to his wife and children?
2. Whether the trial court properly considered, in determining whether there was a substantial change in the parties' circumstances, Erin living with her boyfriend for the past four years; co-owning a house with him; and co-owning their business?

**B. STATEMENT OF THE CASE**

**1. Marriage**

Anthony (Tony) Sideris and Erin Sideris were married on June 27, 1987. RP 15: 6-16. They had two children together, Stefany and Michael. RP 15: 12-16. From 1989 until 2005, Tony was employed, during their marriage, by the Naval Criminal Investigative Service as a criminal

investigator, earning approximately \$80,000 per year. RP 14: 20-22; 15: 2-3; and 55: 12-16. Although she had completed three years of college and was employed prior to having children, Erin was not employed since the birth of their first child. RP 83: 18; 84: 4-9. During their marriage, Tony and Erin acquired a family home on Olympic View in Silverdale, Washington, a vacant lot also on Olympic View, a retirement Thrift Savings Account worth approximately \$170,000.00, a Maui timeshare, four bank accounts at Kitsap Federal Credit Union, personal property, and a couple of vehicles. RP 18: 4-7; 19: 6-13. The marital debt consisted of a mortgage on the family home and a mortgage on the vacant lot. RP 18: 12-14.

## **2. Dissolution**

The parties separated in June 2003. RP 16: 19. Tony and Erin began to jointly draft the dissolution documents in April 2004, when Tony was home from Naples, Italy, where he was assigned as part of his employment with NCIS. RP 16: 24 - 17: 1, 14-21. After he returned to Italy, Erin filed the paperwork for the parties. RP 17: 1-2. Neither party was represented by counsel in obtaining the Divorce Decree. RP 17: 9-12. The Divorce Decree was entered in Kitsap Superior Court on January 8, 2005. RP 28: 23.

In discussing the terms of dissolution, Erin repeatedly expressed concerns that she may not be able to work because of a health problem she had had in 2002. RP 21: 17-19. Second, she was concerned that Tony would not take care of her and the children financially. RP 21: 13-19. In order to assuage her concerns, he agreed to a very generous property distribution, spousal maintenance obligation, and child support obligation. RP 58: 18-20. Erin received the family residence on Olympic View, the vacant lot on Olympic View, four bank accounts at the Kitsap Federal Credit Union, the household furnishings, the Maui timeshare, the 2002 Mitsubishi, and half of the Thrift Savings Plan. RP 19:1- 20:2. Tony only received a 1994 Honda Accord, a FERS retirement plan worth approximately \$10,000, half of the Thrift Savings Plan, a few hundred dollars in one bank account, and a motorcycle. RP 19: 16- 20: 2; 20:14-18.

Tony also agreed to pay \$2,000.00 per month in spousal maintenance so that she could cover the mortgage payments, and \$1,500.00 per month in child support, believing based upon conversations with Erin, that he would be able to reduce his spousal maintenance payments once Erin was able to start working. RP 21: 7-9 and 22: 14-17. While Mr. Sideris knew he may change jobs to another federal position at the time of the divorce, because NCIS was re-assigning him to

Washington D.C. rather than near his home in Kitsap County, the issue of losing his job with NCIS, because of his involvement with his now wife, a foreign national, had not yet arisen. RP 60:22 – 61:19.

### **3. Tony Sideris, After the Divorce**

Shortly after the Divorce Decree was entered, Tony lost his security clearance with the NCIS as he was involved with a foreign national. RP 60: 13-19; 61: 2-4. Tony married Elena Shirgaleva, who had two children from a previous relationship. RP 33: 16-25. Tony formally applied to the U.S. Customs Service in Seattle, after he was terminated from NCIS and after the Divorce Decree with Erin was entered. RP 61:13 - 62:4. Tony had begun inquiring as to potential future employment with the U.S. Customs Service prior to the divorce with Erin to ensure that he would be located near his children when he learned from NCIS that he was to be assigned to Washington D.C. RP 61:13 - 62:4. However, Tony was never offered a position with U.S. Customs Service. RP 37: 9-17. He could find no other employment where he could be near his family and earn enough to support Erin, their children, his current wife, and her children. RP 36: 23-25. Out of desperation, he took a contract position with Blackwater Security, Inc. RP 36: 23-25.

In April 2005, Tony accepted his first contract with Blackwater Security. RP 34: 17. Blackwater Security is a security company that,

among other things, provides security for the Department of State in Iraq and Afghanistan. RP 34: 20-22. Tony was a security specialist who provided protection for the U.S. Ambassador and other diplomats in the Green Zone in Iraq. RP 35: 3-5. While acting in that capacity, Tony was subjected to small-arms fire, car bombs, road side bombs, mortar fire, and rocket fire. RP 35: 15-18. He feared for his life every day while performing this type of work. RP 36:8-9. He renewed his contract with Blackwater Security several more times to meet his obligations until May 2008, working three months on and one month off, unpaid. RP 25: 19-20; 26: 7-8; 27: 2-3; 15: 3-5; and RP 36: 17-22.

In Spring 2008, Tony tore the ligaments in his left shoulder while in Iraq. RP 38: 18-20. Tony understood from his doctor that it would be approximately six to eight months after surgery before he could return to do the type of work that he had been doing. RP 43: 20-23. Also, as a result of his injury on the job in Iraq, Tony was going to receive approximately \$1,030.78 per week in his workman's compensation, disability benefit. RP 44: 4, 9-12; 45: 17-22.

Currently, he is employed by Windemere Real Estate of Gig Harbor. RP 48: 8-10. He chose this line of work, because it would both keep him near his family out of Iraq and eventually be able to provide financial security. RP 50: 13-18. However, other than his disability, he

will not receive income until his employment with Windemere starts to pay him commission. RP 48: 6-10. He believed he would not receive commission until early 2009, based on the market and the production of other realtors. RP 49: 18-22.

#### **4. Erin Sideris, After the Divorce**

Shortly after the separation, Erin became romantically involved with Mr. Brian Slagle. RP 51: 19-20. Tony did not learn of this relationship until after the Divorce Decree was entered. RP 51: 19-20. On January 25, 2005, 13 days after their divorce was finalized, Erin incorporated Slagle Construction Company with her boyfriend. RP 91: 7-10. In September 2005, Erin and the children moved in with Mr. Slagle. RP 101:12-16. Since they met and to this day, Mr. Slagle has been married to another woman with whom he has not lived for the past 20 years. RP 128:23-24.

Although during her marriage to Tony she did not work, Erin is now currently employed as vice president for Slagle Construction Company, though she also functions as treasurer and secretary. RP 84:1-5; 102: 11-16. Despite her alleged disability, Erin performs a variety of other work for the company as well, including excavation, pouring concrete, tile work, and painting. RP 102: 23-25. She currently works approximately 60 hours per week and receives \$1,000.00 per month

wages, along with having her car, gas, and insurance paid for by the company. RP 103: 23 -25; 104: 1-2; 106: 24 -107:1. Mr. Slagle also receives \$1,000.00 per month in wages from the company. RP 104: 8-9. Her health is good and does not interfere with her ability to work. RP 107: 10-13; 145: 3-5.

Erin invested the money that she obtained from selling the properties she received in the divorce decree into her and Mr. Slagle's business. RP 102: 2-10; 108: 12-22. She has since received her initial investment back, plus interest, and has reinvested the profits back into their business. RP 108: 12-22; 109: 12-13; 119: 21-23; 141: 17-22.

Despite not putting any money down on the residence shared with her boyfriend, Erin currently owns 50 percent of the couple's residence. RP 101: 22 - 102: 4. Erin and Mr. Slagle each pay a portion of their mortgage and other expenses, 75% and 25% respectively. RP 104: 19 – 105: 5.

## **5. Procedural History**

In September 2007, Tony petitioned the trial court to modify his spousal maintenance and child support obligation. A trial was held on the matter in Kitsap County Superior Court before the Honorable Jay B. Roof on July 16, 2008. Because the court did not have Erin's financial declaration, Judge Roof reserved making a final ruling on the issue of

spousal maintenance and child support until August 1, 2008. The matter was continued until August 8, 2008 for her to provide that document.

On August 8, 2008, the court found that Tony was not employed as he had been at the time of original dissolution. RP Vol. II, 3:22. The court further found that he was under no obligation to continue employment under the dangerous circumstances in Iraq. RP Vol. II, 3:23-25. While the court considered this good faith reduction of income as a change in circumstances, the court found his employment status in conjunction with Erin's current financial status was a *significant* change of circumstances warranting a reduction in spousal maintenance. RP Vol. II, 4: 12 – 5:14.

After finding that a substantial change existed, the court examined RCW 26.09.090's factors, including financial resources of the party seeking maintenance; education and training required for that spouse to find employment; and the ability of obligor to meet his own needs and the needs of the former spouse. RP Vol. II, 6: 11-21. The court found that Erin was doing well financially, is involved in a successful business, and had a large sum of money available to her. RP Vol. II, 6:22 – 7:5. The court also found that her living arrangement had also reduced her need for maintenance. RP Vol. II, 7: 23-24. The court finally found that Tony was no longer able to earn as much as he had voluntarily obligated himself to

pay. RP Vol. II, 7:19-21. Based on these three factors, the court, rather than terminate maintenance, modified Tony's maintenance obligation downward from \$2,000.00 per month to \$500.00 per month. RP Vol. II, 8: 6-7. The court did not reduce the duration of the spousal maintenance obligation. RP Vol. II, 8:7-9.

### **C. SUMMARY OF ARGUMENT**

The trial court did not abuse its discretion when it found a substantial change in the parties' circumstances. The court properly found that the decision to not renew an employment contract in a war zone was a decision done in good faith. Because the decision was done in good faith, the court rightfully considered Tony's voluntary reduction of income as a part of determining that a substantial change in circumstances had occurred. Along with Tony's decision, the court also took into account that he is currently only receiving disability payments for his injury in Iraq in evaluating his current ability to pay. The court equally considered Erin's current standard of living, income, and co-habitation with her boyfriend for the past 4 years to determine her financial needs. In reviewing the totality of all of these circumstances, the court rightfully determined that Tony does not have the current realistic ability to pay the now reduced necessities of Erin, which warranted the reduction in spousal maintenance.

## D. ARGUMENT

### 1. Standard of Review

Washington State appellate courts will not reverse a trial court's decision to modify a maintenance award absent an abuse of discretion. *In re Drlik*, 121 Wn. App. 269, 274, 87 P.3d 1192 (2004). *Citing In re Marriage of Spreen*, 107 Wn. App. 341, 346, 28 P.3d 769 (2001). Abuse of discretion occurs only where the court's decision is entered on grounds either manifestly unreasonable or clearly untenable. *In re Marriage of Ochsner*, 47 Wn. App. 520, 525, 736 P.2d 292 (1987). To determine whether the trial court abused its discretion, the appellate court reviews the lower court's order for substantial supporting evidence and for legal error. Any unchallenged findings are found to be true upon appeal. *Drlik* at 275. Substantial evidence exists where there is sufficient evidence to persuade a fair-minded, rational person of the truth of that determination. *Spreen* at 346.

### 2. **The Trial Court properly considered Tony's current financial ability to meet his obligations.**

Maintenance awards may be modified when the moving party shows a substantial change in the circumstances that the parties did not contemplate at the time of the entry of the order for spousal maintenance. RCW 26.09.170(1). See also *Spreen* at 346. "Change in circumstances"

has been held to mean the financial ability of the obligor spouse to pay the financial necessities of the obligee spouse. *Spreen* at 346. In other words, the court will compare the necessities of the divorced wife and the realistic ability of the ex-husband to meet the obligations imposed. *Lambert v. Lambert*, 66 Wn.2d 503, 508, 403 P.2d 664 (1965). A voluntary reduction of income can constitute such a change of circumstances in determining the ability of a party to meet his obligations, where the reduction of income is accompanied by a substantial showing of good faith. *Fox v. Fox*, 87 Wn. App. 782, 784, 942 P.2d 1084 (1997).

- a. The trial court properly found that the changes in both parties' financial circumstances were not contemplated at the time of the divorce.

The current circumstances of the parties were not contemplated at the time of the dissolution, nor could they have been. Tony did not know that he would not be continuing with NCIS at the time of the dissolution. Even if he thought he may change positions at some point in the future, he did not know until after the dissolution that he would not be offered the position with U.S. Customs in Seattle. Further, at the time of the divorce, Tony did not work for Blackwater Security. As such, he would have had no information about the physical, mental, and emotional hardships and other dangers that working as a contract employee in Iraq would bring. Tony also could not anticipate in 2005 that in 2008 he would be injured

and earning only disability. The trial court implicitly found this to be the case when it found that he was not employed as he was when the Decree of Dissolution was entered. RP Vol. II, 3: 22.

Similarly, Tony could not have anticipated the reduction of Erin's financial needs. He did not know that Erin was planning on moving in with her boyfriend to share expenses. He did not know that she was well enough to work or that she was going to start her own business with her boyfriend. None of these events were at all in contemplation at the time the divorce decree was entered. The trial court also found that the changes in Erin's circumstances were also not contemplated at the time of dissolution when it discusses that she moved in with Mr. Slagle after the divorce and that she now co-owns a business that she was not involved with at the time of the divorce. RP Vol. II, 4: 12-13; 21-23.

- b. The trial court properly found Tony's voluntary reduction of income was done in good faith.

After making this determination, courts will then look to whether there was a substantial change in the parties' circumstances which warranted a reduction in spousal maintenance. RCW 26.09.170(1)(b). See also *Fox v. Fox*, 87 Wn. App. 782, 784, 942 P.2d 1084 (1997). The trial court implicitly found that Tony showed the requisite good faith in reducing his income and found that he was no longer able to earn enough

to cover what he had voluntarily obligated himself to pay. The Honorable

Jay Roof stated:

Petitioner is not employed as he was. And there is no obligation on his part to continue employment under the dangerous circumstances that he found himself in the last couple of years working with Blackwater in Iraq. And while, arguably, working in the “green zone” is the least risky location of the country, this Court will not require him to work under such circumstances, nor will it impose upon him income that he received when he was receiving hazardous duty pay.”

RP Vol. II., 3: 22-25; 4: 1-5. Simply because the judge did not use the term “good faith” does not undermine the court’s finding. The court would not impose upon Tony a duty to risk his life for hazardous pay, or in other words, Tony’s choice not to continue to risk his life was a decision that was done in good faith. *See Spreen* at 346. (Trial court’s decision to modify maintenance based on the implicit finding of changed circumstances, though did not use the term “changed circumstances”, was not an abuse of discretion.)

Other Washington Courts have addressed circumstances in which a determination of whether the party made the requisite showing of good faith in the voluntary reduction of income. *Fox v. Fox*, 87 Wn. App. 782, 942 P.2d 1084 (1997). *Lambert v. Lambert*, 66 Wn.2d 503, 403 P.2d 664 (1965). In *Fox*, Mr. Fox’s motion seeking a reduction of his maintenance obligation was denied upon the court’s finding that his voluntary reduction

of income was not in good faith. To address the issue of whether he acted in good faith, the court considered that he had voluntarily sold his medical practice to a company owned, at least in part, by his new wife; that the sale was not an arms-length negotiated sale; that his new wife was hired at the practice as office manager earning over \$127,000.00 per year; that he was also employed at the practice; and that when combined, he and his new wife's income was the same as his income prior to the sale. Based on these facts, it was clear to the court that Mr. Fox's lifestyle had not changed at all due to the sale of his business, and therefore, neither had his ability to pay spousal maintenance. The court further considered that his former wife was disabled and had no employable skills. Her medical expenses were also increasing during this time. When the entirety of these circumstances were reviewed and the parties relative positions were compared, the court found that his voluntary "reduction" of income was not a good faith reduction and could not serve as a basis for modifying his maintenance obligation.

Here, after suffering an injury, Tony chose to not continue to risk his life daily in his former occupation with Blackwater Security in Iraq and subject himself to daily missile and mortar fire. He sought to find employment closer to his children, wife, and step-children, and did so by obtaining employment at Windermere Real Estate. Even if he could find

comparable, non-life-threatening work, Tony is receiving disability for his injury and is unable to earn as he had been.

Tony was injured on his last assignment for Blackwater Security and now only receives disability payments, until he can receive a commission from his real estate work. The trial court acknowledged that after the entry of the Divorce Decree Tony remarried and now also supports his new wife and her two children. Unlike Mr. Fox in *Fox v. Fox*, Tony's lifestyle and standard of living is negatively affected by his good faith decision to not continue to risk his life.

Also, unlike Ms. Fox, this trial court found that Erin is physically able to work and is working nearly 60 hours per week as the Vice President of Slagle Construction Company in a job that she enjoys. The court found that Erin was sharing expenses at least to some degree with her boyfriend and business partner with whom she and her children reside.

When viewing the facts in the entirety, the trial court implicitly found, when making its decision, that Tony's voluntary reduction in income was in good faith, amounted to a substantial change in circumstances, and warranted a reduction in his maintenance obligation. If it was error to not use the term "good faith," it was a harmless one, as the court's findings indicate that Tony's actions to not continue to risk his life was a good faith decision, not designed to deliberately shirk his

obligations. As such, the court did not abuse its discretion in so finding.

**3. The Trial Court properly considered Erin's current need for financial support.**

When determining whether a substantial change in circumstances has occurred, as discussed above, the court compares the necessities of the divorced wife and the realistic ability of the ex-husband to meet the obligations imposed. *Lambert v. Lambert*, 66 Wn.2d 503, 508, 403 P.2d 664 (1965). While there is no per se rule that modification is warranted when a party is residing with someone else, the test for modification is whether the new relationship has reduced the financial needs of the divorced spouse. *In re the Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989). In the present case, Erin resides with her boyfriend and business partner, Brian Slagle. Both receive income from their shared business and both share household expenses. Erin purportedly pays 75% of the bills and Brian pays 25% of the household's bills. Erin now co-owns the business which she was not involved with at the time of the original dissolution and she also co-owns her home with Mr. Slagle. The court found that, while convoluted, the duration and financial entanglements of Erin and Brian's relationship warranted consideration in reviewing the totality of Erin's current financial circumstances. See RP Vol. II, 4:12 - 5:14; 6:22 - 7:13; Considering Erin's new employment, as

well as her co-habitation with Mr. Slagle, the court found that Erin's financial needs had been reduced since the divorce decree was entered. As a result, the trial court properly considered these facts.

Erin's brief also focuses on the definition of the term "cohabitation." In *Tower*, the court found that unless otherwise defined in a divorce decree, a cohabitation provision respecting maintenance in a divorce decree applies only to those relationships which are tantamount to marriage. *Id* at 703. Unlike in *Tower*, the court below was not addressing such a co-habitation provision, but rather was considering the financial needs of Erin in light of all her particular circumstances. Erin argues that she cannot be found to co-habit with Mr. Slagle, because he is married to someone else. However, Erin has voluntarily lived with this man for the past four years and he has not lived with his legal wife for the past 20 years. Mr. Slagle and Erin co-own property together and co-own their business. Obviously, this is not the type of transitory meretricious relationship that the court in *Tower* had expressed concerns about. Further, what was considered "tantamount to marriage" in 1965 when the *Tower* case was decided is considerably different than the various lifestyle choices of people in 2008. The court simply considered the affect that sharing expenses had on Erin's current financial need for spousal maintenance. As a result, the court properly considered her living

arrangements.

**4. The Trial Court properly reduced spousal maintenance.**

While Erin does not specifically assign error to the issue of the amount of the spousal maintenance, she does briefly discuss the issue at the end of her brief. Once the court has found that a substantial change in the parties' circumstances has occurred and that modification is appropriate, the court will then review the issues of amount and duration, as it had in the original dissolution proceeding, pursuant to the non-exclusive factors listed in RCW 26.09.090. *Spreen* at 347. The only limitation on the award is that the amount and duration be just. *Id.* In the present case, the court focused on the following issues:

1. The financial resources of the party seeking maintenance, including property owned by that party to meet his or her needs in conjunction with any child support that's to be received;
2. Time necessary for education training for employment appropriate to the parties' skill, lifestyle, etc.
3. The ability of the spouse from whom maintenance is sought to meet his or her own needs and the financial obligations while meeting those of the spouse seeking maintenance.

RP Vol. II, 6: 11-21. See also RCW 26.09.090.

In considering those three factors, the court ruled that Erin was involved in a successful business, had a relatively large sum of cash

available to her to invest, and shared expenses with Mr. Slagle. Further, the court stated in its oral opinion that she would need no additional time to find employment as she is involved in the Slagle Construction Company business. The Trial Court also found that Tony was no longer able to earn as much as he had voluntarily obligated himself to pay. In considering these factors and the parties' financial declarations, the court below reduced maintenance in amount from \$2,000.00 to \$500.00 per month, but did not reduce the duration. Because the court carefully considered the factors indicated by the statute, the trial court did not abuse its discretion in reducing the maintenance obligation.

#### **5. Statutory Costs and Attorney's Fees**

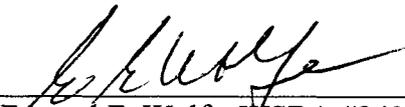
Respondent Anthony Sideris also requests statutory costs and attorney's fees for defending this appeal pursuant to RAP 18.1 and RCW 26.09.140. Courts will look to the arguable merit on appeal and the financial resources of both sides. *Bower v. Reich*, 89 Wn. App. 9, 20, 964 P.2d 359 (1997). As discussed at length above, Erin Sideris' appeal has little merit as she simply seeks to have the appellate court re-consider the facts that the trial court, in its discretion, so carefully weighed. Further, Tony only has been receiving disability and has to support himself, his new wife, his two children, his two step-children, and pay spousal maintenance in the amount of \$500.00 per month to Erin. Tony has

demonstrated the need for Erin to pay for his attorneys fees on appeal. CP 49-54. Erin also has the ability to pay, because of all of the property she has received in the divorce and has reinvested.

**E. Conclusion**

As a result, Respondent Anthony Sideris respectfully requests this court to affirm the trial court's decision. Tony Sideris further requests this Court to award attorney's fees and costs on appeal.

Respectfully submitted this 13 day of April, 2009

  
\_\_\_\_\_  
Edward E. Wolfe, WSBA #24952  
Jessica A. Jozefowicz, WSBA #35814  
Attorneys for Anthony Sideris

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

In re the Marriage of:	)	
	)	<b>No. 383951 - II</b>
ANTHONY SIDERIS,	)	
	)	<b>AFFIDAVIT OF SERVICE</b>
Respondent,	)	
	)	
and	)	
	)	
ERIN SIDERIS,	)	
	)	
Appellant.	)	

STATE OF WASHINGTON	)
	) ss.
COUNTY OF KITSAP	)

Elizabeth Thomson, being first duly sworn on oath, deposes and says:

That on the 13<sup>th</sup> day of April, 2009, affiant caused to be served true and correct copies of the following documents on the parties and in the manner listed below:

- Respondents Brief; and
- This Affidavit of Service

**ORIGINAL**

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Directed and addressed to the following parties:

Kerry Stevens  
Stevens Law Office  
513 Bay Street, Suite 104  
Port Orchard, WA 98366-5301

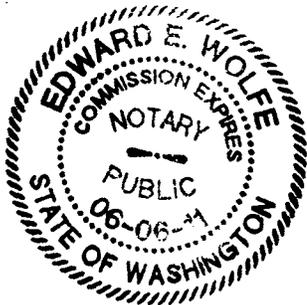
- Via Facsimile
- Via U.S. Mail – First Class, Postage Prepaid
- Via Legal Messenger
- Via Federal Express
- Via Hand Delivery
- Via Posting

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 13 day of April, 2009 at Bremerton, Washington.

Elizabeth C Thomson  
Elizabeth Thomson

SUBSCRIBED AND SWORN to before me this 13 day of April, 2009.



Edward Wolfe  
Print Name: Edward Wolfe  
NOTARY PUBLIC in and for the State of  
Washington, residing in:  
Bremerton  
My commission expires: 6-6-11