

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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CHARLES L. EAKINS, PETITIONER

AND

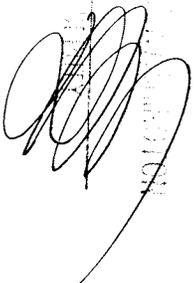
BEVERLY J. EAKINS, RESPONDENT

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BRIEF OF RESPONDENT

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Kathleen Hathaway, WSBA #20802  
Attorney for Respondent Beverly J. Eakins  
Post Office Box 293  
Grand Coulee, Washington 99133

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**A. IDENTITY OF RESPONDENT**

Beverly Eakins (wife/mother in this action) asks the Court to affirm the decision of the Kitsap County Superior Court described in Part B of her brief and as set forth below.

**B. DECISION – FACTUAL BACKGROUND**

On September 4, 2009, Kitsap County Court Commissioner Lowens denied Beverly's motion for financial relief (except for child support) *without prejudice*, based upon the fact that he did not have a bench copy of her financial declaration. *VRP, page 9, lines 10-25; VRP page 10, lines 1-25.* Beverly then re-noted the financial issues for Friday, October 2, 2009 and the note and motion were left by a process server on the front door of Mr. Eakins' residence on the preceding Friday, September 25, 2009. *Petitioner's Motion for Discretionary Review.* Kitsap Superior Court Judge Leila Mills heard Beverly's motion for temporary financial relief, including attorney fees and maintenance, on October 2, 2009. Judge Mills first asked Charles if he agreed that the financial issues should be heard by her on that date. He first responded that 'Um, in as far as – I don't know that you saw that I have some objections to the way it was delivered to me on Friday.' *VRP, page 7, lines 13-15.* Judge Mills answered, 'I saw that, And we should take that up first, Because that's a preliminary issue whether or

not it can be heard today.’ *VRP, page 7, lines 16-18.* After a significant discussion of miscellaneous issues, including that Commissioner Lowen’s order of September 4, 2009 denying financial relief had been made without prejudice and a discussion of transportation costs, Judge Mills again raised the issue of whether Beverly’s motion requesting financial issues would be heard during the October 2, 2009 hearing and Charles Eakins unequivocally waived his objection to the Court hearing that motion. In again raising the issue, Judge Mills asked, ‘Okay, and what other financial issues are you seeking to raise today, maintenance—.’ *VRP, page 10, lines 22-23.* Beverly’s counsel stated ‘They’re all related to the disparity in the parties’ income. Maintenance, attorney fees, and debt division.’ *VRP, page 10, lines 24-25; page 11, line 1.* Judge Mills specifically then asked Charles Eakins, ‘Any reason why we shouldn’t address those as well as the transportation costs, Mr. Eakins?’ *VRP, page 11, lines 2-3.* Charles Eakins first responded, ‘Again they were – the transportation costs were already addressed.’ *VRP, page 11, lines 4-5.* Judge Mills then again asked Charles Eakins, ‘As to the other financial issues,’ and Charles Eakins responded, ‘We can go ahead.’ *VRP, page 11, lines 6-7.* After argument from both parties, and specifically questioning Charles about the expenses on his financial declaration, Judge Mills ordered \$350.00 in maintenance. *VRP, page 26, line 18; VRP, page 19, line 3 – page 26, line*

4; *VRP*, page 30, line 6 – line 12. Judge Mills provided a factual basis for her order, stating ‘I’m looking at the entire picture, taking into account child support, taking into account the maintenance of the household, taking into account the expenses in his financial declaration, but there’s such a clear disparity. And I believe there can be some payment of maintenance in this case, albeit it’s only going to be \$350.’ *VRP*, page 26, line 23 – page 27, line 4. Judge Mills additionally stated ‘I have looked at this entire case, and what I saw in the pleadings was that Miss Eakins is on TANF. She is also receiving food stamps, as I recall. And you apparently – according to your financial statement, you’re spending \$700 a month in food. So I believe \$350 in maintenance is affordable to you.’ *VRP*, page 30, lines 6-12.

Charles Eakins filed a notice of appeal of Judge Mills’ decision on October 28, 2009 and the Court of Appeals issued a Perfection Notice on November 9, 2009. Eleven days after the Court of Appeals issued its Perfection Notice, Charles Eakins filed a motion for temporary orders on November 20, 2009, which would modify child support (based upon unemployment) and vacating the temporary maintenance ordered by Judge Mills on October 2, 2009. *Respondent’s Designation of Clerk’s Papers, Sub, 102, Docket Date 11/20/2009, Docket Description Note for Motion Docket Temporary Orders*. The Respondent’s motion was heard

by Judge Anna Laurie on December 12, 2009. Judge Laurie significantly lowered Charles Eakins' child support, but declined to change the previously ordered maintenance of \$350.00 per month. *Respondent's Designation of Clerk's Papers, Sub. 114, 115, 116 and 119*. Charles Eakins has never made a maintenance payment.

### C. ARGUMENT

1. Charles Eakins specifically waived his objection to propriety of service during the October 2, 2009 hearing when Judge Mills asked him 'about the other financial issues,' and Charles said 'we can go ahead' [with the hearing.] *VRP, page 11, lines 6-7*. Additionally, Judge Mills spent a significant amount of time questioning Charles about his financial declaration – reading the transcript of the proceedings, there can be no doubt that the Court fully considered all available evidence in issuing its ruling on maintenance. *VRP, page 26, line 23 – page 27, line 4. VRP, page 30, line 6 – line 12*.

2. Charles Eakins had full and adequate notice of the financial issues – specifically the request for maintenance – dating from the hearing of September 4, 2009 at which time Commissioner Lowens declined to hear the mother's motion because he lacked a bench copy of her financial declaration. *VRP, page 9, lines 10-25; VRP page 10, lines 1-25*. During

previous oral argument before the Court of Appeals, Charles argued that he lacked sufficient time to respond to the mother's motion. This is simply not true – Charles Eakins had notice of this motion and the issues since before September 4, 2009 hearing and had previously and subsequently filed an abundance of financial materials both for the October 2, 2009 hearing and for the December 12, 2009 hearing on his own motion to vacate the maintenance order. *Respondent's Designation of Clerk's Papers, Sub, 102, Docket Date 11/20/2009, Docket Description Note for Motion Docket Temporary Orders.*

3. Subsequent to filing his appeal, Charles Eakins had a new hearing before the trial court (in front of Judge Laurie) to revisit the issue of maintenance, based upon his motion to vacate the maintenance order of September 4, 2009. The fundamental of due process is 'notice' and 'opportunity to be heard.' Mr. Eakins had notice of the September 4, 2009 hearing, the October 2, 2009 and the December 12, 2009. It is difficult to conceive of what other opportunities to be heard on this issue that the trial court could or should have provided Mr. Eakins.

4. Beverly Eakins' motion for temporary orders which the process server left on the door of Charles Eakins' residence was not served in violation of his rights to due process. Mr. Eakins was the petitioning party – his petition was personally served on his wife. This

case was actively prosecuted and defended for some months since the petition was filed in June 2009. Due process does not require new original process for such a motion as filed by Beverly Eakins on September 25, 2009. *Chai v. Kong*, 93 P.3d 936 (2004), 122 Wash. App. 247.

5. Beverly Eakins' motion which was left on the door of her husband's residence on September 2009 was in *substantial compliance* with CR 5. The substantial compliance doctrine requires both actual notice, and service in a manner reasonably calculated to reach the party on whom the statute requires notice. *Id*, citing *Petta v. Dep't of Labor & Industries*, 68 Wash. App. 406, 409, 842 P.2d 1006 (1992). The Fourteenth Amendment<sup>1</sup> requires that deprivation of life, liberty, or property by adjudication must be preceded by notice and an opportunity to be heard appropriate to the nature of the case. *Mullane v. Central Hanover Tr. Co.*, 339 U.S. at 313, 1950. Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id*. at 314. Charles Eakins had five-court days notice of Beverly's motion for financial relief – he received the motion and supporting pleadings on Friday, September 25, 2009 for a hearing noted for Friday, October 2, 2009. *Motion for Discretionary Review*, page 5.

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<sup>1</sup> Notice and opportunity to be heard are also requirements under the Fifth Amendment to the United States Constitution and Article I of Washington's Constitution.

Charles filed documents in response to Beverly's motion. *RA-1*. Charles had his constitutionally-guaranteed opportunity to be heard in writing, an opportunity which he utilized – Charles also had his constitutionally-guaranteed opportunity to be heard in person on October 2, 2009, an opportunity which he also utilized. *RA-1, Motion for Discretionary Review.*<sup>2</sup> Charles appears to be arguing that 1) the process server was deliberately instructed to leave the pleadings on September 25, 2009 at his home rather than personally serving him, and 2) that such allegedly deliberate act is somehow relevant. First, this was not a deliberate act and second, the instructions to the process server have no relevance whatsoever. There is no evidence whatsoever in the record that the process server was instructed to avoid personally serving Charles Eakins on September 25, 2009. *Motion for Discretionary Review.*

#### D. CONCLUSION

Chapter 26.09 RCW and the court's inherent jurisdiction provide the basis for the authority of the superior court to provide temporary relief. See e.g., *Tupper v. Tupper*, 63 Wn.2d 585, 388 P.2d 225 (1964); RCW 26.09.060. Statutes giving the courts authority and jurisdiction over the dissolution of marriage are to be broadly construed. *In re Marriage of Little*, 96 Wn.2d 183, 197, 634 P.2d 498 (1981). Statute specifically

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<sup>2</sup> Beverly notes that Charles also had notice of her earlier motion of August 4, 2009, listing substantially similar requests for relief.

authorizes the court to grant temporary child support or maintenance and provide other 'relief proper in the circumstances.' RCW 26.09.060. The trial court has wide discretion in equitably disposing of marital property. In re Marriage of Thompson, 32 Wn.App. 170, 646 P.2d 163 (1982); Peterson v. Peterson, 3 Wn.App. 374, 475, P.2d 576 (1970).

As stated above, Judge Mills' October 2, 2009 order denied Beverly's motion for attorney fees (leaving the issue for trial) and required that Charles Eakins pay: 1) Beverly's vehicle payment of \$598.00 per month; 2) Beverly's cell phone payment (except that Judge Mills held that Charles was not required to pay for any text messages on that bill); 3) the monthly mortgage payment for the family home in which he resides (with the caveat that he make 'best efforts' to make that payment); and 4) \$350.00 per month in spousal maintenance to be paid to Beverly through child support enforcement with the first payment for one-half of October 2009 due on October 15, 2009 and that subsequent monthly payments were to be paid on the 5<sup>th</sup> of each month beginning in November 2009.

PA-1.

As a general matter, the decision whether or not to award maintenance is within the sound discretion of the trial court. See, e.g., In re Marriage of Crosetto, 82 Wn.App. 545, 918 P.2d 954 (1996). Those cases decided before the enactment of the Dissolution of Marriage Act of

1973 follow the common law rule that the spouse seeking maintenance must show need and the other spouse's ability to pay. See e.g., Motley v. Motley, 117 Wn. 234, 237-38, 200 P. 1099 (1921). Under RCW 26.09.090, the court may consider a broad set of criteria applicable for the most part to either temporary or final maintenance orders, including: 1) the financial resources of the party seeking maintenance, including separate or community property apportioned to him, and his ability to meet his needs independently, 2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, 3) the standard of living established during the marriage, 4) the duration of the marriage, 5) the age, physical and emotional condition, and financial obligations of the spouse seeking maintenance, and 6) 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.

The record is clear that there was an abundance of evidence supporting an award of temporary maintenance, particularly a maintenance amount in such a relatively small amount of \$350.00 per month. In regard to the first statutory factor – the financial resources of the party seeking maintenance: Beverly and her five-year old child are living with her parents, sharing a bedroom; Beverly is on public assistance and working

part-time at a job paying minimum wage; Beverly's parents have no legal obligation to support her, and she wishes to live on her own; and Charles had not paid Beverly a cent in either child support or maintenance since the date of separation in March 2009. *PA 24 et seq; PA 32 et seq.* In regard to the second statutory factor – the time necessary to acquire sufficient education to find appropriate employment – that factor is more appropriate in consideration of long-term or permanent maintenance. However, Beverly does note that she is taking classes to improve her employability. *Id.* In regard to the third statutory factor – the standard of living established during the marriage – Beverly and her child formerly lived in the family 3-bedroom, 2-bath home and are now sharing a bedroom at her parents. In other words, they were formerly living fairly comfortably and are now living under more cramped circumstances. *Id.* In regard to the fourth statutory factor – the duration of the marriage – the parties were married between five and six years. *Id.* In regard to the fifth statutory factor – the health and other personal circumstances of the spouse seeking maintenance – Beverly is fairly young and relatively healthy. In regard to the sixth statutory factor – 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 – Charles has a net monthly income of approximately \$5,200/month and

acknowledged to Judge Mills that he has not been making the mortgage payment or credit card payments listed on his financial declaration.

In conclusion, Beverly Eakins respectfully requests that the trial court decision in this case be affirmed. She is also requesting both need-based and cause-based attorney fees.

6/28/2010

Respectfully submitted,



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Kathleen Hathaway, WSBA #20802  
Attorney for Respondent  
Post Office Box 293  
Grand Coulee, WA 98133