

NO. 44296-5-II

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

ANN E. MILLS,

Appellant,

v.

PAUL WIERENGA,

Respondent.

BRIEF OF RESPONDENT

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA 22278
Shelby R. Frost Lemmel, WSBA 33099
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033
Attorney for Respondent

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF THE CASE AND PROCEDURE	2
A. After a long and contentious divorce, the court entered the dissolution decree in November 2011, giving the parties another six weeks to correct any discrepancies in asset values.....	2
B. Mills availed herself of this process, and the parties settled any discrepancies in April, 2012, a fact Mills neglects to mention.	3
C. Three months later, Mills filed a CR 60 motion to vacate the dissolution decree, claiming that she was entitled to an additional \$40,000.	3
ARGUMENTS	5
A. Absent a manifest abuse of discretion, this Court will affirm the trial court’s denial of the CR 60 motion and the distribution of assets.	5
B. Mills already received over \$1.3 million, slightly more than Wierenga, contrary to her argument that the trial court must vacate the decree to make an “equal” distribution.....	6
C. Mills does not contest – or even mention – that parties settled all disputes regarding the distribution of assets.....	8
D. Mills did not meet her high burden of proving fraud or mistake.....	9
CONCLUSION	12

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Haley v. Highland</i> , 142 Wn.2d 135, 12 P.3d 119 (2000).....	5
<i>In re Marriage of Buchanan</i> , 150 Wn. App. 730, 207 P.3d 478 (2009)	6
<i>In re Marriage of Knutson</i> , 114 Wn. App. 866, 60 P.3d 681 (2003)	5
<i>In re Marriage of Landry</i> , 103 Wn.2d 807, 699 P.2d 214 (1985).....	8
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 940 P.2d 1362 (1997).....	6
<i>In re Marriage of Luckey</i> , 73 Wn. App. 201, 868 P.2d 189 (1994)	6
<i>In re Marriage of Mueller</i> , 140 Wn. App. 498, 167 P.3d 568 (2007)	11
<i>In re Marriage of Rockwell</i> , 141 Wn. App. 235, 170 P.3d 572 (2007), <i>rev. denied</i> , 163 Wn.2d 1055 (2008).....	6
<i>Lindgren v. Lindgren</i> , 58 Wn. App. 588, 794 P.2d 526 (1990), <i>rev. denied</i> , 116 Wn.2d 1009 (1991).....	10, 11, 12
STATUTES	
RCW 26.09.080	6
RCW 26.09.170(1).....	5

RULES

CR 60..... passim

CR 60(b) 5

CR 60(b)(1) and (11)..... 9

CR 60(b)(4)..... 5, 9

RAP 10.3(a)(4)..... 9

INTRODUCTION

After a long and contentious divorce following a mid-term marriage, the trial court awarded Ann Mills just under \$1.4 million, about 52% of the parties' assets. The court gave both parties six weeks to challenge any asset values, and Mills did so, obtaining an additional \$26,000. Still unsatisfied, Mills filed a CR 60 motion, seeking another \$40,000. She appeals solely from the denial of that motion.

Mills' principal argument is that the denial of her CR 60 motion is inconsistent with the trial court's prior statement that it intended to divide the assets equally. But the court did not divide the assets exactly equally – Mills received slightly more in the decree and more in the amended decree. Mills fails to mention that the amended decree was an agreed order intended to fully resolve this matter. In any event, the trial court plainly had discretion to deny Mills still more.

And Mills fell far short of meeting her heavy burden of proof on the CR 60 motion, based in large part on her unsupported speculation. The asset distribution is plainly just and equitable, if not generous to Mills. Mills already had a second bite at the apple – the court properly denied her a third. This Court should affirm.

STATEMENT OF THE CASE AND PROCEDURE

- A. After a long and contentious divorce, the court entered the dissolution decree in November 2011, giving the parties another six weeks to correct any discrepancies in asset values.**

Appellant Ann Mills filed for dissolution in September 2009. CP 25, 33. The parties had been married for 15 years. App. A at 5.¹ Paul Wierenga was 73 when the parties divorced, and in poor health. *Id.* at 1.

The dissolution proceedings were long and highly contentious. CP 25-26. Mills filed many contempt motions, all of which were denied. CP 25. She repeatedly moved funds from the parties' accounts and closed account in her control, violating the temporary restraining orders. *Id.* She failed to disclose these activities until ordered to do so. CP 25-26. In her pre-trial memorandum, Mills used outdated property values, causing confusion and delay. CP 26. She refused to disclose current account balances, causing more delay. *Id.*

The decree was finally entered on November 10, 2011, two years after Mills filed for dissolution. CP 5. The court awarded Mills \$1,363,276 ("Tax Adjusted Grand Total"), and awarded

¹ Along with this brief, Wierenga includes a Supplemental Designation of Clerk's Papers. The Supplemental Clerk's Papers are attached as Appendix A.

Wierenga \$1,256,719 (also adjusted). CP 9. This amounts to 52/48 distribution in Mills' favor. The court gave the parties six weeks (to December 31) to bring a motion to challenge any asset values. CP 8, 34, 36-37.

B. Mills availed herself of this process, and the parties settled any discrepancies in April, 2012, a fact Mills neglects to mention.

Mills filed a motion to amend the decree on December 16, 2011, seeking to reduce the value assigned to one of the accounts she was awarded, and to adjust the distribution accordingly. CP 63. More litigation ensued. CP 26-27. On April 17, 2012, the court entered a final "Order Amending Decree" awarding Mills an additional \$26,000. CP 26-27; App. A at 13. This was an agreed order, signed by the attorneys for both parties, intended to "fully and finally compromise and settle all issues." CP 27. Although Wierenga believed that Mills had misdirected funds and failed to disclose assets, he authorized his attorney to sign on his behalf, tired of the seemingly endless litigation. *Id.*

C. Three months later, Mills filed a CR 60 motion to vacate the dissolution decree, claiming that she was entitled to an additional \$40,000.

Three months later (July 11, 2012), Mills filed a CR 60 motion to vacate and modify the amended decree, claiming that

Wierenga had withdrawn about \$50,000 in community funds from the parties' accounts while the dissolution was pending. CP 1, 3-4. Mills sought 50% of the withdrawals. *Id.* Mills also claimed that Wierenga had falsely represented to the trial court that he had mistakenly deposited three separate-property checks (totaling \$28,149.23) into community accounts. *Id.* Mills asked the trial court to adjust the award to negate the reimbursement of those funds to Wierenga. *Id.*

Wierenga's counsel filed declarations explaining that due to his age, Wierenga had to withdrawal "mandatory minimum distributions" from his Simplified Employee Pension ("SEP") IRA to avoid paying a 50% excise tax. CP 53 (emphasis omitted); see also CP 24-27. Wierenga also deposited \$28,471 into these same accounts, which Mills neglects to mention. CP 11. And Mills had copies of all three checks before the trial court entered the dissolution decree, but did not argue that the checks went into some account other than one of Wierenga's Schwab IRA accounts as the court found. CP 52.

Counsel could not obtain a declaration from Wierenga, an elderly gentleman living in California, who was "very ill." CP 50-51. Wierenga sent counsel medical records documenting pneumonia

and heart problems in September 2012. *Id.* Counsel sought a 30-day continuance to allow Wierenaga to recover and to obtain his declaration. *Id.*

The trial court continued the matter to October 8, 2012. App. A at 10. The court then granted two additional continuances. App. A at 11-12. The court denied Mills' motion on November 13, 2012, three years after she filed for dissolution, without a declaration from Wierenga. CP 92.

ARGUMENTS

A. Absent a manifest abuse of discretion, this Court will affirm the trial court's denial of the CR 60 motion and the distribution of assets.

The provisions of a dissolution decree "as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state." RCW 26.09.170(1). This Court will reverse a trial court's denial of a motion to vacate a dissolution decree under CR 60(b), only if the trial court manifestly abused its discretion. *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000) (affirming the trial court's order declining to vacate a dissolution decree under CR 60(b)(4)); *In re Marriage of Knutson*, 114 Wn. App. 866, 871, 60 P.3d 681 (2003).

The same is true to challenges to the property distribution in the underlying decree. *In re Marriage of Buchanan*, 150 Wn. App. 730, 735, 207 P.3d 478 (2009). In dissolution proceedings, the trial court has broad discretion to make a just and equitable property distribution based on the factors enumerated in RCW 26.09.080. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007), *rev. denied*, 163 Wn.2d 1055 (2008); *In re Marriage of Luckey*, 73 Wn. App. 201, 209-10, 868 P.2d 189 (1994). A trial court abuses its discretion if its decision is manifestly unreasonable, meaning that its decision is outside the range of acceptable choices, or is based upon untenable grounds. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

B. Mills already received over \$1.3 million, slightly more than Wierenga, contrary to her argument that the trial court must vacate the decree to make an “equal” distribution.

Mills argues that the trial court abused its discretion in denying her CR 60 motion and refusing to modify the decree, where the decree indicates the court’s intent to “equally” divide the parties’ assets. BA 4, 7. Mills suggests that the asset distribution is not “equal,” based on her allegations that Wierenga improperly withdrew funds from community accounts while the dissolution was

pending, and failed to properly account for three checks. BA 4-5. The total value of Mills' claim is about \$39,740 (50% of \$13,500 + \$37,831 + \$28,149.23). BA 4.

Even assuming *arguendo* that Wierenga mistakenly accounted for the checks and withdrawals as Mills claims, it simply does not follow that the trial court could not reasonably deny Mills' CR 60 motion. BA 4-6. The trial court stated its intent to divide the assets equally, awarding Mills \$1,480,002, and awarding Wierenga \$1,478,486. CP 8, 9. After adjusting these figures for the amount subject to 20% income tax, the court awarded Mills, \$1,363,276 – \$106,557 more than Wierenga, 52% of the total assets. *Id.* in other words, the distribution was not “equal,” despite Mills' claims.

Vacating and modifying the decree to give Mills still more would not make the asset distribution “equal,” but would further tip the scale in her favor. Thus, Mills is simply incorrect in asserting that the trial court's denial of her CR 60 motion is inconsistent with the court's intent to divide the assets equally. BA 4-6. The opposite is true – by denying Mills' motion, the court avoided increasing the negligible disparity in the asset distribution.

Further, this Court will “seldom” change decisions in dissolution proceedings, where “[t]he emotional and financial

interests affected by such decisions are best served by finality.” *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985). The court entered the decree in November 2011, after this two-year long, highly contentious divorce. CP 25-26. Mills then filed a motion to amend the decree, which the parties resolved by agreement in April 2012. CP 26, 63. Three months later, Mills filed her CR 60 motion, asking the court to vacate the revised decree, raising still more issues over the asset values. CP 1. The trial court was well within its broad discretion in denying Mills a third bite of the apple, particularly for an amount that is *di minimus* in light of the total assets at issue.

In short, the trial court correctly rejected Mills’ argument that the already-amended decree was inconsistent with the trial court’s intention to equally divide the assets. After a midterm marriage, awarding Mills slightly more of the total assets was more than just and equitable. This Court should affirm.

C. Mills does not contest – or even mention – that parties settled all disputes regarding the distribution of assets.

After Mills filed her December 2011 motion to modify the decree, the parties negotiated and arrived at an agreed order resolving Mills’ claims. CP 24, 63. The trial court entered the

agreed order in April 2012. CP 26. In response to Mills' CR 60 motion, Wierenga explained that the agreed order was intended to be a final settlement of all outstanding issues regarding the value and distribution of the parties' assets. CP 26-27. Mills did not disagree, stating only that she would not have agreed to the order if she had known that Wierenga had failed to properly account for bank withdrawals and the three checks. CP 29-30.

Here, Mills does not even mention the existence of this settlement agreement. Mills makes no claim that this agreement does not finally resolve the distribution of assets, yet her appeal undermines this final agreement. Nor does Mills assign error to the decree or the Order Amending Decree, challenging only the denial of her CR 60 motion. BA 4. Mills has failed to preserve this issue for appeal. RAP 10.3(a)(4).

D. Mills did not meet her high burden of proving fraud or mistake.

Mills relies exclusively in CR 60(b)(4), claiming that Weirenga's conduct constituted fraud, misrepresentation or other misconduct. BA 8.² Mills bore the burden to prove misconduct by

² Although Mills also raised CR 60(b)(1) and (11) below, she apparently abandons her argument on those subsections on appeal. BA 8-10.

“clear and convincing evidence.” *Lindgren v. Lindgren*, 58 Wn. App. 588, 596, 794 P.2d 526 (1990), *rev. denied*, 116 Wn.2d 1009 (1991). She also had to prove that the alleged misconduct caused the trial court to enter the decree. *Lindgren*, 58 Wn. App. at 596.

It is undisputed that Mills had copies of all three checks she now complains of during the dissolution and that nothing prevented her from timely raising her arguments regarding these checks. CP 26. The trial court was well within its broad discretion in refusing to vacate the decree based on Mills’ belated allegations.

In any event, Mills simply failed to provide “clear and convincing evidence” that these three checks, totaling \$28,149.23, were not deposited into one of Wierenga’s Schwab IRA accounts, as the court found. CP 8; *Lindgren*, 58 Wn. App, at 596. It is undisputed that these checks were from separate-property income Wierenga earned after the parties’ separated. CP 8. The trial court found that Wierenga deposited this separate property into a community account, so was entitled to a reimbursement before the assets were distributed. *Id.*

Mills argues that these checks were deposited into a “separate account thus eliminating any need for a credit.” BA 7. Before the trial court, Mills acknowledged that she had no idea

where the check for \$22,000 was deposited. CP 45. She neglects to mention this point on appeal.

Before the trial court, Mills argued only that the remaining two checks, totaling \$6,149.23, were deposited into an account “in Mr. Wierenga’s full control.” CP 45. Here, she argues that the account was “solely in Mr. Wierenga’s name.” BA 5. Neither proves the character of the account. *In re Marriage of Mueller*, 140 Wn. App. 498, 504, 167 P.3d 568 (2007). Mills’ unsupported assertion about “control” simply is not evidence that these checks were deposited into a separate-property account. CP 45. She provided nothing else, plainly failing to demonstrate “clear and convincing evidence” of misconduct. *Lindgren*, 58 Wn. App. at 596.

Mills’ argument that Wierenga impermissibly withdrew \$51,331 from community accounts ignores that he had to make withdrawals to avoid a 50% excise tax for the failure to make mandatory minimum distributions on his SEP IRA. *Compare* BA 4, 6, 7 *with supra*, Statement of the Case § C. In other words, Wierenga provided an entirely reasonable explanation for withdrawing these funds. Again, Mills failed to prove misconduct by clear and convincing evidence. *Lindgren*, 58 Wn. App. at 596.

And Mills also ignores that during the same timeframe, Wierenga deposited \$28,471 into the same accounts. *Compare* BA 4, 6, 7 *with* CP 11. Refusing to vacate the decree to award Mills half of the difference – \$11,430 – was well-within the trial court’s broad discretion.

Finally, Mills plainly failed to show that the alleged misconduct caused the trial court to enter the decree. *Lindgren*, 58 Wn. App. at 596. The trial court saw no reason to disturb its just and equitable distribution of assets. This Court should affirm.

CONCLUSION

For the reasons stated above, this Court should affirm.

RESPECTFULLY SUBMITTED this 9th day of May, 2013.

MASTERS LAW GROUP, P.L.L.C.



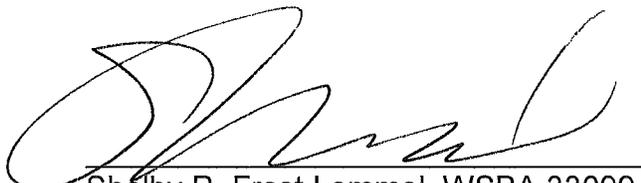
Kenneth W. Masters, WSBA 22278
Shelby R. Frost Lemmel, WSBA 33099
241 Madison Avenue North
Bainbridge Is, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 9th day of May 2013, to the following counsel of record at the following addresses:

Jon C. Parker
PARKER & WINKELMAN, P.S.
813 Levee Street
P.O. Box 700
Hoquiam, WA 98550-0700

Stephen L. Olson
OLSON & ZABRISKIE, INC.
104 West Marcy Avenue
Montesano, WA 98563



Shelby R. Frost Lemmel, WSBA 33099
Counsel for Respondent

Appendix A

COPY

2011 FEB 16 AM 11:22

102 W. BROADWAY
ROOM 203
MONTESANO, WASHINGTON 98563

GORDON L. GODFREY, JUDGE
DAVID L. EDWARDS, JUDGE
F. MARK MCGAULEY, JUDGE
(360) 249-6363
BONNIE KINDLE, ADMINISTRATOR
(360) 249-5311

February 16, 2011

Vini Samuel
Attorney at Law
114A N. River Street
Montesano, WA 98563

Jon Parker
Attorney at Law
Post Office Box 700
Hoquiam, WA 98550

RE: *Mills v. Wierenga*
Grays Harbor County Cause No. 09-3-00368-8

Dear Counsel:

I have reviewed my trial notes, the exhibits, and the law regarding the key issues in this case. Below is my decision regarding the major issues presented during the trial.

GOODWILL

I am clearly convinced that there is no goodwill in the business (ARC Analysis, Inc.). The testimony of Mr. Easter and Ms. Rau was very persuasive on the goodwill issue. Also, I note that on a cross examination even Mr. Deaton conceded that the parties had made no attempt to create goodwill.

Further, Mr. Wierenga turned 73 years old last November, and has had considerable health problems recently. The business receives all of its income from the federal government for the work that Mr. Wierenga does for the government. I do find, however, that the hard assets of the corporation are worth \$42,000, and Mr. Wierenga is awarded those assets.

95

HOME AND ADJACENT LOTS

Ms. Mills is awarded the home located in Westport, Washington (value \$465,000), and both adjacent lots. I find each lot to be worth \$150,000.

LA CENTER REAL ESTATE

Mr. Wierenga is awarded the two five-acre parcels of land in La Center, Washington. I find each parcel to be worth \$150,000.

PERSONAL PROPERTY AND ACCOUNTS

Ms. Mills is awarded the household furnishings and appliances in the home. I find the fair market value of those items to be \$15,000. She had a Camry hybrid automobile that she apparently sold during the course of this case. I find the fair market value of the Camry to be \$20,000.

I am not going to attempt to divide out the various accounts as I believe the parties can do that with the guidance that I want the bottom line to be a 50/50 division of the marital assets. I recognize that each party argued for a greater percentage share, but I am not going to give a greater percentage to either party.

Mr. Wierenga brought more assets into their relationship, however, there was no effort to trace particular property, and additionally, the parties entered into a written agreement making all of their property community property. Also, he has very substantial income at the present time.

I believe I have given you sufficient information above to mathematically work out an even division of the assets of the marital community.

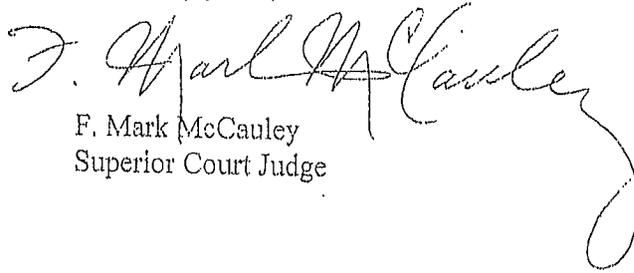
MAINTENANCE

Mr. Wierenga has been paying Ms. Mills \$5,000 per month for a period of time. I am going to require that he continue to pay her \$5,000 a month through 2011. Thereafter, no further payments will be required to be made to Ms. Mills. I know Mr. Wierenga could be terminated at any time by the government. If he is terminated, or if he retires, or illness prohibits him from working, he will no longer be responsible for paying \$5,000 per month to Ms. Mills.

CONCLUSION

Finally, each party is responsible for their own attorney fees. Please present final papers at your earliest convenience.

Very truly yours,



F. Mark McCauley
Superior Court Judge

FMM/rz
cc: file ✓

FILED
GRAYS HARBOR COUNTY
C. BROWN, CLERK
2011 NOV 10 AM 11:54

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR

In re the Marriage of:

ANN E. MILLS

No. 09-3-368-8

and

Petitioner,

Findings of Fact and
Conclusions of Law
(Marriage)
(FNFCL)

PAUL WIERENGA

Respondent.

I. Basis for Findings

The findings are based on trial. The following people attended:

Petitioner.

Petitioner's Lawyer.

Respondent.

Respondent's Lawyer.

II. Findings of Fact

Upon the basis of the court record, the court *Finds*:

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington

126

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2.2 Notice to the Respondent

The respondent appeared, responded or joined in the petition

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent.

The respondent is currently residing in Washington.

2.4 Date and Place of Marriage

The parties were married on 04/30/94 at Monterey, CA.

2.5 Status of the Parties

Husband and wife separated on 9/15/09.

2.6 Status of Marriage

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the respondent joined.

2.7 Separation Contract or Prenuptial Agreement

There is no written separation contract or prenuptial agreement.

2.8 Community Property

The parties have real or personal community property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these findings.

2.9 Separate Property

The husband has no real or personal separate property.

The wife has no real or personal separate property.

2.10 Community Liabilities

There are no known community liabilities.

1 2.11 Separate Liabilities

2 The husband has no known separate liabilities.

3 The wife has no known separate liabilities.

4 2.12 Maintenance

5 Other: Maintenance should be ordered pursuant to Judges decision of February 16,
6 2011.

7 2.13 Continuing Restraining Order

8 Does not apply.

9 2.14 Protection Order

10 Does not apply.

11 2.15 Fees and Costs

12 There is no award of fees or costs.

13 2.16 Pregnancy

14 The wife is not pregnant.

15 2.17 Dependent Children

16 The parties have no dependent children of this marriage

17 2.18 Jurisdiction Over the Children

18 Does not apply because there are no dependent children.

19 2.19 Parenting Plan

20 Does not apply.

21 2.20 Child Support

22 Does not apply.

Any motion should be filed no later than 12/31/11. (8/3)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2.21 Other:

The court intends to make an equal division of the assets of the parties. The court recognizes that the values set forth on the attached Exhibit A may not be current values for the various financial accounts and that growth or loss may have occurred therefore if either party believes there is a material difference in value he/she may by motion ask the court to make an adjustment in the division however the moving party must submit with the motion current statements for all accounts that he/she is receiving statements and the opposing party must do likewise.*The court retains jurisdiction to resolve any disputes as to the adjustments on motion of either party.

Paul Wierenga made deposits totaling \$28,149.23 to his IRA account(s) after separation and that amount should be returned to him before any division is calculated.

Both parties are ordered to cooperate in effectuating the terms of this decree by signing any title, deed, withdrawal form, resignation of trustee or other document to accomplish the division of assets intended by the court.

III. Conclusions of Law

The court makes the following conclusions of law from the foregoing findings of fact:

3.1 Jurisdiction

The court has jurisdiction to enter a decree in this matter.

3.2 Granting a Decree

The parties should be granted a decree.

3.3 Pregnancy

Does not apply.

3.4 Disposition

The court should determine the marital status of the parties, make provision for a parenting plan for any minor child of the marriage, make provision for the support of any minor child of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the child as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable

1
2 3.5 Continuing Restraining Order

3 Does not apply.

4 3.6 Protection Order

5 Does not apply.

6 3.7 Attorney Fees and Costs

7 Does not apply.

8 3.8 Other

9
10 The court intends to make an equal division of the assets of the parties. The court
11 recognizes that the values set forth on the attached Exhibit A may not be current values
12 for the various financial accounts and that growth or loss may have occurred therefore
13 either party believes there is a material difference in value he/she may by motion ask the
14 court to make an adjustment in the division however the moving party must submit with
15 the motion current statements for all accounts that he/she is receiving statements and
16 the opposing party must do likewise. The court retains jurisdiction to resolve any
17 disputes as to the adjustments on motion of either party.

18 Paul Wierenga made deposits totaling \$28,149.23 to his IRA account(s) after separation
19 and that amount should be returned to him before any division is calculated.

20 Both parties are ordered to cooperate in effectuating the terms of this decree by signing
21 any title, deed, withdrawal form, resignation of trustee or other document to accomplish
22 the division of assets intended by the court.

23 Dated: 11/10/11 D. Paul H. Gauler
24 Judge/Commissioner

25 Presented by:
26 PARKER & WINKELMAN, P.S.
27 Attorneys for Respondent
28 [Signature] 5769
29 Jon C. Parker Date

Approved for entry:
Notice of presentation waived:
[Signature] 27186
Vini E. Samuel Date
Attorney for Petitioner

30 *Any motion shall be filed no later than 12/31/11.
31 Findings of Fact and Concl of Law (FNFL) - Page 5 of 5
32 W/PF DR 04 0300 Mandatory (6/2008) - CR 52: RCW 26 09 030;.070(3)

33 PARKER & WINKELMAN, P.S.
34 813 LEVEE STREET
35 P. O. BOX 700
36 HOQUIAM, WA 98550-0700
37 (PHONE) 360-532-5780
38 (FAX) 360-532-5788

Item	Wife	Cumulative Wife	Husband	Cumulative Husband	Comments/Ac count #
901 Dunecrest	\$465,000	\$465,000			
Furnishings Dune Crest	\$15,000	\$480,000			
North LaCenter 5 ac		\$480,000	\$150,000	\$150,000	
South LaCenter 5 ac		\$480,000	\$150,000	\$300,000	
North Dune Crest Lot	\$150,000	\$630,000		\$300,000	
South Dune Crest Lot	\$150,000	\$780,000		\$300,000	
		\$780,000		\$300,000	
✓ A 401K	\$140,923	\$920,923	\$140,923	\$440,923	xxxx-4298
✓ A IRA	\$443,629	\$1,364,552		\$440,923	xxxx-7053
✓ A. Sep IRA	\$25,791	\$1,390,343		\$440,923	xxxx-7058
✓ P. 401K		\$1,390,343	\$711,330	\$1,152,253	xxxx-8986
✓ P. IRA		\$1,390,343	\$211,736	\$1,363,989	xxxx-5428
✓ P. Sep IRA		\$1,390,343	\$18,767	\$1,382,756	xxxx-8991
		\$1,390,343		\$1,382,756	
✓ A. Schwab HY	\$966	\$1,391,309		\$1,382,756	xxxx3606
✓ A. Trust Brokerage & CDs	140,000	\$1,391,309	\$200,513	\$1,649,269	xxxx-5663
✓ A. Bank of America	2044	\$27,108	167,000	\$1,649,269	xxxx7923
✓ A. Schwab Savings	573	\$17,042		\$1,649,269	xxxx2128
✓ A. B of A Checking	1141	\$10,653		\$1,649,269	xxxx7327
✓ A. B of A Savings	6491	\$14,214		\$1,649,269	xxxx7327
✓ P. B of A Checking		\$1,460,326	\$5,955	\$1,655,224	
✓ A. Emergency Cash	\$7,520	\$1,467,846		\$1,655,224	
✓ A & P Cash	\$40,000	\$1,507,846	\$40,000	\$1,695,224	
A. October 09 Pay	\$17,000	\$28,500	\$17,500	\$2,000	\$1,697,224
A. Camry Hybrid	\$20,000	\$1,556,346		\$1,697,224	
A. USAA Life Insur Policy	\$9,138	\$1,565,484		\$1,697,224	xxxx515U1
P. USAA Life Insur Policy		\$1,565,484	\$7,847	\$1,705,071	xxxx494U1
P. ARC Analysis Inc.*		\$1,565,484	\$42,000	\$1,747,071	
*Highlander		\$1,565,484		\$1,747,071	
*Desktop Comp & Printer		\$1,565,484		\$1,747,071	
*Laptop 2008		\$1,565,484		\$1,747,071	
*2009 Dell Desktop		\$1,565,484		\$1,747,071	
*2009 Laptop		\$1,565,484		\$1,747,071	
*HP Laser Printer		\$1,565,484		\$1,747,071	
*B of A Checking		\$1,565,484		\$1,747,071	
*401K Account:		\$1,565,484		\$1,747,071	
		\$1,565,484		\$1,747,071	
Less P/W IRA Contributions After Separation				-28,149.00	
Grand Total	583629	1480002		\$1,718,922	1478,486
Total Subject to Income Tax	6610,312	116,726	1,108,833	\$1,349,267	
Income Tax Est @ 20%		\$23,063		\$269,854	
Tax Adjusted Grand Total		\$1,443,415	1,363,276	\$1,449,063	1,256,719

2012 SEP 17 AM 11:02

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

Anna Mills
Plaintiff
vs. Paul Wierenga
Defendant

No. 09-3-368-8
ORDER _____

Clerk's Action Necessary

- On the motion of the _____
- By stipulation of the parties.
- It appearing that the _____ has been duly served and is in default.

IT IS ORDERED: that the hearing on motion for
Relief of Judgment is continued to October
8th, 2012 at 9:00 am

Dated: 9/17/12

[Signature]

JUDGE

Presented by: [Signature]
Attorney for Resident

Approved for entry: [Signature]
Attorney for Anna Mills

2012 OCT -8 AM 11:05

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

Ann Mills
Plaintiff

vs. Paul Wierenga
Defendant

No. 09-3-368-8

ORDER _____

Clerk's Action Necessary
JUDGE McCauley

On the motion of the Respondent

By stipulation of the parties.

It appearing that the _____ has been duly served and is in default.

IT IS ORDERED: that all matters are continued
to October 29, 2012 at 9:00am; No
further continuances will be allowed
without a doctor's report as to Respondent's
health condition

Dated: 10/8/12

JUDGE

Approved for entry:

Presented by:

[Signature]
Attorney for Respondent

[Signature]
Attorney for Peltner

** PREPARED **
10 25-12 15-56

STATE OF WASHINGTON, GRAYS HARBOR SUPERIOR COURT PAGE 3
DOMESTIC DOCKET - 9:00 AM
MONDAY, OCTOBER 29, 2012
JUDGE EDWARDS, DEPT 2, CLK MADE
90 DAYS PRIOR DATE JULY 31, 2012

Brenda Johnston

7. 09-3-00226-6

CHURCH, ROBERT BRIAN
AND
CHURCH, BRANDI LEE

BITAR DOUGLAS BRUCE

MOREAN, GARY ARNOLD
BERNARD, REBECCA LYNNE

CHILD SUPPORT MODIFICATION

8. 09-3-00566-2

(C)

MILLS, ANN ERICKA
AND
MIRENDA, PAUL

OLSON, STEPHEN LYLE *-Present*

PARKER, JON CHARLES

ALL MATTERS

Continued to 11-13-2012

9. 10-3-00054-5

TURPIN, JAMES RYAN
AND
BRYANT, MARGARET ANNE

MONEILL, STEVEN GRANT

COURTNEY

FILED
GRAYS HARBOR COUNTY
C. BROWN, CLERK

2012 APR 17 AM 8:46

SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR

<p>1 In re the Marriage of:</p> <p>2 ANNE MILLS,</p> <p>3 and</p> <p>4 PAUL WIERENGA,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: right;">Respondent.</p>	<p>NO. 09-3-00368-8</p> <p>ORDER ON MOTION TO AMEND THE DECREE</p>
---	--

5 Based on the Motion to Amend Decree RE: IRA Amount and Award, the Petitioner, ANN MILLS, being represented by counsel, Vini Samuel and Respondent, PAUL WIERENGA, being represented by his counsel, Jon Parker, the court finding that a scrivener's error occurred and the motion being raised under the terms as allowed under the decree, hereby finds and

8 ORDERS

9 THAT Exhibit A to the Decree shall be amended to reflect the balance of Ms. Mills IRA account at Charles Schwab from \$443,629 to \$391,281.55.

11 THAT the award allowed under Exhibit A to the Decree to Mr. Wierenga be adjusted negatively by \$26,173.73 and that specifically that the award of \$167,000 awarded to him from Ms. Mills Trust Brokerage & CDs under the Decree of Dissolution be reduced to reflect \$140,826.27 transfer.

13 DATED: 4/17/12 J. Mark McCauley
14 JUDGE

<p>15 <u>Vini Samuel</u></p> <p>16 VINI E. SAMUEL, WSBA #27186 Attorney for Petitioner</p>	<p><u>Jon C. Parker</u></p> <p>JON C. PARKER, WSBA #5769 Attorney for Respondent</p>
--	--

* Payment of the funds to be made to Parker & Winkelmann's trust account. Respondent is responsible for any penalties/income taxes of this is an IRA distribution. (15)

ORDER ON MOTION TO AMEND DECREE

VINI ELIZABETH SAMUEL
ATTORNEY AT LAW
114 A N. River Street
Munich, WA 98563
Tel (360) 249-0720 • Fax (360) 249-0714

146.2 13

RCW 26.09.170

Modification of decree for maintenance or support, property disposition — Termination of maintenance obligation and child support — Grounds.

(1) Except as otherwise provided in RCW 26.09.070(7), the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) 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 or registration of a new domestic partnership of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) Unless expressly provided by an order of the superior court or a court of comparable jurisdiction, provisions for the support of a child are terminated upon the marriage or registration of a domestic partnership to each other of parties to a paternity order, or upon the remarriage or registration of a domestic partnership to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.

(5)(a) A party to an order of child support may petition for a modification based upon a showing of substantially changed circumstances at any time.

(b) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(6) An order of child support may be modified one year or more after it has been entered without a showing of substantially changed circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;

(b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the

child is no longer in the age category on which the current support amount was based;

(c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or

(d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.

(7)(a) If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon:

(i) Changes in the income of the parents; or

(ii) Changes in the economic table or standards in chapter 26.19 RCW.

(b) Either party may initiate the adjustment by filing a motion and child support worksheets.

(c) If the court adjusts or modifies a child support obligation pursuant to this subsection by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for another adjustment under this subsection may be filed.

(8)(a) The department of social and health services may file an action to modify or adjust an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order.

(b) The department of social and health services may file an action to modify or adjust an order of child support in a nonassistance case if:

(i) The child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011;

(ii) The department has determined the case meets the department's review criteria; and

(iii) A party to the order or another state or jurisdiction has requested a review.

(c) The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial

change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

(9) The department of social and health services may file an action to modify or adjust an order of child support under subsections (5) through (7) of this section if:

- (a) Public assistance money is being paid to or for the benefit of the child;
- (b) A party to the order in a nonassistance case has requested a review; or
- (c) Another state or jurisdiction has requested a modification of the order.

(10) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown.

[2010 c 279 § 1; 2008 c 6 § 1017; 2002 c 199 § 1; 1997 c 58 § 910; 1992 c 229 § 2; 1991 sp.s. c 28 § 2; 1990 1st ex.

RCW 26.09.080

Disposition of property and liabilities — Factors.

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

[2008 c 6 § 1011; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

MASTERS LAW GROUP

May 09, 2013 - 4:17 PM

Transmittal Letter

Document Uploaded: 442965-Response Brief.pdf

Case Name:

Court of Appeals Case Number: 44296-5

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Response

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Shelly Windsby - Email: shelly@appeal-law.com