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No. 45674-5-II

THE COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

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In re the Marriage of

TIMOTHY J. BENZ,

Pro se, Appellant

and

ALIZA WISEMAN (f/k/a/ TRISTAN BENZ),

Pro se, Respondent

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APPELLANT'S OPENING BRIEF

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Timothy Benz,  
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*pm 8/2/14 marked*

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### C. Statutes:

RCW 26.09.080 4, 6, 9

RCW 26.16.030 16, 17

**A. Assignments of Error**

1. The trial court erred in awarding an unjust and inequitable division of assets and liabilities. CP 75; CP 24-25 (Joint A&L); CP 37-38 (Agreed Division); CP 16 (Award) and RCW 26.09.080
2. The trial court erred in awarding approximately \$82,000 of community funds from a designated joint account in its entirety to Ms. Wiseman without a commensurate offset to Mr. Benz. CP 62-65; CP 16.
3. The trial court erred in selectively allowing certain pre-agreed division of assets and liabilities (CP 37-38) and child support payment items (CP 7-12) of agreement between the parties, yet disallowing others. CP 16; CP 4.
4. The trial court erred in awarding child support payments to Ms. Wiseman that are neither in accordance with the WA Child Support Worksheet nor commensurate with the Appellant's (Mr. Benz) income. Specifically, the trial court erred in not taking the WA State Child support Worksheet's 'Self-Support Reserve' into account. CP 7-12; CP 4.
5. The trial court erred in designating voluntary child support payments as delinquent and erred again in awarding a monetary judgment in favor of

Respondent (Ms. Wiseman) based on such voluntary, non-delinquent child support payments. CP 7-12; CP 4.

6. The trial court erred in allowing Ms. Wiseman to submit manipulated WA State Child Support Worksheets that were significantly different to an Agreed Settlement / Consent Order, with attached WA State Child Support Worksheets, signed by Ms. Wiseman, Mr. Benz and a DSHS Division of Child Support representative in June of 2013. CP 7-12;

7. The trial court erred in allowing an inexperienced Judge whose apparent area of expertise is/was not in Family Law to preside over an extremely combative divorce which has dragged on for almost 3 full years. (It is understood the Judge prematurely vacated his position and no longer presides in the Kitsap County Superior Court System.)

8. The trial court erred in providing Ms. Wiseman with the opportunity to make an opening statement, yet failing to provide Mr. Benz with that same opportunity - per trial minutes.

9. The trial court erred in allowing Ms. Wiseman to take the stand for approximately 5 hours, while only allowing Mr. Benz to take the stand for

approximately 1 hour, thereby providing inequitable time to parties - per trial minutes.

10. The trial court erred in initially awarding one and the same asset to both parties, awarding another asset that did not appear to exist to one party and initially overlooking / *not* awarding the two most significant assets to either party - per trial minutes.

11. The trial court erred in not taking the annual income (taxable or not) and financial position of Ms. Wiseman into account. CP 41-45.

12. The trial court erred in spending the majority of the trial day examining the parties exhibits as trial-worthy or not, and then seemingly ignoring the contents of the exhibits that were deemed admissible before deciding on the division of assets and liabilities - per trial minutes.

**B. Issues Pertaining to Assignments of Error**

1. Does an inequitable division of assets and liabilities cause an unjust hardship on Mr. Benz? In a dissolution action, the trial court must order a 'just and equitable' distribution. RCW 26.09.080. All property is before the court for distribution. *Farmer vs Farmer*, 172 Wn.2d 616, 625, 259 P.3d 256 (2011). The

court has broad discretion to determine what is just and equitable based on the circumstances of each case. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007). A just and equitable division does not require mathematical precision, but rather fairness, based on a consideration of all circumstances, including economic.

2. Should a clearly designated community funds account containing approximately \$82,000 which both parties used to funnel monies into, and out of which all community funds were paid have been awarded to Ms. Wiseman as if it were her separate property? This is the same account that both parties had agreed should be split 50/50 between them.

3. Does the trial court have the discretion to pick and choose which parts of the pre-agreed division of assets and liabilities and volunteered child support payments to enforce and which parts to disregard? When does such action bring into question the trial court's duty of neutrality and impartiality towards a just and equitable disposition? RCW 26.09.080

4. Should the WA Child Support Worksheets and Mr. Benz' income have been ignored when awarding child support payments to Ms. Wiseman? It should

be noted that while Mr. Benz had volunteered (pre-trial) to make payments in excess of the WA Child Support Worksheets. He did so on the understanding that both parties had also come to an agreement (also pre-trial) on the division of assets and liabilities. Such agreement between parties included the 50/50 split of the designated community funds containing approximately \$82,000. Mr. Benz took the position that while his current income did not support his volunteered payments in excess of those calculated through the Child Support Worksheets, he did not want his children to suffer any unnecessary hardship, and that he would be able to sustain the increased payments out of his equitable share of capital if necessary.

5. Can and should child support payments that were volunteered by Mr. Benz be designated by the trial court as delinquent? Mr. Benz had volunteered to pay child support over and above what the WA Child Support Worksheets require well before the trial. He had agreed with Ms. Wiseman to pay child support monthly and to make extra payments *when he could afford to do so*. Should the trial court have arbitrarily designated such volunteered extra payments as delinquent simply because Mr. Benz did not yet have the funds to pay them? Should the court have designated such extra payments as being

attributable to the months before or after voluntary payments commenced?

Arbitrarily attributing these payments to before voluntary payments commenced and then declaring such payments as delinquent unreasonably maximizes the interest effect. Should the trial Judge have coached Ms. Wiseman to treat such voluntary payments as a monetary judgment against Mr. Benz?

6. Was the trial court remiss in allowing Ms. Wiseman to submit significantly altered WA Child Support Worksheets from the version she submitted to DSHS (DCS), especially when the prior version was agreed to and signed off by all parties, including Ms. Wiseman, Mr. Benz and a DSHS Division of Child Support representative in June of 2013, and was on record? Were Ms. Wiseman's WA Child Support Worksheets she submitted at trial in October of 2013 artificially manipulated so as to unjustifiably increase the financial burden on Mr. Benz while simultaneously decrease the financial burden for herself?

7. Under the circumstances, should a more experienced Judge, and/or one whose area of expertise included Family Law have been appointed to preside over this extremely combative divorce?

8. Even though Mr. Benz reserved the right to make an opening statement until after the exhibits were reviewed and deemed admissible or not for trial purposes, was the court remiss in not ultimately providing that opportunity to Mr. Benz?

9. Was there an abuse of discretion by trial court allowing Ms. Wiseman to take the stand for almost 5 hours while only allowing Mr. Benz approximately 1 hour to take the stand?

10. Did the trial court display a lack of grasp on the assets and liabilities of the parties when upon ruling, the court *initially* awarded the same single asset to both parties, awarded another asset that did not exist and completely overlooked the two most significant assets (the Morgan Stanly and Promissory Note) until these oversights were pointed out by the party(ies)? Did the court's lack of grasp lead to an unjustified and unreasonable award of asset and liabilities between the parties? If the court did have a thorough grasp on the assets and liabilities, was the inequitable division in favor of Ms. Wiseman an abuse of discretion? Or was there simply a lack of sufficient documentation to allow the court to make a fair and equitable award between the parties, in which case, why did the court *not* accept the pre-trial agreement between the parties

of the division of assets and liabilities, which was presented to the court, while the court *did* accept the pre-trial agreement between the parties of child support payments? Was such inconsistency a result of inexperience, a lack of grasp or simply an abuse of discretion by a Judge who was inexperienced and whose understood area of expertise lay/lies outside the scope Family Law?

11. Was the lack of understanding of economic circumstances- per RCW 26.09.080 (4), namely, the annual income (taxable or not) and financial position of Ms. Wiseman the reason the trial court awarded a disproportional division of net assets to her? Why did the trial court appear to ignore the exhibits that parties had spent almost the entire trial day submitting to be deemed acceptable or not by the trial Judge? Specifically, one exhibit (#42 - Relating to Ms. Wiseman's Income between the months of October 2011 and February 2012) showed Ms. Wiseman received substantially more than Mr. Benz every year. In fact, over this specific 5-month period, exhibit #42 shows Ms. Wiseman received approximately \$185,000 (approximately \$37,000 average per month), all apparently tax-free. In contrast Mr. Benz' income for the entire year in 2012 was only \$31,005, and was *not* tax-free. Had the trial court taken the significant disparity in income into account, would a more equitable division of assets and

liabilities have been awarded? Did the trial court fail to investigate where such considerable income/monies had gone when Ms. Wiseman declared under oath that she had nothing left to show for it? And if it was true that Ms. Wiseman really did not have anything to show for it, was it a failure of the trial court to award Ms. Wiseman a disproportionate share of net assets to the party who clearly has a challenge holding on or accounting for significant amounts of money? Such a challenge jeopardizes the necessary financial consistency the children deserve and need. In spite of the significant amounts of income/monies Ms. Wiseman received, substantiated by the fact that Ms. Wiseman has not held a full-time position for almost three years, she declared an arbitrary \$2,000 imputed monthly income, which after deductions (typically inadmissible on imputed income) dropped to \$1,475 per month. Did the trial court fail to comprehend the stark inconsistencies with these facts and statements?

12. Was trial court's spending the majority of the trial day examining documents to determine their admissibility or not in trial the best use of the court's time and did the court rush to judgment on the division of assets and liabilities by not examining and therefore not fully understanding the exhibits deemed admissible for trial? If there was a full comprehension of the admissible

exhibits contents, why did the court award the entire Morgan Stanley (MS) community asset to Ms. Wiseman without a commensurate off-set to the Mr. Benz? This award went against the wishes and pre-trial agreement of both parties. Why did the court apparently ignore the financial registers provided and deemed admissible in trial, clearly showing this MS community asset account as having received several significant deposits directly from Mr. Benz' personal account, including the most recent deposit of approximately \$100,000 from Mr. Benz' personal checking account a few months prior to Ms. Wiseman withdrawing the remaining balance of approximately \$82,000 and depositing same into her personal account without notice to or agreement from Mr. Benz?

**C. Statement of the Case**

Mr. Benz believes the community assets and liabilities division is less than equitable based on the following:

1. There were anomalies with the initial asset / liability division ruling. One (IRA) asset was awarded twice, another (Wells Fargo) asset was awarded that didn't appear to exist and the two most significant community assets (Morgan Stanley and Promissory Note) were initially overlooked;

2. The Honorable Steve Dixon voiced his frustration more than once that he had insufficient documentation which made equitable division and final resolution very difficult; (There was a lack of sufficient documentation because the parties had substantially come to an agreement on the division of assets and liabilities, as well as child support payments before trial.) CP 75; CP 24-25 (Joint A&L); CP 37-38 (Agreed Division); CP 16 (Award).
3. Based on the inequitable asset / liability division ruling at trial, Mr. Benz' child support payments are not sustainable; CP 7-12; CP 4.
4. Mr. Benz' child support payments are in excess of the amount calculated on the WA Child Support Worksheet; CP 7-12; CP 4.
5. Prior to trial the parties agreed to an equitable asset / liability split and a child support payment in excess of the Child Support Worksheets. The increased Child Support payments were volunteered by Mr. Benz *based on the agreed split of assets and liabilities*. At trial, the pre-trial agreed child support payment was accepted but the pre-trial agreed assets and liabilities split was not accepted; CP 37-38; CP 7-12; CP 16; CP 4

6. Accepting the parties pre-trial child support payment agreement but not the asset / liability split agreement, *which directly affects the increased child support agreement*, is inconsistent and places an unjust hardship on Mr. Benz;
7. Mr. Benz still wishes - and volunteers - the increased child support payments, but he requires an equitable asset / liability division to do so. Absent an equitable division, the transfer payment is more than Mr. Benz' current income will bear without pushing him well below the Federal Poverty Self-Support Reserve. It is also inconsistent with WA Child Support Worksheets. CP 7-12; CP 4.

**Brief History (leading to trial):**

Parties had a settlement conference in May, 2013. During this conference, settlement on only the Parenting Plan was reached. Parties did not have a chance to discuss asset splits or child support during this settlement conference. During this conference Judge Olsen set a date for trial. After the conference, both parties continued to work on remaining settlement matters with a view to get the divorce finalized. Both parties expressed a desire to settle and to avoid a trial. Substantial progress was made and agreement was in fact reached on the asset/liability splits and child support payments (CP 37-38).

Unfortunately, the trial date came up before the remaining final verbiage could be agreed upon, and the parties went to trial despite their attempts and wishes to settle without a trial.

Mr. Benz contacted the court scheduler to see if a second settlement conference could be scheduled to iron out the remaining verbiage differences. Mr. Benz was informed that a second settlement conference could not be scheduled.

Both pro se parties appeared unprepared for trial. The Honorable Steve Dixon voiced his frustration more than once that he had insufficient documentation which made equitable division and final resolution very difficult.

The majority of the trial day was spent by the parties submitting documentation to the court for exhibit relevancy and approval. The majority of Ms. Wiseman's documentation was not approved and subsequently dismissed. Quite a bit of Mr. Benz' document was dismissed too, but a fair amount was found to be relevant and admissible to be used during the actual trial and cross-examination.

Ms. Wiseman was allowed to make an opening statement and then offer her documents to the court for exhibit approval. This process took the majority of the day, from approximately 9:04 AM to approximately 2:06 PM (*spanning approximately 5 hours*). At approximately 3:19 PM Ms. Wiseman was allowed to make a closing argument.

Mr. Benz was asked if he'd like to make an opening statement directly after Ms. Wiseman's opening statement or at the beginning of his document/exhibit submission. Although he elected the latter, he was never actually given the opportunity to make an opening statement. By contrast, Mr. Benz' time on the stand was from approximately 2:09 PM to approximately 3:00 PM (*less than 1 hour*). Again, Mr. Benz never did get an opportunity to make an opening statement.

Not able to afford to be represented by an attorney at trial, and understanding that the parties had essentially agreed to the numbers prior to trial anyway, Mr. Benz brought only documentation necessary to present and argue for the remaining language or verbiage portions, and was prepared for the Judge to make a final decision on verbiage in order to create final documentation to sign. It was Mr. Benz' understanding that the Judge would identify, ignore and

make no ruling on all the issues and numbers that the parties had already agreed upon, but rather focus only on the remaining language issues where parties were not in agreement in order to make a determination, one way or another with the intent to produce one set of documents that could be signed by both parties. So, when asked by the Honorable Judge Dixon whether the parties had agreed to a Child Support payment, Mr. Benz and Ms. Wiseman said yes. Inexplicably, the Judge did not do the same with the asset and liability division. Instead, the Judge sought all available documentation to determine the value and ownership (community vs. separate) of all assets and liabilities. Since Mr. Benz - and I can only assume Ms. Wiseman too (since she had no documentation to submit regarding value and ownership of assets and liabilities) - was not prepared for the agreed assets and liabilities to be 'unwound' by the Judge, it is easy to understand how the Judge became frustrated about not having the documentation necessary to easily make a determination about such division.

It should be noted Mr. Benz tried several times to point out that the Child Support payment was in excess of the amount calculated by the WA Child Support Worksheets but that he had agreed to paying more based on the division of assets and liabilities that both parties had already agreed to prior to

trial. That it was specifically the agreed upon division that allowed Mr. Benz to pay more towards child support. Without that agreed split, Mr. Benz would not be able to sustain the payment he volunteered in excess of the Child Support Worksheets to make. But Mr. Benz' argument was in vain, resulting in an inequitable asset and liability division along with an unsustainable ongoing child support payment ruling.

All Mr. Benz wants is a fair and equitable division of community assets and liabilities so that he can sustain child support payments in excess of the amount he should pay in accordance with the worksheet calculations.

As mentioned, most of the day was spent submitting documentation for exhibit inclusion with the Judge and opposing party discussing relevancy and reasons to oppose inclusion or not. There was an attempt at cross examination but with two pro se parties inexperienced in litigation, this was less than fruitful with parties struggling to come up with relevant and meaningful cross-examination questions. No exhibits were called upon either making the considerable time spent presenting, opposing and either approving or disqualifying documents as relevant for exhibit purposes quite meaningless.

There was a mid afternoon break and when the Judge returned he made his ruling.

It should be noted that there were some anomalies with this initial ruling. One asset (Mr. Benz' IRA account) was partially awarded twice. Another asset, awarded to Mr. Benz, did not appear to exist. The two most significant assets (the \$82,000 Morgan Stanley a/c and the \$70,000 promissory note) were initially overlooked and not awarded. It was only after the Judge asked for questions / comments that these two assets were identified and subsequently divided, allocated and ruled upon. It is specifically the division, allocation and ruling of these two assets that Mr. Benz would like reviewed.

A few days after the trial, Mr. Benz submitted an accounting of the asset / liability ruling, along with a letter to the Judge pointing out why the split was inequitable and asking if this was truly what he had meant.

At subsequent court appearance to discuss/sign the final paperwork, Mr. Benz attempted to raise this issue again, but the Judge was not receptive to any further discussion on the issue. After finalizing the language in the paperwork, final documents were provided for signature and filed in court. It was later

discovered that the Decree of Dissolution was not actually signed by the Judge or Mr. Benz. An amendment was later filed containing the Judge's signature but not Mr. Benz'. Mr. Benz only received a few minutes in court to review and sign the final drafts that were presented to Mr. Benz for signature. Despite his non-agreement to the division and a few other matters, Mr. Benz signed the final documents feeling he had no other choice but to seek equitability through the appeal process.

#### **Trial Facts & Matters for Consideration:**

Mr. Benz seeks the review and equitable division of two community assets, the *first* of which was allocated entirely to Ms. Wiseman with no commensurate off-set to Mr. Benz, while the *second* was divided 50/50 between parties.

- The *first asset in question* was cash in a joint Morgan Stanley Active Asset Money Market account; CP 62-74
- This community asset was valued at +- \$82,000;

- Monies in this joint account were *co-mingled* and therefore *community* funds;  
CP 47-60; RCW 26.16.030
- This Morgan Stanley joint account contained monies sourced from both parties.  
Law-suit monies that were awarded to Ms. Wiseman for an asbestos-related passing of a family member and real estate monies as a result of Mr. Benz' real estate activities and negotiations.
- This joint account was used primarily to pay community bills and to provide capital to start new businesses;
- Ms. Wiseman withdrew +- \$82,000 from this joint account and deposited funds into her personal account; CP 62-74
- The funds Ms. Wiseman withdrew were primarily from real estate activities / negotiations. Specifically, \$100,000 was deposited by Mr. Benz into the joint account from Mr. Benz' personal a/c a few months earlier. CP 47-60.
- Ms. Wiseman withdrew funds unilaterally, without discussion, *before* filing for divorce and before separation in violation of RCW 26.16.030 (2)
- After withdrawing the +-\$82,000, Ms. Wiseman filed for divorce, again without discussion with Mr. Benz;

- Mr. Benz was left to pay all the ongoing community bills, almost all of which were in his name. Since the joint account had been emptied, he was left with no money to pay these bills;
- Amongst other community bills, Mr. Benz could no longer pay the community credit card bills or the mortgage of the community home either;
- Mr. Benz' credit, which had been exemplary for the last 19 or so years was ruined by Ms. Wiseman's action;
- Ms. Wiseman abandoned the home a few weeks after filing for divorce and left with the children and whatever other community assets she wanted while Mr. Benz was at work - all without warning or discussion, violation of RCW 26.16.030 (5)
- Ms. Wiseman and Mr. Benz were equal owners in a business they had started together. Ms. Wiseman handled the day-to-day activity and transactions, while Mr. Benz handled the back office end of the business. Initially both parties were responsible for strategic direction. When Ms. Wiseman abandoned the community home, she also took with her (acquired) all day-to-day operations to this business, in violation of RCW 26.16.030 (6)

- Mr. Benz did not seek an order to replace the +-\$82,000 community funds because he did not want his children to suffer financially during this time of separation and divorce. Mr. Benz' former attorney advised that his half (+-\$41,000) would be reconciled at the end of the divorce, that it would be considered a pre-distribution to Ms. Wiseman which would be off-set by commensurate assets at the time of final decree.
- However, at trial, no such off-set was ruled. The \$82,000 community funds were awarded entirely to Ms. Wiseman. CP 16.
- It should be noted that the parties had been working diligently to reach a settlement before trial. During this time, both parties had, in fact *agreed* to a split of assets and liabilities. Both parties agreed to off-set the +-\$82,000, by awarding a Promissory Note (*the second asset in question*) with a face value of \$70,000 to Mr. Benz. Even though there is a +-\$12,000 difference between these two asset values and that the second asset *note* is a lot less secure than \$82K *cash*, both parties agreed to this disposition. CP 37-38
- However, at trial, the pre-agreed to asset / liability split was *NOT* taken into consideration and enforced but rather divided as if no agreement had been reached. *Mr. Benz understands that settlement negotiations may not be taken*

*into consideration or enforced during trial.* In contrast, however, the pre-agreed to child support payments volunteered by Mr. Benz, in excess of the WA Child Support Worksheets, *WAS* taken into consideration and enforced during the trial. Why one and not the other, especially when the one was/is based on the other? That is, the child support payments in excess of the WA Child Support Worksheets *were/are based on the pre-trial, agreed split of assets and liabilities!*

- It is inconsistent to enforce *some* pre-trial settlement agreements at trial but *not others related to them*. This selective enforcement has and will continue to cause unjust financial hardship to Mr. Benz;
- Mr. Benz wishes and agrees to pay the higher child support payments to support his children but to do so requires the asset / liability split that was agreed to pre-trial be enforced, i.e. to award the \$70,000 note to Mr. Benz as an off-set to the +-\$82,000 community funds that were awarded entirely to Ms. Wiseman.
- Based on Mr. Benz' 2011 income, the WA Child Support Worksheet calculates the basic child support obligation of Mr. Benz to be \$518 per month. After the Self-Support Reserve (at 125% of the Federal Poverty Guideline), this obligation is reduced to \$333 per month. This amount is reflected as the Standard

Calculation / Presumptive Transfer Payment on line 17 of the WA Child Support Worksheet. CP 7 - 11.

- The \$70,000 note is currently yielding a 7% return, which calculates to \$408.33 per month. The source of money for this note came from Mr. Benz' real estate activities and negotiations. Mr. Benz has been receiving this amount each month which he requires to pay ongoing bills, both separate and community.
- Mr. Benz understands his children have been living (until very recently) in the San Francisco area, only +-20 miles from downtown. San Francisco is one of the most expensive cities to live in across the entire USA, ranked #3 on Kiplinger.com. Mr. Benz wishes to contribute as much as his income will afford and as such, volunteered this extra monthly income from the note towards increasing his child support payments. So \$333 (per the child support worksheet) plus \$408.33 (from the note) equals \$741.33, which Mr. Benz rounded up to \$750 per month. Again, Mr. Benz volunteered this extra amount based on the division of assets and liabilities that both parties agreed to prior to trial.
- Mr. Benz respectfully requests that the court of appeal make the division of assets and liabilities more equitable by awarding the entire note of \$70,000 to Mr. Benz to off-set the entire \$82,000 joint account to Ms. Wiseman. If the court

does not see fit to this more equitable redistribution, Mr. Benz' current payments of \$750 per month (which he has paid monthly since March 2013) are *unsustainable*. In this case, Mr. Benz requests that the court make an adjustment to his transfer payment and to base his child support obligation in accordance with the WA Child Support Worksheets.

**Other Case Facts & Matters to Consider:**

1. Ms. Wiseman has received substantial sums from the law-suit, filed due to the passing of her father. Prior to separation Mr. Benz was aware of close to \$900,000 (*approximately \$100,000 per year on average*) having been received from this source. All this money was received tax-free. Mr. Benz and Ms. Wiseman had agreed to use this money to relocate to Washington State and as capital to start a new business.
2. Ms. Wiseman continues to receive substantially more money than Mr. Benz every year. Over a single 5-month period (during late 2011 / early 2012) Ms. Wiseman received approximately \$185,000 (*approximately \$37,000 per month on average*) from the ongoing lawsuit related to a family member's passing, again all tax-free. CP 40-45.

3. Mr. Benz' 2012 income *for the year* was only \$31,005 - per 1099 (attached). This income was *not* tax-free. CP 7.
4. Ms. Wiseman claimed at trial she had no money. Yet she chose to live in one of the most expensive cities in the country and has chosen to remain under-employed for the last three or so years, working only one or two days a week - from what Mr. Benz understands.
5. Despite all of this considerable, ongoing, tax-free money that Ms. Wiseman continues to receive, she based her "income" on her WA Child Support Worksheets off of her chosen under-employment income. This significantly distorts her financial affairs and has the effect of manipulating the obligations of Mr. Benz.
6. Ms. Wiseman has been manipulating / abusing the legal system throughout this divorce (i.e. for the last +- 3 years) with unfounded, false allegations and frivolous actions against Mr. Benz.
7. Based on Ms. Wiseman's actions, including using conflict as a problem solving mechanism, destroying the relationship between Mr. Benz and his children, abducting the children during a pre-arranged visitation, taken the children out of school, making false accusations about domestic violence to a California Court

and a long list of gate-keeping behaviors, the children were ordered into the care of Mr. Benz in WA State and Ms. Wiseman was ordered to undergo a psychological evaluation, amongst other rulings. (See Temporary Order filed in the superior Court of WA, County of Kitsap on February 22, 2013.)

8. However, Ms. Wiseman has so severely destroyed the relationship between Mr. Benz and his children, that actually returning the girls into their father's care in WA was not possible (at that time). Not wanting to keep the children against their will - and with the help and on the recommendations of GAL, Stacy Bronson - Mr. Benz allowed the girls to return to Ms. Wiseman in California. To this day, Mr. Benz has received no contact whatsoever from his children.
9. Still, Ms. Wiseman continues her relentless, ad hominem attacks against Mr. Benz (all without merit or single shred of evidence to back-up her asinine allegations), alleging all sorts of abuse, economic hardship and apparent need for control (see Ms. Wiseman's response to Mr. Benz' notice of appeal.) Yet the facts are there for all to see that this is nothing more than psychological projection. (Again, refer to Temporary Order filed in the superior Court of WA, County of Kitsap on February 22, 2013, as well as California Superior Court (Case # FAM0120252), denying restraining order on 02/27/13.)

**D. Summary of Argument**

Mr. Benz seeks the equitable division of two community assets, the *first* of which was allocated entirely to Ms. Wiseman with no commensurate off-set to Mr. Benz, while the *second* was divided 50/50 between parties.

- The *first* asset in question was cash in a joint Morgan Stanley Active Asset Money Market account with a face value of +- \$82,000. CP 62-73.
- Monies in this joint account were *co-mingled* and therefore *community* funds. CP 47-60.
- This community asset was awarded in its entirety to Ms. Wiseman. CP 16.
- The *second* asset in question is a Promissory Note with a face value of \$70,000.
- The source for this note were *co-mingled* and therefore *community* funds.
- This community asset was divided equally and awarded 50/50 to the parties. CP 15-16

Even though a Promissory note is a lot less secure than \$82,000 cash, and there is a +-\$12,000 difference between these two asset values, Mr. Benz is of the opinion that an equitable division of assets and liabilities could be achieved by awarding him the \$70,000 community Promissory Note in its entirety as a

commensurate off-set to the \$82,000 community Money Market fund already awarded to Ms. Wiseman.

Mr. Benz also seeks the dismissal of a monetary judgment against him for voluntary child support payments that he agreed to make when he could. Since these payments were voluntary and not court ordered, these payments were never due by any court ordered date and therefore should not be attracting interest fees based on some arbitrary date.

**E. Conclusion**

In the light of the foregoing and in the interest of a fair and equitable division of assets and liabilities, it is respectfully requested that:

1. The Court award the \$70,000 Promissory Note to Mr. Benz as a commensurate offset to the +-\$82,000 Money Market Fund awarded to Ms. Wiseman.
2. The Court overturn the 'delinquent' designation of Mr. Benz' voluntary contributions of child support and dismiss the monetary judgment for interest on these non-delinquent payments.

DATED this 31st day of July, 2014

A handwritten signature in black ink, appearing to read 'Timothy Benz', written over a horizontal line.

Timothy Benz  
Pro Se, Appellant

(F)

SUMMARY:  
(POST TRIAL)

Assets and Liabilities

POST TRIAL ASSET/LIAB DIVISION  
SHOWING INEQUITABLE SPLIT.

ASSETS

Current Assets

Checking/Savings

	Jan 31, 11	To <u>APPELLANT</u>	To <u>RESPONDENT</u>
<del>_____</del>	237.30	0.00	
<del>_____</del>	70,000.00	35,000.00	35,000.00
<del>_____</del>	(219.03)	0.00	
<del>_____</del>	121.92		
<del>_____</del>	9,454.15	4,727.08 (?)	4,727.08 (?)
<del>_____</del>	376.07		
<del>_____</del>	81,893.56		81,893.56 (*)
<del>_____</del>	38.04	0.00	
<del>_____</del>	15.84	0.00	
<del>_____</del>	198.90	0.00	
<del>_____</del>	1,001.26		
<del>_____</del>	62.62		
<del>_____</del>	3,705.61	0.00 (?)	
<b>Total Checking/Savings</b>	<b>166,886.24</b>	<b>39,727.08 25%</b>	<b>121,620.64 75%</b>

Double count  
\$9,454.15  
initially  
awarded to  
respondent  
And 4,727 to petitioner?!

\$3,705.61  
initially  
awarded  
0.00 (?) to respondent

161,347.71

Total Current Assets 166,886.24 39,727.08 121,620.64

Other Assets

<del>_____</del>	354,000.00		
<del>_____</del>	488,000.00	488,000.00	
<del>_____</del>	5,500.00		5,500.00
<del>_____</del>	6,000.00	6,000.00	
<del>_____</del>	5,931.00	5,931.00	
<del>_____</del>	2,500.00	0.00	
<del>_____</del>	29,475.78	29,475.78	
<del>_____</del>	29,475.78		29,475.78
<del>_____</del>	10,893.96	10,893.96	
<b>Total Other Assets</b>	<b>931,776.52</b>	<b>540,300.74</b>	<b>34,975.78</b>

TOTAL ASSETS 1,098,662.76 580,027.82 156,596.42

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Credit Cards

<del>_____</del>	5,152.21	5,152.21	
<del>_____</del>	2,244.68	2,244.68	
<b>Total Credit Cards</b>	<b>7,396.89</b>	<b>7,396.89</b>	<b>0.00</b>

Other Current Liabilities

<del>_____</del>	362,804.19	100,000.00	
<del>_____</del>	309,500.00	309,500.00	

## Assets and Liabilities

		DISTRIBUTION PROPOSAL - Per COURT:	
<del>_____</del>	254,467.34	254,467.34	
<del>_____</del>	0.00		0.00
<del>_____</del>	2,200.00	2,200.00	
<del>_____</del>	5,931.00	5,931.00	
<del>_____</del>	0.00		
<b>Total Other Current Liabilities</b>	934,902.53	672,098.34	0.00
<b>Total Current Liabilities</b>	942,299.42	679,495.23	0.00
<b>TOTAL LIABILITIES</b>	942,299.42	679,495.23	0.00
<b>Equity</b>			
Opening Bal Equity	156,363.34	(99,467.42)	156,596.42
Retained Earnings			
Net Income			
<b>NET EQUITY SPLIT DURING MARRIAGE (I.E. COMMUNITY A&amp;L)</b>	156,363.34	(99,467.42) <i>(NET LIAB)</i>	156,596.42 <i>(NET ASSETS)</i>
<b>NET A&amp;L BEFORE MARRIAGE (I.E. SEPARATE A&amp;L)</b>		82,953.00	(46,500.00)
<b>Assets</b>		54,953.00	
<del>_____</del>		12,500.00	
<del>_____</del>		7,500.00	
<del>_____</del>		8,000.00	
<del>_____</del>		10,000.00	
<b>Liabilities</b>		(10,000.00)	(46,500.00)
<del>_____</del>			
<del>_____</del>			
<b>TOTAL EQUITY SPLIT (BEFORE &amp; DURING MARRIAGE)</b>	0.00	(102,420.42)	203,096.42

(\*\*) Judge declared these to be comingled  
and therefore 'community' funds

(\*) JUDGE VIXON,  
WITH ALL DUE RESPECT SIR, IS THIS THE  
EQUITABLE SPLIT YOU HAD INTENDED ?

THANK YOU,  
TIM BENZ  
~~\_\_\_\_\_~~

Thu 7/31/2014  
4:22 PM

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WASHINGTON STATE COURT OF APPEALS  
Division II

In Re the Marriage of:

TIMOTHY J. BENZ,

Pro se, Appellant,

and

ALIZA WISEMAN (f/k/a/ TRISTAN BENZ),

Pro se, Respondent.

No. 45674-5-II

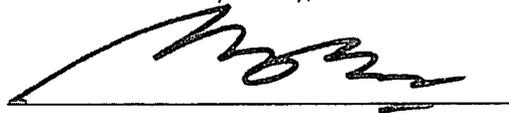
Declaration of Service of

APPELLANT'S OPENING BRIEF

I, Timothy Benz, Pro se, Appellant in the above mentioned matter, hereby certify that on this date a true and correct copy of the APPELLANT'S OPENING BRIEF (attached) was personally filed with the court and served via e-mail to alizawiseman@gmail.com and Certified Mail, postage pre-paid upon the following:

Aliza Wiseman  
P.O. Box 351896  
Los Angeles, CA 90035

Dated this 31st day of July, 2014



Timothy J. Benz  
Pro se, Appellant

Service Declaration

Timothy Benz, Pro se  
TimBenz1@gmail.com  
5727 Baker Way NW # 101  
Gig Harbor, WA 98332  
(360) 731-9069

WASHINGTON STATE COURT OF APPEALS

Division II

In Re the Marriage of:

TIMOTHY J. BENZ,

Pro se, Appellant,

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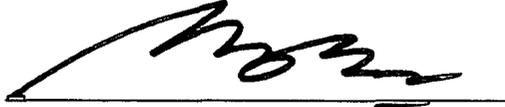
Declaration of Service of

APPELLANT'S OPENING BRIEF

I, Timothy Benz, Pro se, Appellant in the above mentioned matter, hereby certify that on this date a true and correct copy of the APPELLANT'S OPENING BRIEF (attached) was personally filed with the court and served via e-mail to alizawiseman@gmail.com and Certified Mail, postage pre-paid upon the following:

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P.O. Box 351896  
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Timothy J. Benz  
Pro se, Appellant

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