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Decree of Dissolution

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A. INTRODUCTION

This case arises from a family law dispute as to the award of property and debts and a violation of the parenting plan. The Beardslees have been involved in litigation against each other for several years and the trial court's frustration obliterated its ability to proceed in a manner that is acceptable or allowable under the law.

After the parties' marriage was dissolved, each party initiated a contempt motion. The issues in both motions were about compliance as to debts and awards. While these were pending, their daughter made disclosures of a sexual nature against the father.

When the disclosures were being resolved at hearing, the trial court made rulings which abused its discretion and turned Katrina Beardslee into a victim of the court system by ignoring the legal process which guides at all times.

B. ASSIGNMENTS OF ERROR

Assignments of Error

1. The court abused its discretion by expanding without notice to the mother the matter to be heard from dismissal of the sexual protection order and restraining order to a hearing on both mother's and father's pending contempt motions.

2. The trial court erred in its finding of contempt of the parenting plan in bad faith and abused its discretion by not following the statutory process for violation of a parenting plan.

3. The trial court erred in its finding of contempt that Katrina Beardslee did willfully violate the Decree of Dissolution to cooperate to refinance or modify the home mortgage to remove her name.

4. The trial court erred in its finding of contempt that Katrina Beardslee did willfully violate the Decree of Dissolution by refusing to timely sign documents presented by her former husband in refinancing or modifying the home mortgage in order to remove her name.

5. The court abused its discretion in its denial of contempt of equalization payment, award of fees and cancellation of the equalization of transfer payment from husband.

6. The court abused its discretion in releasing the husband from interest on the equalization transfer payment as terms for purging the contempt.

7. The trial court erred in its finding of contempt that Katrina Beardslee did willfully not pay the debt owed to Alaska USA Federal Credit Union and did not hold harmless the husband.

Issues Pertaining to Assignments of Error

1: Did the trial court's expansion of hearing on contempt and sua sponte finding of contempt of the parenting plan violate the statute and Katrina Beardslee's due process rights and her ability and opportunity to defend herself? [Assignments 1-7]

2: Did the court have a basis in the Decree of Dissolution to find that Katrina Beardslee violated the terms of the Decree of Dissolution in a manner which rose to intentional disobedience of the court order and to find that Mr. Beardslee did not willfully violate the same? [Assignment 3-7]

C. STATEMENT OF THE CASE

The parties entered a Decree of Dissolution (hereafter Decree) and Findings of Fact/Conclusions of Law on January 3, 2013. CP 81-82. The parties had previously entered a Parenting Plan and Order of Child Support with worksheets on August 24, 2012. CP 57-59.

A motion for contempt against Ms. Beardslee was filed by Steven Beardslee on May 2, 2013 alleging (1) failure to pay Alaska USA Federal Credit Union, (2) refusing to timely sign documents to refinance or modify the mortgage the mortgage loans and (3) making deposits to blocked accounts for minor child. CP 106.

A motion for contempt against the father was filed by Katrina Beardslee on May 13, 2013 for (1) failure to transfer personal property, (2) failure to remove her name from mortgage loan, (3) failure to pay the equalization payments and (4) failure to pay his 37% share of medical. CP 109. These matters were to be set for hearing by the court administrator upon submission of counsels' unavailable dates. CP 110.

In the summer 2013, the child made a disclosure to the mother of a sexual nature involving her father. The mother sought a protection order as she was directed to by law enforcement and CPS. RP I 35-37. The child repeated her statements under a Forensic interview by Thomas Taylor of CAC. CP 121C. The court reviewed this under the sexual protection/restraining order cause of actions and cause number; but then the previously appointed Guardian ad Litem (hereafter GAL) in this cause of action was directed to keep abreast and schedule a hearing upon determination of prosecution under the cause number under appeal. CP 114. The GAL brought a motion for review on August 26, 2013 for September 5, 2013 under all three cause numbers as there was a determination that there was to be no prosecution of the father. CP 117.

The hearing on September 5, 2015 was expected to be solely on the GAL's motion. The parties' openings did not mention the contempt

and the court did not identify that this hearing was also to be on the pending contempt motions prior to witnesses being called. RP I 2-6.

The trial court allowed an expansion of the matter sua sponte in the cross examination of the mother despite objection of her counsel. RP I 46, 50.

The trial continued through the day and through a part of the next day. The trial court judge allowed testimony as to allegation of federal mail tampering as a method of determining Ms. Beardslee's credibility. RP I 180-181, 210-222.

The trial court judge was Judge Godfrey and he made his oral ruling on the second day of trial. RP I 239-252. At the end of the year, Judge Godfrey then recused himself from all matters involving this counsel. RP I 255.

Judge McCauley heard this matter in a motion docket for entry on March 17, 2014. RP I 253-257. He indicated that he had discussed this with Judge Godfrey and that the matter should be presented to Judge Godfrey. RP I 254-255.

Judge McCauley then directed counsel to set the matter in front of Judge Godfrey despite his general recusal from all other cases in which this counsel appears. RP I 256.

The matter was set in front of Judge Godfrey and struck by Judge Godfrey the morning of that special set hearing. RP II 4.

Counsel for the father identified that Judge Godfrey found the mother in contempt for 3 out of 4 issues. RP II 7.

The next hearing was on May 27, 2014 in front of Judge McCauley to determine how to proceed; Judge McCauley decided to review the oral ruling of the court and affidavits as to arguments on remaining issues. RP II 30.

A hearing was set on July 31, 2014 for oral argument on the remaining issues on the contempt allegations and what the decisions had been made by Judge Godfrey. RP II 32-77.

At that point, Judge McCauley refused to entertain reconsideration of the contempt issues. RP II 53-54. The court refused to look at the exhibits or require proof that Katrina Beardslee's name was removed and put that burden on Katrina Beardslee. RP II 55-60. Further hearings were heard on August 25th and finally the order under appeal was entered on September 10, 2014. RP II 78-80, 82-132.

D. SUMMARY OF ARGUMENT

The findings of contempt against Katrina Beardslee are riddled in misinterpretation and misapplication of the law. This situation was worsened by the trial court's abuse of discretion during trial.

The trial court threw away the process allowed under statute to find a person in contempt and focused on the personalities of the case.

Its desire to punish Katrina Beardslee made it go as far as a finding on contempt on violations of a parenting plan that had not even been motioned and findings on contempt as to the home and car which is unsupported by the Decree of Dissolution.

E. ARGUMENT

Standard of Review on appeal

This court is being asked to review this de novo due to the misapplication of the law regarding contempt and interpretation of the Decree. In the alternative, the entire process was flawed due to the choices the trial court made in abusing its discretion in allowing the contempt hearing to occur in the first place.

1. De Novo

Review of the case by a de novo standard as review of the record as to the application or interpretation of the law. *Cox v. General Motors Corp.*, 64 Wn.App. 823, 827 P.2d 1052 (1992). If a decree is clear and unambiguous, there is nothing for the court to interpret. *Byrne v. Ackerlund*, 108 Wn.2d 445, 453, 739 P.2d 1138 (1987). Even if the decree's language is less than clear, this court would still under this

standard be required to determine the court's intent in entering the original decree. *Berry v. Berry*, 50 Wn.2d 158, 161, 310 P.2d 223 (1957).

2. Abuse of discretion

Family law cases are creatures of facts and case law is replete with the Appellate court not wanting to substitute its judgment for the trial court on the facts alone. *Chatwood v. Chatwood*, 44 Wn.2d 233, 266 P.2d 782 (1954); *In re Marriage of Woffinden*, 33 Wn.App. 326, 654 P.2d 1219 (1982).

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); *In re Marriage of Wicklund*, 84 Wn.App. 763, 770, 932 P.2d 652 (1996). The proper standard is whether discretion is exercised on untenable grounds or for untenable reasons, considering the purposes of the trial court's discretion. *Coggle v. Snow*, 56 Wn.App. 499, 784 P.2d 554 (1990). "This standard, like that articulated by the above quoted commentators, requires decision-making founded upon principle and reason." *Id.* at pg 558.

Analysis on law on contempt

The entirety of the appeal of this matter rests on the application of the court's contempt powers. Contempt should a rarified finding and used

in situations where there is clarity in the bad faith and/or a willful, intentional violation of an order.

The court's contempt powers in this case and many family law cases come from RCW 26.09.160 (as to the parenting plan) and RCW 7.21 (as to awards under the Decree). The contempt finding on the parenting plan is specifically identified in RCW 26.09.160(1). A motion is to be initiated and if "based on all the facts and circumstances the court finds after hearing that the parent, in bad faith, has not complied..." the court shall find the parent in contempt. RCW 26.09.160(2).

A contempt action of the parenting plan is based on a failure to follow a court order and determination that bad faith occurred. RCW 26.09.160(2)(b); *In re Marriage of Humphreys*, 79 Wn.App. 596, 599, 903 P.2d 1012 (1995).

At the case at hand, no motion was filed and no order to show cause issued as to identification of the violations of the parenting plan. The court stepped outside of the statute in making this finding and thus, did so without the power imbued to it under the statute. RCW 7.21 allows punitive and remedial sanctions for contempts that are intentional disobedience of a lawful order and for disorderly, insolent behavior toward the judge while holding court. RCW 7.21.010.

The court is also to strictly construe whether action rises to this level. *Johnston v. Beneficial Management Corp.*, 96 Wn.2d 708, 713–14, 638 P.2d 1201, 1203–04 (1982); *In re Marriage of Humphreys*, 79 Wn.App. 596, 599, 903 P.2d 1012, 1013 (1995).

In this case, Judge Godfrey ruled Ms. Beardslee in contempt of an order that did not exist, in doing so and in failing to find Mr. Beardslee in contempt of the equalization provision, the court abrogated the terms of the Decree.

Analysis on Issues

1: Did the trial court's expansion of hearing on contempts and sua sponte finding of contempt of the parenting plan violate the statute and Katrina Beardslee's due process rights and her ability and opportunity to defend herself?

(1) Irregularity in Proceedings

The father's original motion for contempt filed in May 2014 alleged the mother violation on three issues: not paying the debt owed to Alaska USA, refusing to timely sign documents to refinance or modify the mortgage loans and not make deposits for a blocked account. CP 104.

The father asked for imprisonment as a sanction. CP 104, page 2. He proposed the same in the final order. CP 169, pg. 4. This matter was to be set for hearing by order. CP110.

The trial court's original purpose in September 2014 hearing was to resolve the mother's motion/order of restraint and restraining order. CP 117. Instead, this hearing was flipped on its head by rulings of the trial court with no prior notice.

On September 5, 2013 both parties were represented by counsel whose openings did not go beyond the scope of the mother's motion/order of restraint and restraining order. RP I 2-6. Judge Godfrey did not question or expand on this scope at the beginning of the hearing. RP I 6.

The mother's direct testimony was limited to the goals outlined in her opening. She put forth her desire to have a restraining order between herself and her ex-husband. RP I 40-41. She stated the desire for the child to go to counseling and to phase in visitation. In this request, she followed the recommendation of CPS and the GAL. RP I 206-207.

After her direct was finished, the father's counsel started to ask her about the facts surrounding the pending contempt action. RP I 46. Objections were made because it was beyond the scope of the direct and irrelevant for what was scheduled to be heard in front of the court. The trial court overruled without explanation. RP I 46. Continuing objections were made as this line of testimony and examination. RP I 46-58.

As set forth above, the reason presented in opening was to address the restraining orders. In the cross examination of the mother, the court's

rulings allowing questions about the contempt over the continuing objection was based its belief that the underlying animosity between parties was a factor. RP I 50. Yet the court allowed this expansiveness until the hearing was fully on the pending contempts and the original hearing a side issue.

The court kept changing the goal posts. The testimony and cross examination was an ever changing target until Judge Godfrey ruled that the hearing was an open ended contempt proceeding. RP I 58.

The mother did not have time for any level of preparation. She did not prepare her case nor the case she brought by Mr. Beardslee. She had no opportunity to even know that she was going to be asked in detail the responses for the father's contempt action. Katrina had not even reviewed the motion for contempt prior to the hearing. She had to do so over the lunch hour after she had to testify about it. RP I 92.

This made it impossible for the mother to call other witnesses or exhibits to be prepared prior to the court hearing for a defense to a contempt hearing. Nor could Ms. Beardslee properly prepare for her contempt motions against the father. RP II 13-14. The judge who entered the order questioned that the bank official had not been brought to testify on her behalf and appeared to believe it was her duty to bring that person

if she wanted to defend herself. RP II 69. Interestingly Judge Godfrey also castigated Ms. Beardslee for failing to bring a banker to testify. RP I 243. Neither Judge acknowledged her inability of being able to do so given the lack of notice for the contempt hearing.

Because imprisonment was sought, the court needed to assure the highest level of protection and due process to the mother. Judge Godfrey himself waived the flag of imprisonment as well in his oral ruling. RP I 251. The process of a contempt testimonial hearing should have started with the alleging party presenting their case so that the mother had the opportunity to defend against it. She should have been able to present witnesses and exhibits that were relevant and prepared.

The trial court abused its discretion in allowing this situation to occur. Judge Godfrey in numerous places made his opinion of the parties and this case known demonstrating a clear lack of impartiality about deciding the case of the parameters allowed under the law. RP I 167 and RP I 240. That colored his decision-making and allowed the father's counsel to proceed on a contempt hearing by ambush which then colored the decision-making of the later court. RP II 63, 70.

This type of proceeding not only goes against the interest of justice but also violates the protections allowed under the statutes in question.

(2) Sua sponte contempt on parenting plan

Another aspect of this lack of notice also falls into the contempt finding as to violation of the parenting plan.

The finding stemmed from the withholding of visitation under the orders regarding the sexual allegations made by the child. In terms of the sexual protection order and restraining order, the mother adhered to both. Testimony was taken from two witnesses called by the mother CPS Social Worker Karen Gatlin and Mr. Thomas Taylor.

Mr. Taylor testified as to his specifics of the interview with the child and that it was conducted outside of the mother's care. RP I 1-15, Exhibits 1-2. The child's interview confirmed the general facts that were disclosed to the mother. RP I 35-37. Mr. Taylor further testified that based on his knowledge and experience, he did not find any evidence of bad faith by the mother or any attempts of coaching on her part. RP I 14. The mother's truthfulness was raised to the Social Worker and she too testified that she did not have any sense of coaching of the child. RP I 27-28.

The mother's request of the court given the finding was that it allows a restraining order as to her personally based on the father following her in 2013 on her work route, that the child has counseling and at least transition visitation. RP I 39-42 and CP 120.

As to the request for a personal restraining order to continue as to the mother, Mr. Beardslee denied that he had in the past six months as alleged and denied that the mental health evaluation had identified that he may stalk his ex-wife. RP I 163-164. He denied the interactions that he had with Albert Munoz. RP I 166. It is unclear what happened to Exhibit 28. RP 167, CP 126.

The court dismissed the rationale for any restraining order as requested because the Decree entered in January 2013 did not address it. RP I 246. This becomes important because it demonstrates the disconnect between the court and the facts presented versus the history of the judge with this case. That dismissal of facts due to the bias that the judge brought to the case is also clear as to the handling of the parenting issues.

The father allowed that if he had heard similar allegations as to sexual that he would have contacted his lawyer, CPS and sought a restraining order. RP I 165-166.

The Social Worker testified that she would recommend counseling for the child. RP I 30. She stated that did not have anything to indicate a sense that the mother manufactured the allegations. RP I 29. She also testified that the explanation of the lack of visitation with the father was appropriate. RP I 28.

The GAL reiterated the same as to the mother's handling of the child in her missing visits. RP I 200. The GAL also asked for counseling. RP I 194-195. The GAL identified her concerns about past issues of credibility as to the mother but also stated she could not determine any coaching had occurred. RP I 185.

Yet, the trial court denied that there was any rationale to ease into visitation or allow any counseling. RP I 245-247, 249-250.

Contempt of the parenting plan was never part of the original motion, nor was the motion ever made by the father. Judge Godfrey flirted with tying the allegations with bad faith but never made an actual finding. RP I 244, 245, 247.

The statute requires a motion with order to show cause, an opportunity to defend and bad faith as to violations of the parenting plan. RCW 26.09.160. None of these exist in the record. RCW 7.21.101 does not address sua sponte contempt finding on matters of contempt for actions outside of the court.

Opposing counsel argued for this finding in presentation extrapolating on Judge Godfrey's ruling. RP II 88-93. The court entering the order then flipped the question asking mother's counsel on why the visitation issue was not contempt. RP II 93-96. Judge McCauley then did what he refused to do in the other contempts and revised on the Judge

Godfrey's oral rulings. RP II 96. He previously stated that he would not go outside of the plain reading of Judge Godfrey's ruling and that is what he did when allowing a finding of contempt on the parenting plan. RP II 50.

There is no basis in the law or the record to make this finding. It is both a misinterpretation of the law and abuse in discretion of the court.

2: *Did the court have a basis in the Decree of Dissolution to find that Katrina Beardslee violated the terms of the Decree of Dissolution in a manner which rose to intentional disobedience of the court order?*

(1) Alaska USA Federal Credit Union

The first contempt against Ms. Beardslee was as to the failure to pay Alaska USA Federal Credit Union which addressed payment on the vehicle awarded to her under the Decree. CP 82.

This vehicle was voluntarily returned to the bank because it was upside down and due to Ms. Beardslee's financial situation. She made arrangements with the bank to pay on the amount due through her April 22, 2013 letter. Exhibit 11. Mr. Beardslee never made any payments on the car nor was he requested to do so. RP I 95, 161-162.

On May 7, 2013, after filing the contempt on this matter on May 2, 2013, Mr. Beardslee forwarded through his counsel a letter from Alaska USA dated April 30, 2013 on collection of the debt and sent to him. Exhibit 12, CP 106. Payment arrangements were made between Ms.

Beardslee and Alaska USA by May 3, 2013. Exhibit 13 and 14. The payments were made until there was no further balance. CP 138, Attachment 2, CP 150, Attachment 4-5.

Katrina Beardslee never asked or put Mr. Beardslee in a position to make this payment which could have triggered the hold harmless provision of the Decree and a potential contempt action. RP I 95-96. She complied with the Decree of Dissolution in her payment as to the obligation under the Decree. Exhibit 14. Her actions do not even violate the court order much less show intentional disobedience or willful disobedience of the Decree of Dissolution.

The court heard testimony that the husband failed to make a series of mortgage payments. RP I 136-137. Yet the court chose to target Katrina Beardslee's behavior and indicated that it affected her ex-husband's credit as sufficient to warrant a contempt find. RP I 244, 248.

It did not factor in her income, debt loads, or ability to continue payment in order to assess whether she intentionally refused to obey the allocation of debt. It did not factor in the fact that she had made arrangements to make on-going payments. It did not factor or weigh Mr. Beardslee's failure to make mortgage payments on the debts he was awarded and the impact of that on his credit or the measurable difference the Alaska USA debt created in his credit score.

The failure to analyze the rationale for delay in payment and assessment of measurable harm to Mr. Beardslee rises to an abuse of discretion by the trial court.

(2) Failure to timely sign Modification/Refinance/Assumption

The second contempt was based on Ms. Beardslee refusing to timely sign documents to refinance or modify the mortgage the mortgage loans. The Decree (on page 4, section 3.15.1, 3.15.2 (in part) and page 5, 1*) identifies what is expected by the parties as to the home and the mortgage. The goal was to remove the wife as debtor on the mortgage (through refinance or modification) and if that was not possible by April 1, 2013 an equalization payment was to be made to the wife on that date. CP 82.

The language of the Decree was specific that Ms. Beardslee **was not ordered** to sign documents (except a quit claim deed with limitation) if her name was not removed from the loan. She provided a quit claim deed and real estate tax affidavit on January 14, 2013 through counsel to Mr. Beardslee. CP 150, Attachment 1. The Decree had been entered on January 3, 2013. CP 82.

However, Judge Godfrey interpreted the Decree to state that modification can mean a lot of things. RP I 243. Modification could mean

a lot of things but the Decree's language only had one threshold issue and that was the removal of the wife from the loan.

A letter was sent by Mr. Beardslee's counsel on February 19th which indicated the need for signature on a form because the ex-husband was "successful in modifying the mortgage". Exhibit 22. On February 28th a request was sent by this counsel for proof that this form would release from the financial obligation on the community residence. Exhibit 5.

A letter was sent again by Mr. Beardslee's counsel with the assertion again that Mr. Beardslee's modification was in jeopardy due to failure to provide the form and goes on to say "This document is necessary to remove Mrs. Beardslee's name from the loan." Exhibit 6. That letter states that compliance by "March 14th at 5:00 p.m." would have to occur or a contempt would be filed. Exhibit 6.

On March 13, 2013 at 4:17 p.m. the form was faxed to counsel despite the failure of the husband to provide any verification that her name would be off the loan except the assertion of opposing counsel. Exhibit 8.

Yet, the court allowed a contempt order to show cause despite Ms. Beardslee's compliance to the timetable that was set by the ex-husband. The court ruled (despite the husband's affirmative deadline) that it was untimely and affected process to remove her name on the loan. RP I

243-244. Ms. Beardslee relied on this timetable to show her compliance to the Decree but it did not matter to the trial court.

The more egregious element of this is at no time is there any evidence that Ms. Beardslee was ever to be removed from the loan as was envisioned in the agreement of the parties in the Decree of Dissolution. CP 150, Attachment 6. It was all a lie—a shell game by the ex-husband in order to evade the payment due to Ms. Beardslee by April 1, 2013.

The language used in the above letters identifies Mr. Beardslee to be engaged in the pursuit of a loan modification to remove Katrina Beardslee from the loan. The form that was provided referred to a “Qualifying Assumption”. Exhibit 7. Due to the distrust of these documents and no removal of her name from the loan, documents were subpoenaed as to the loan from Bank of America. Exhibit 9. RP 120, 122-124.

These Bank of America records are telling; the second to last page recounts the communication summary between Mr. Beardslee and Bank of America which identify that he knew before the first letter was sent that his ex-wife’s name would not be removed. Exhibit 9.

It states that he was sent a Trial Payment Plan on February 13, 2013. That on February 15, 2013 he was told that this plan did not remove his wife from the loan. This is four days before his counsel sent the form.

He called again on February 25th again to assess how to remove his wife from the loan—which signifies that he knew that she could not be removed in the process that he was undergoing. Exhibit 9.

On March 12th—the same day the second letter was sent from his counsel demanding the form—he was again told that the loan could not be assumed by him (taking Katrina Beardslee off the loan) because he was delinquent on the mortgage payments and would not qualify for assumption. This delinquency was occurring at the same time Ms. Beardslee was having difficulty with the car loan. Exhibit 9.

On March 22nd Mr. Beardslee told the bank he could not afford the equalization payment that he knew was coming. He expressed the urgency. The bank told him that an assumption was not possible until 2015 and he said he would talk to another bank. Exhibit 9.

Mr. Beardslee was not truthful in presenting the form on Assumption because it was a useless document. He may have asked for multiple efforts to remove his former wife from the loan but nothing was approved and he knew it when he sent it. That is the basis of the bad faith element of the contempt against him made by Ms. Beardslee. This basis was exasperated when he filed his contempt action accusing his former wife of failing to do something which he knew would make no difference and would never result in an assumption of the loan by him.

On July 16th, opposing counsel provided a loan modification which decreased Mr. Beardslee's payments but reaffirmed Ms. Beardslee's loan obligation. Exhibit 10. Section 3.15.1 of the Decree states "Wife shall execute a Quit Claim Deed to husband and shall cooperate to assist him in refinancing, if possible, with the exception she shall not be required to assume any debt on the property or co-sign in any manner." CP 82.

There is nothing in the record to show removal of Ms. Beardslee from the loan. Judge McCauley asked opposing counsel point blank whether her name was removed. Opposing counsel specifically told Judge McCauley she "is not on the loan". Opposing counsel relied on Judge Godfrey's finding that "he was able to get that done". RP II 41. This was not true and Ms. Beardslee remains on the loan. CP 150, Attachment 6.

The threshold question is what order was violated by Ms. Beardslee. Did the document or process she signed allow her to be removed from the loan? The answer is no and has always been no.

No order states that Ms. Beardslee is required to sign any document that modifies a loan to decrease her former husband's mortgage payment. She cannot be in contempt of an order that does not exist. She cannot be untimely if that order does not exist.

(3) Remedy for Contempt

The order under appeal allows for Mr. Beardslee to have another 36 months to remove the loan from his former wife's name. CP 169. It requires nothing from Ms. Beardslee. It removes the requirement of interest from Mr. Beardslee.

The other parts of this section allow specifics for purging the contempt—payment in full of the car loan (which had been done) and allowing visitation. CP 138, Attachment 2. Those actions are under Ms. Beardslee's control and are not impacting her future action in a coercive manner.

The lack of this provision to allow Katrina Beardslee to purge through an affirmative act makes this penalty makes this remedy punitive. *In re M.B.*, 101 Wn App. 425, 3 P.3d 780 (Div. 1 2000); *In re Marriage of Didier*, 134 Wn. App. 490, 140 P.3d 607 (2006), *review denied* 160 Wn. 2d 283, 892 P. 2d 85; RCW 7.21.030.

Even though there was no imprisonment in the final order, a punitive remedy requires a higher level of procedural requirements. *State v. Heiner*, 29 Wn. App. 193, 627 P.2d 983 (Div. 1 1981). This case had minimal compliance to any procedure and this remedy is another example of the failure to follow the statute.

F. ATTORNEY FEES

Katrina Beardslee is requesting attorney fees against Mr. Beardslee based on his wrongful pursuit of the contempts set forth above and his pursuit of imprisonment as a sanction under RCW 7.21.

While normally each party bears its own fees on appeals, the court allows fees when provided by in statute or on grounds of equity. *Seattle School Dist. No. I v. State*, 90 Wn.2d 476 585 P.2d 71 (1978). *Western Stud Welding, Inc. v. Omark Indus., Inc.*, 43 Wn. App. 293,716 P.2d 959 (1986). RCW 26.09.140 provides:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

Ms. Beardslee defended herself against contempts that should not have been filed and also tried to enforce the order. Her former husband made

choices in his pursuit of this action which obfuscated facts from the court, failing to honor his word as to the time frames set for signing and sought imprisonment for non-parenting or support issues. This gave her no other recourse but to defend herself which has cost her significantly financially.

G. CONCLUSION

The finding of contempt is important because it labels the person as a violator of a court order. In family law cases, multiple contempt finding can be the basis of change of custody. Due to the extreme nature of the ruling it needs to be done with judicial caution.

Contempt actions are based on the facts of a case and the weighing of the information by the trial court. If a party facing the court is assured of the process facing them and clarity in the order being violated then the foundations of the justice system will not be affected regardless of the ruling of the case.

Every finding and lack of finding of the court is touched with the abuse in the process against Ms. Beardslee. However, the consequences of the abuse in process are monumental and affect every contempt case as it

opens the door to bastardize the process and diminish the protection allowed to the accused. It becomes no longer about the violation of an order and that in turn undermines the value of any order of the court.

Dated June 1, 2015

Respectfully submitted:

A handwritten signature in cursive script that reads "Vini Samuel". The signature is written in black ink and is positioned above a horizontal line.

VINI SAMUEL, WSBA #27186
VINI ELIZABETH SAMUEL, ATTORNEY AT LAW
114 North River
Montesano, WA 98563
360-249-0720
Attorney for Appellant

APPENDIX

FILED
GRAYS HARBOR COUNTY
C. BROWN, CLERK

2013 JAN -3 AM 11:10

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Superior Court of Washington
County of GRAYS HARBOR

In re the Marriage of:

KATRINA LEE BEARDSLEE,

Petitioner,

and

STEVEN F. BEARDSLEE,

Respondent.

No. 12-3-00144-8

Decree of Dissolution (DCD)

Clerk's Action Required

I. Judgment Summaries

1.1 Real Property Judgment Summary:

Real Property Judgment Summary is set forth below:

Name of Grantor: KATRINA LEE BEARDSLEE

Name of Grantee: STEVEN F. BEARDSLEE

Assessor's property tax parcel or account number: 017600300801

Legally described as: HOPE NELLY 30 – OF LOT 7; LOT 8 & ½ VAC ST ADJ LS E 8 – BLK 3
Known as: 2326 Victor Avenue, Aberdeen, Grays Harbor County, Washington

80

1 **1.2 Money Judgment Summary:**

Does not apply.

3
4 **End of Summaries**

5 **II. Basis**

6 Findings of Fact and Conclusions of Law have been entered in this case.

7
8 **III. Decree**

9 *It Is Decreed* that:

10 **3.1 Status of the Marriage**

11 The marriage of the parties is dissolved.

12
13 **3.2 Property to be Awarded the Husband**

14 The husband is awarded as his separate property the following:

15 *MGS/BAES* **TAX exemption/deduction available regarding the family home/interest.**

16 3.2.1 Real property commonly known as 2326 Victory Avenue, Aberdeen, Grays Harbor
17 County, Washington, as legally described in 1.1 above, subject to the provisions in
18 paragraph 3.15 below.

19 3.2.2 Personal property as set forth in Exhibit A. This exhibit is attached or filed and
20 incorporated by reference as part of this decree.

21 **3.3 Property to be Awarded to the Wife**

22 The wife is awarded as her separate property the property set forth in Exhibit A. This
23 exhibit is attached or filed and incorporated by reference as part of this decree.

24 *DRW MGS/* **SEE *2 page 5.**

25 **3.4 Liabilities to be Paid by the Husband**

The husband shall pay the community or separate liabilities ^{AS} set forth in Exhibit A. This
exhibit is attached or filed and incorporated by reference as part of this decree.

In addition, husband shall pay real property liabilities as set out in paragraph 3.15 below.

1 Unless otherwise provided herein, the husband shall pay all liabilities incurred by him
2 since the date of separation.

3 **3.5 Liabilities to be Paid by the Wife**

4 The wife shall pay the community or separate liabilities set forth in Exhibit A. This exhibit
5 is attached or filed and incorporated by reference as part of this decree. Mes /
D.W.

6 Unless otherwise provided herein, the wife shall pay all liabilities incurred by her since the
7 date of separation.

8 **3.6 Hold Harmless Provision**

9 Each party shall hold the other party harmless from any collection action relating to
10 separate or community liabilities set forth above, including reasonable attorney's fees and
11 costs incurred in defending against any attempts to collect an obligation of the other party.

12 Specifically, husband shall hold wife harmless from any mortgage, taxes, or other
13 encumbrance related to the real property awarded to husband.

14 **3.7 Maintenance**

15 Does not apply.

16 **3.8 Restraining Order**

17 No temporary restraining orders have been entered under this cause number.

18 **3.9 Protection Order**

19 Does not apply.

20 **3.10 Jurisdiction Over the Children**

21 The court has jurisdiction over the children as set forth in the Findings of Fact and
22 Conclusions of Law.
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3.11 Parenting Plan

The parties shall comply with the Parenting Plan signed by the court on August 24, 2012. The Parenting Plan signed by the court is approved and incorporated as part of this decree.

3.12 Child Support

Child support shall be paid in accordance with the order of child support signed by the court on August 24, 2012. This order is incorporated as part of this decree.

3.13 Attorney Fees, Other Professional Fees and Costs

Each party shall be responsible for his or her attorney fees and costs.

3.14 Name Changes

Does not apply.

3.15 Other

3.15.1 The real property located at 2326 Victory Way, Aberdeen, Grays Harbor County, Washington, shall be awarded to husband, together with all mortgage liabilities, taxes, and related encumbrances. Husband shall hold wife harmless from all liabilities associated with the real property awarded herein.

Wife shall execute a Quit Claim Deed to husband and shall cooperate to assist him in any refinancing, if possible, with the exception she shall not be required to assume any debt on the property or co-sign in any manner.

3.15.2 Husband shall be required to make an equalizing transfer payment to wife in the amount of ~~\$13,378.00~~ ^{\$12,593.00}. This amount shall be paid at a rate of \$350.00 per month without an interest obligation. Payments shall commence ~~January 15, 2013~~ ^{April 1, 2012,} and each month thereafter until the obligation is paid. If husband fails to pay as ordered, any remaining amount shall be reduced to judgment and interest at the rate of 6% shall be imposed.

3.15.2 wife shall deposit into blocked account \$4974.69 child's education funds which may be removed by court order Ann provide father with confirmation of said deposit.

Dated: July 3, 2013

GORDON L. GODFREY, Judge

Petitioner's lawyer:
Presented by:

Respondent's lawyer:
A signature below is actual notice of this order.
Approved for entry:
~~Notice for presentation waived:~~


MICHAEL G. SPENCER, WSB #6909


BENJAMIN WINKELMAN, WSB #33539

*1 If husbands is able to refinance or modify the home mortgage, removing the wife as debtor on the home, the balance of the equalization transfer payment in section 3.15.2 shall be deemed satisfied and paid in full.

If the family home is returned to the lending institution (Bank of America), or if husbands is unable to refinance or modify, or if husbands signs a deed in lieu of foreclosure, or if foreclosure occurs, or if he files Bankruptcy, the obligation of section 3.15.2 transfer payment shall remain in effect.

*2 wife will specify the seven (7) autographs Alice Cooper memorandum she is to receive. Husbands shall carefully and safely arrange all items awarded to wife next to the Portiac All to be picked up and available for pickup on ^{noon} Jan. 6, 2012

*3 Husbands shall provide wife with ~~the~~ her DVD's, husbands to retain all CD's. ~~Another~~ Father's mother shall supervise distribution of Christmas decorations/ornaments owned by each party prior to marriage, and divide evenly the remainder.

BROWN LEWIS JANHUNEN & SPENCER
Bank of America Building, Suite 501
101 East Market Street
Post Office Box 2806
Aberdeen, Washington 98520
(360) 533-1600 ext (360) 532-1960 - Fax (360) 532-4116

PETITIONER'S PROPOSED DISTRIBUTION OF COMMUNITY AND SEPARATE PROPERTY

KATRINA		STEVE	
Item	Value	Item	Value
	Community	Community	Separate
2008 Scion	\$9,500.00	1998 Dodge pickup	\$4,250.00
		2 big screen TV's	\$100.00
		4 bookshelves	\$60.00
		Washer/dryer	\$450.00
		Downstairs Refrigerator	\$85.00
		Downstairs Freezer	\$125.00
		Couch/love seat/tables	\$600.00
		Large desk	\$20.00
		Jukebox	\$850.00
		6 leather jackets	\$900.00
		3 autographed leather jackets	\$450.00
		Video games, systems & racks	\$300.00
		Gold coins	\$240.00
		35 Beanie babies	\$70.00
		Seahorse sand art	\$35.00
		3 lanterns	\$30.00
		2 DVD/VCR's	\$50.00
		3 bedroom TV's	\$235.00
		Desktop computer	\$25.00
		Microwave	\$40.00
		Water cooler	\$65.00
		Microwave stand	\$50.00
		Storage Pantry	\$50.00
		4 bar chairs	\$200.00
		3 bedroom dressers	\$85.00
<p>The following items were removed from the family home under the April 16, 2012, Court Order:</p>			
Entertainment Center	\$20.00		\$20.00
TV	\$50.00		\$50.00
Half bunk bed (Aurora)			
2 Dressers (Aurora)			
2 bookcases (Aurora)			
1/2 dishes and cups (Aurora)			
1/3 toys & books (Aurora)			
1/2 clothing (Aurora)			
Most of Katrina's clothes/shoes			
Katrina's mother's silver flatware			
White set of China			
Microwave			
Pine nightstand			
Katrina's camera (left three digital cameras-Christmas gifts)			
Katrina's stereo/record player (Christmas gift from parents)			

PETITIONER'S PROPOSED DISTRIBUTION OF COMMUNITY AND SEPARATE PROPERTY

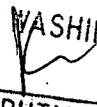
KATRINA				STEVE			
Item	Value	Community	Separate	Item	Value	Community	Separate
These items were removed from the family home under the July 20 2012 Court Order.							
Printer	\$35.00	\$35.00		Purple dresser/Armoire	\$30.00	\$30.00	
Bakeware	\$10.00	\$10.00		5 boxes Stok coffee shots	\$125.00	\$125.00	
Crock pot	\$10.00	\$10.00		2 carpet shampoos	\$75.00	\$75.00	
Vacuum sealer	\$50.00	\$50.00		Foosball table	\$100.00	\$100.00	
Thomas Kincaide clock	\$30.00	\$30.00		2 5' Alice Cooper posters	\$50.00	\$50.00	
Katrina's toiletries			X	2 autographed t-shirts	\$40.00	\$40.00	
Katrina's mother's cedar chest			X	Autographed Alice Cooper poster	\$40.00	\$40.00	
2 bx childhood mementos			X	18 dolls	\$1,000.00	\$1,000.00	
Cake platter			X	Autographed Alice Cooper flyer	\$40.00	\$40.00	
Turkey platter			X	Alice Cooper cane	\$100.00	\$100.00	
10 coffee mugs		X		6 large posters in frames	\$100.00	\$100.00	
These items remain at the family home.							
8x10 multiple pics for album		X		2 Ionic pro air cleaners	\$100.00	\$100.00	
3 10x13 Aurora pics for album		X		Generator	\$400.00	\$400.00	
8x10 of Aurora and Katrina		X		Storage shed	\$250.00	\$250.00	
Dog with saddle (gift from Katrina's sister to Aurora)				Tool box and tools	\$230.00	\$230.00	
Sewing machine	\$75.00	\$75.00	X	Lawn mower	\$100.00	\$100.00	
Aurora's crib	\$100.00	\$100.00		Recliner	\$20.00	\$20.00	
Alice Cooper leather jacket	\$150.00	\$150.00		Black bookshelf	\$15.00	\$15.00	
Pics of Katrina/Alice Cooper		X		Entertainment center	\$30.00	\$30.00	
Pics of Katrina/Chuck		X		2 boxed shelves	\$100.00	\$100.00	
2 pics of Cara		X		Lawn decorations	\$50.00	\$50.00	
Aurora's school pic		X		Swingset and 5 outdoor toys	\$150.00	\$150.00	
				Black desk	\$20.00	\$20.00	
				Food	\$3,000.00	\$3,000.00	
				Cleaning supplies	\$100.00	\$100.00	
				Pistol	\$400.00	\$400.00	
				Collectable concert t-shirts (over 100)	\$2,000.00	\$2,000.00	

PETITIONER'S PROPOSED DISTRIBUTION C COMMUNITY AND SEPARATE PROPERTY

KATRINA				STEVE			
Item	Value	Community	Separate	Item	Value	Community	Separate
Alice Cooper box set (one of two - other to Respondent)		X		Pressure washer	\$100.00	\$100.00	
Aurora's jewelry box			X	China hutch and contents	\$225.00	\$225.00	
Katrina's books in toy room			X	Upstairs refrigerator	\$400.00	\$400.00	
Katrina's 12 Disney cups in toy room			X	Stove	\$350.00	\$350.00	
Katrina's 6 dolls/toy room			X	Camcorder	\$200.00	\$200.00	
Step ladder			X	Paper shredder	\$30.00	\$30.00	
Warmer/steam table	\$20.00	\$20.00		Assorted framed mirrors	\$50.00	\$50.00	
Box of Christmas village			X	Hanging lamp (maybe)	\$40.00	\$40.00	\$40.00
1/2 Christmas decorations (divide evenly)				Lizard tank	\$50.00	\$50.00	
Outdoor Christmas decorations (divide evenly)				Small appliances	\$50.00	\$50.00	
Blue bouncy horse (Katrina's as a child)			X	Pine dresser	\$50.00	\$50.00	
1/2 DVD's (combination community & separate)		X	X	Telephone bench (gift to both)	\$140.00	\$140.00	
Katrina's cradle			X	Air conditioner (gift to both)	\$125.00	\$125.00	
7 autographed AC memorabilia	\$100.00	\$100.00		Bed and nightstand	\$50.00	\$50.00	
				Danzig poster	\$15.00	\$15.00	
				2 Ramones posters	\$40.00	\$40.00	
				1600 CD's	\$1,600.00	\$1,600.00	
1966 Pontiac Lemans with all documentation & pictures	\$7,500.00	\$7,500.00		Action figures	\$200.00	\$200.00	
				Pics with Alice Cooper	\$20.00	\$20.00	
				Antique sword	\$65.00	\$65.00	
				Vinyl records (maybe half)	\$200.00	\$100.00	\$100.00
				Harley Davidson die casts	\$100.00	\$100.00	
				Weed eater	\$20.00	\$20.00	
				Shop vac	\$10.00	\$10.00	

PETITIONER'S PROPOSED DISTRIBUTION OF COMMUNITY AND SEPARATE PROPERTY

KATRINA				STEVE			
Item	Value	Community	Separate	Item	Value	Community	Separate
				6' ladder	\$15.00	\$15.00	
				1998 Dodge Durango	\$3,250.00	\$3,250.00	
				Katrina's missing lingerie 80+	\$1,600.00	\$1,600.00	
				Katrina's missing clothing	\$440.00	\$440.00	
Retirement	\$17,072.00	\$17,072.00		Retirement	\$19,120.00	\$19,120.00	
Life Insurance	\$202.00	\$202.00		Life Insurance	\$294.00	\$294.00	
Life Insurance	\$141.00	\$141.00		Life Insurance	\$192.00	\$192.00	
Total	\$35,165.00	\$35,165.00		Total	\$47,396.00	\$47,256.00	\$140.00
Lien on Scion	-\$14,425.00	-\$14,425.00					
TOTAL TO WIFE	\$20,640.00	\$20,640.00		TOTAL TO HUSBAND	\$47,396.00	\$47,256.00	\$140.00
				Difference:	\$26,756.00		
				1/2 to Wife:	\$13,378.00		

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COURT OF APPEALS
DIVISION II
2015 JUN -3 AM 11:21
STATE OF WASHINGTON
BY 
DEPUTY

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

KATRINA L. BEARDSLEE,
Appellant,
v.
STEVEN F. BEARDSLEE,
Respondent.

NO. 46740-2-II
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that on the 1 day of June, 2015, I caused a true and correct copy of the Brief of Appellant to be served on the following in the manner indicated below:

Benjamin Winkelman by Electronic Mail
Counsel for Steven F. Beardslee
PO Box 700
Hoquiam WA 98550

I further certify that I hand-delivered a full copy of the Report of Proceedings as set forth in the Statement of Arrangements.


VINI SAMUEL, WSBA #27186
Attorney for Appellant