

No. 49496-5-II

STATE OF WASHINGTON COURT OF APPEALS, DIVISION II

---

*In re:*

NATACHA MCFARLAND (fka HARVEY)

Respondent,

and

CONRAD HARVEY,

Appellant

---

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT

---

OPENING BRIEF OF CONRAD HARVEY

---

Patrick W. Rawnsley, WSBA 34879

PWR LAW, PLLC  
1411 State Ave. NE, Suite 201  
Olympia, WA 98506  
(360)754-1222

*Attorney for Appellant*

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES.....	i-ii
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL.....	2
A. Assignments of Error.....	2
B. Issues on Appeal.....	4
III. STATEMENT OF THE CASE.....	4
A. Procedural Facts.....	4
B. Substantive Facts.....	6
IV. ARGUMENT.....	8
A. Standard of Review and Decision Under Review.....	8
B. The Commissioner Erred by Finding That a Substantial Change in Circumstances Had Not Occurred.....	9
C. The Term of Art “Adequate Cause” Is Not Applicable To Support Modification Proceedings And a Trial Award of Maintenance is Modifiable Consistent with RCW 26.09.170(1).....	14
D. The Court’s Contempt Finding Was Not Supported by Substantial Evidence And Utilized An Incorrect Legal Standard.....	15
E. The Court Erred in Awarding Attorneys Fees On Contempt Or In The Alternative, Awarded An Amount Without Findings.....	17
V. CONCLUSION.....	19

## TABLE OF AUTHORITIES

Washington Cases (In alphabetical Order)	<u>Page(s)</u>
<i>Bering v. SHARE</i> 106 Wn.2d 212, 220, 721 P.2d 918 (1986)	9
<i>In re Marriage of Coyle</i> 61 Wn.App. 653, 658, 811 P.2d 244 (Div. III, 1991)	9, 11
<i>Lambert v. Lambert</i> 66 Wn.2d 503, 508, 403 P.2d 664 (1965)	9
<i>Mahler v. Szucs</i> 135 Wn.2d 398, 434–35, 957 P.2d 632 (1998)	18
<i>Matsyuk v. State Farm Fire &amp; Cas. Co.</i> 173 Wn.2d 643, 659, 272 P.3d 802 (2012)	18
<i>Nordstrom, Inc. v. Tampourlos,</i> 107 Wn.2d 735, 744, 733 P.2d 208 (1987)	18
<i>In re Marriage of Ochsner</i> 47 Wn.App. 520, 524, 736 P.2d 292 (1987)	11
<i>In re Marriage of Rideout</i> 150 W.2d 337, 351, 77 P.3d 1174 (2003)	9
<i>SentinelC3, Inc. v. Hunt</i> 181 Wn.2d 127, 144, 331 P.3d 40 (2014)	18
<i>In re Marriage of Short</i> 125 Wn.2d 865, 876, 890 P.2d 12 (1995)	11, 15
<i>In re Marriage of Spreen</i> 107 Wn.App. 341, 346, 28 P.3d 769 (Div. II, 2001)	8, 9, 11, 12
<i>In re Marriage of Stern</i> 68 Wn.App. 922, 929, 846 P.2d 1387 (Div. I, 1993)	8

**Constitutional Provisions, Statutes and Court Rules**

RCW 7.21.030(3)	17, 18
RCW 26.09.160(2)(b)	16
RCW 26.09.170	19
RCW 26.09.170(1)	10, 11, 15
RCW 26.09.270	14
RCW 26.18.050	16
RCW 26.18.050(1)	15, 17
RCW 26.18.050(4)	16

## I. INTRODUCTION

Spousal maintenance is that flexible tool which is designed to rehabilitate a recipient spouse. Likewise, that flexibility must also cut both ways such that an obligated former spouse cannot be relegated to that of an indentured servant. In this instance, the provision of the parties' divorce decree providing for the award of spousal maintenance provides for that flexibility by stating that the award is modifiable and that in the event of certain circumstances, maintenance could be reviewed. The spousal maintenance provisions of the parties' decree were entered following a trial.

Mr. Harvey's forced separation from the military subsequent to the entry of the parties' decree of dissolution could not have been contemplated by the parties or the court. Moreover, the somewhat inartful wording of the decree providing for both modifiable maintenance and a review of maintenance upon two specific events was not helpful to the parties or the commissioner *pro tempore*. In short, the commissioner *pro tempore* conflated these two very separate and distinct provisions of the decree respecting the modification and review of maintenance spawning an aberrant ruling effectively construing the maintenance provision of the

parties' divorce decree as being that of modifiable spousal maintenance but limited to only certain circumstances/events. As this Court knows well, a trial court lacks the jurisdiction to enter a maintenance provision other than that of a modifiable award except in those circumstances where the parties contract between themselves for same. The result for Mr. Harvey is the continued imposition of a spousal maintenance award in an amount which approximated his net monthly income for a period of time until he reaches the age of 60 which would provide for spousal maintenance of 16 years for a 18 ½ year marriage. CP 59

## **II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL**

### **A. Assignments of Error**

1. The trial court erred by denying Mr. Harvey's petition for modification and/or termination of spousal maintenance.
2. The trial court erred by both failing to find that an unanticipated and substantial change in circumstances had occurred as to Mr. Harvey but also limited that inquiry to only that of the two specifically enumerated criteria contained in the maintenance provision of the parties' decree.
3. The trial court erred by finding that Ms. McFarland

accepted a voluntary termination of his military active duty service with the agreement that he would receive an honorable discharge but not immediately receive his normal military retirement/pension.

4. The trial court erred by finding that in consideration of the agreement by which he would retain his commissioned officer status, Mr. Harvey voluntarily agreed he would not receive any retirement/pension until January 2027 under the Army Reserve retirement plan.

5. The trial court erred by imposing an adequate cause standard for a petition seeking modification/termination of spousal maintenance and deny Mr. Harvey's petition for termination / modification of spousal maintenance based on same.

6. The court erred by finding Mr. Harvey knew months in advance that his status with the military was changing and took no action to address non-payment of maintenance. The court further erred in this regard by finding such conduct to constitute bad faith and finding Mr. Harvey in contempt for having failed to pay spousal maintenance as ordered for the month of June 2015 despite the first half of the maintenance payment was not due until Mr. Harvey's mid-month pay.

7. The court erred by awarding attorney fees based on its

erroneous contempt finding and the disparity in the incomes of the parties despite indicating that it was unable to segregate the fees incurred for contempt from that of modification.

**B. Issues on Appeal**

1. Must the orders subject to this appeal be vacated and this matter remanded back for further proceedings in light of the commissioner's failure to find that an unanticipated and substantial change in circumstances occurred with respect to Mr. Harvey? AE 1-5.

2. Must the orders subject to this appeal be vacated and this matter remanded back for further proceedings given the commissioner's erroneous limiting of the basis on which spousal maintenance could be modified despite the maintenance obligation being modifiable? AE 1-5.

3. Given Mr. Harvey's financial condition at the time of the contempt finding, must the Order on Contempt be vacated or, in the alternative, this issue be remanded back for further proceedings concurrent with that of rehearing of Mr. Harvey's petition for modification of spousal maintenance? AE 6.

4. Whether it was an abuse of discretion for the trial court to award \$7,000 in attorneys fees when it expressly stated it was unable to

segregate Ms. McFarland's attorneys fees expended for contempt proceedings from that of the modification proceeding? AE 7.

### **III. STATEMENT OF THE CASE**

#### **A. Procedural Facts**

The original dissolution of marriage proceeding was filed on June 23, 2010. CP 47. Some of the issues were resolved by agreement; the unresolved issues, including spousal maintenance, were tried before the Hon. Anne Hirsch on September 30, 2011. CP 47. The parties' Decree of Dissolution was entered on November 11, 2011; an Amended Decree of Dissolution was entered on September 20, 2012. CP 47, CP 5-20. The Amended Decree of Dissolution did not alter the spousal maintenance provision.

Mr. Harvey's Petition for Termination/Modification of Spousal Maintenance was filed on June 15, 2015. CP 30-32. Mr. Harvey's Amended Petition for Termination/Modification of Spousal Maintenance was filed on June 29, 2015. CP 89-91. The amended petition amended only the identification of the Amended Decree of Dissolution entered on September 20, 2012 as the order for which termination/modification was being sought. Ms. McFarland's Response to Petition was filed on August

25, 2015 and asserted, *inter alia*, that no substantial change in circumstances not contemplated at the entry of either decree had occurred. CP 109-111.

Significant discovery ensued and following multiple continuances, argument on Mr. Harvey's aforementioned petition was heard on June 10, 2016. The court issued a written opinion entitled "Court's Decision" on July 26, 2016. CP 200-206. Presentation of the Contempt Hearing Order was held on September 2, 2016 for which argument was heard and an order entered attached to which was the aforementioned Court's Decision of July 26, 2016. CP 207-217. The Order Denying Adequate Cause & Judgment for Spousal Maintenance was entered on September 9, 2016 attached to which was the aforementioned Court's Decision of July 26, 2016. CP 252-263. Mr. Harvey timely filed his Notice of Appeal on October 3, 2016.

**B. Substantive Facts.**

The parties' Amended Decree of Dissolution provided for spousal maintenance, *inter alia*, in the amount of \$3,500 per month. Mr. Harvey paid his spousal maintenance timely for the period of November 2011 through May of 2015 as both of the orders subject to this appeal provide

for judgments for back support beginning with the month of June 2015. CP 207 & 252. Further, all payments for spousal maintenance and child support were paid through DSHS by operation of payroll deduction. CP 81. In June of 2013, Mr. Harvey learned of the military's decision to either force him out of the service or take a reserve retirement. CP 40. Mr. Harvey sought reconsideration of the recommendation but was unsuccessful. CP 40. Mr. Harvey had four days advance notice of the board's refusal to reconsider its decision. CP 40. Between the time of the military's initial recommendation and its eventual denial of reconsideration, Mr. Harvey paid \$80,000+ in spousal maintenance. CP 40. Mr. Harvey was faced with separation from service without a pension or drawing a reserve pension; payments for which would commence on his 60<sup>th</sup> birthday occurring in January of 2027. CP 40-41.

Prior to the filing of his petition for termination / modification, appellant's gross monthly income from his service in the military was comprised of his base pay, BAH and BAS in the total amount of \$11,165.94. CP 41. Mr. Harvey was separated from military service and transferred to retired reserve status on May 2, 2015. CP 40 & CP \_\_\_\_.

Appellant had managed to obtain temporary employment with the

Washington State Department of Transportation on May 18, 2015 with a pay rate of \$31.81 per hour which approximates \$5,514.00 per month. CP 41 & CP \_\_\_\_\_. Appellant caused to be filed his petition for termination/modification on June 16, 2015. CP 30-32. At the time of the filing of the petition, appellant's monthly expenses were \$4,626.32; his spouse was unemployed at that time. CP 33 & CP 41.

During the course of the proceedings, discovery was had resulting in the severe limiting of access to financial information to be provided by Ms. McFarland. CP 150-151. Ms. McFarland alleged that she was suffering from a cognitive impairment in February of 2016, CP 175, yet no indication of any attempt to apply for or receive state or federal benefits was made by her. CP 177. An attempt for a full hearing was made on March 22, 2016 resulting only in the ordering of Mr. Harvey to produce his 2015 tax return. CP 182. On April 18, 2016, Mr. Harvey was terminated from his temporary position with WSDOT. CP 183. At that time, his income was \$2,392 per month from unemployment and VA benefits of \$1,680 per month. CP 184. Appellant's monthly living expenses were \$6,551.32 per month; his spouse had since obtained employment earning gross monthly income of \$5,833. CP 187, 189.

## IV. ARGUMENT

### A. Standard of Review and Decision Under Review

The standard of review on a petition for modification of support is substantial evidence and whether the trial court has made an error of law that could be corrected on appeal. *In re Marriage of Spreen*, 107 Wn.App. 341, 346, 28 P.3d 769 (Div. II, 2001); *citing In re Marriage of Stern*, 68 Wn.App. 922, 929, 846 P.2d 1387 (Div. I, 1993). “Substantial evidence supports a factual determination if the record contains sufficient evidence to persuade a fair-minded, rational person of the truth of that determination.” *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986). Absent an abuse of discretion, this court cannot reverse a finding as to whether a substantial change of circumstances has occurred with respect to a modification of support. *Spreen*, 107 Wn.App. at 346; *citing Lambert v. Lambert*, 66 Wn.2d 503, 508, 403 P.2d 664 (1965). “Abuse occurs where the court's decision is entered on grounds either manifestly unreasonable or clearly untenable”. *In re Marriage of Coyle*, 61 Wn.App. 653, 658, 811 P.2d 244 (Div. III, 1991).

With respect to contempt, the standard of review for the findings of fact is substantial evidence and this court will look to whether the findings

support the conclusions of law. *In re Marriage of Rideout*, 150 W.2d 337, 351, 77 P.3d 1174 (2003). While not expressly stated in *Rideout*, it necessarily follows that this court reviews the conclusions of law on an abuse of discretion standard.

**B. The Commissioner Erred by Finding That a Substantial Change in Circumstances Had Not Occurred**

Paragraph 3.7 of both decrees provides for in relevant part as follows:

“The husband shall pay maintenance to the wife in the amount of \$3,500.00/mo, payable on the first and second pay dates of each month via direct allotment from Mr. Harvey’s military pay to an account of Ms. Harvey’s choosing. This shall be paid by Mr. Harvey beginning November 2011 and shall be paid each and every month through the month in which the wife receives military retired pay...

**Maintenance shall be modifiable** and shall terminate upon any of the following: 1) husband’s retirement from the military as stated in this paragraph; 2) death of either party; or 3) wife’s remarriage.

Maintenance can be reviewed if a party shows a substantial change in circumstances given the following concerns: 1)

The start date of husband’s military retirement versus when his activity [sic] duty pay ends; and 2) the wife’s ability to

get medical coverage given her monthly income.” CP 7-8;  
*emphasis added.*

RCW 26.09.170 is the operative statute which provides for in  
relevant part:

“(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.” RCW 26.09.170(1).

As a preliminary matter, a trial court lacks jurisdiction to order a non-modifiable award of spousal maintenance absent an agreement of the parties consistent with RCW 26.09.070(7). *See e.g. In re Marriage of Short*, 125 Wn.2d 865, 876, 890 P.2d 12 (1995). The term “change in circumstances” has been oft and consistently referred to as the “financial ability of the obligor spouse to pay vis-a-vis the necessities of the other spouse.” *In re Marriage of Ochsner*, 47 Wn.App. 520, 524, 736 P.2d 292 (1987); *see also Spreen*, 107 Wn.App. at 346. The substantial change in

circumstances has to have been unanticipated by the court at the time of entry of the original order. *Id*; see also *Coyle*, 61 Wn.App. at 657; *Ochsner*, 47 Wn.App. at 524.

While it was argued before the commissioner that Mr. Harvey was aware of the investigation as of the time of the original trial, it is undisputed that Mr. Harvey exhausted all of his remedies to save his military career beginning with reconsideration of the board's June 2013 decision to separate him from military service. CP 40. Moreover, Mr. Harvey was given four days advance notice of the board's election to not reconsider its decision to separate Mr. Harvey from military service. CP 40. It is as equally unrefuted in this record that Mr. Harvey paid spousal maintenance through the month of May 2015 as the substantial change in circumstances did not occur until May 1, 2015 when Mr. Harvey was separated from military service and transferred into retired reserve status. CP 40 & CP \_\_\_\_\_. It would be incomprehensible to assert that either party could have contemplated a separation from military service as a result of the complaints that had been filed by respondent. CP 48.

The facts of this case are not terribly dissimilar to the facts and circumstances in *Spreen*. In *Spreen*, both parties were aware as of the entry

date of the decree that the wife suffered from mental health issues given that the wife's mental health issues had worsened since the entry of the decree. *Spreen*, 107 Wn.App. at 344.<sup>1</sup> Here, while there may have been facts known to the parties that an investigation and GOMOR had been issued by the time of the parties' divorce trial, Mr. Harvey's separation from military service did not occur until nearly four years later and only after significant efforts were made by Mr. Harvey to save his military career. There is ample evidence in the record to support a finding that an unanticipated and substantial change in circumstances had occurred as to Mr. Harvey notwithstanding the fact that it has never been argued by Ms. McFarland at the commissioner level that a 50%+ reduction in income was not a substantial change in circumstances.

Moreover, it would appear from a review of the commissioner's findings that he was of the misapprehension that Mr. Harvey elected to forego receipt of a full retirement/pension in consideration of an honorable discharge. Such was not the case. Filed under seal on June 16, 2015 concurrently with his petition for modification was Mr. Harvey's DD-214

---

1

It should be noted that appellant's counsel was a legal intern/paralegal working for Mr. Spreen's counsel during the litigation preceding, during and after the appeal cited to above and worked on same.

which clearly provides for him having only accrued 14 years, 10 months and 26 days of active duty service but 13+ years of inactive service. CP \_\_\_\_\_. The choice presented to Mr. Harvey was effectively no choice at all; either be separated from active duty with nothing given that he did not have 20 years of active duty service or be separated from active duty and take a reserve retirement that would not be collectible until January 2027. It necessarily follows that if Mr. Harvey were truly motivated, to the exclusion of all else, to inflict as much harm on Ms. McFarland as he possibly could he would have opted for immediate separation from active duty and opted to receive no retirement benefits whatsoever.

**C. The Term of Art “Adequate Cause” Is Not Applicable To Support Modification Proceedings And a Trial Award of Maintenance is Modifiable Consistent with RCW 26.09.170(1)**

In making his written decision, the commissioner indicated at CP 202 that “[t]he issue of adequate cause for both Petitions [sic] was not addressed.” Unlike the provisions of RCW 26.09.270 which requires a finding of adequate cause prior to further proceedings to modify a parenting plan or residential schedule, no such provision exists with respect to either a child support or spousal maintenance modification action. At best, this finding could have been construed as more of a *non-sequitur* and could

very well have constituted harmless error. What could have been a more plausible explanation would have the “adequate cause” be a supplanting of a finding with respect to whether an unanticipated substantial change of circumstances had occurred but clearly such was not the case as the commissioner expressly stated in his written decision, “Therefore the Court does not find adequate cause for the modification of the award of spousal maintenance and denies the petition filed by Ms. McFarland.” CP 205. Given this specific conclusion, the commissioner employed an erroneous legal standard and as such constitutes an abuse of discretion as it is both manifestly unreasonable and clearly untenable.

More importantly, the parties’ maintenance provision was expressly modifiable, CP 8, and therefore subject only to the provisions of RCW 26.09.170(1). *Short*, 125 Wn.2d at 875-76; RCW 26.09.170(1).

Accordingly, the commissioner employed an incorrect legal standard by limiting the scope of both modification and/or termination to that of the limited terms of the decree. Not only is this conclusion inconsistent with law but is inconsistent with the express terms of the decree itself.

**D. The Court’s Contempt Finding Was Not Supported by Substantial Evidence And Utilized An Incorrect Legal Standard.**

RCW 26.18.050 provides the statutory basis for which contempt can be sought for failure to pay support whether it be for child support or spousal maintenance by stating in relevant part:

“(1) If an obligor fails to comply with a support or maintenance order, a petition or motion may be filed without notice under RCW 26.18.040 to initiate a contempt action as provided in chapter 7.21 RCW. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support or maintenance order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause. ... (4) If the obligor contends at the hearing that he or she lacked the means to comply with the support or maintenance order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order...” RCW 26.18.050(1)&(4).

Unlike RCW 26.09.160(2)(b), RCW 26.18.050 does not provide for a bad faith element. Moreover, substantial evidence was offered by the obligor to show that he had started new employment on May 18, 2015 which was

approximately three weeks after learning that he was to be separated from active duty. CP 41. Additionally, appellant paid his spousal maintenance obligation for the month of May 2015 despite not having been employed for the bulk of the month. CP 41. His spouse was unemployed at that time as well. CP 41. Mr. Harvey indicated that he was able to collect enough money within 30 days of his separation from active duty to retain counsel to bring his petition for termination/modification. CP 74. His financial declaration indicated that he had only \$4,000 in cash on hand while operating at a net monthly deficit in June of 2015. CP 33-38. It is unclear as to what more Mr. Harvey could have done to have conserved assets that didn't exist or pay maintenance from funds that didn't exist notwithstanding the fact that Mr. Harvey did pay a portion of June 2015 spousal maintenance in the amount of \$550.00. CP 218-219. Accordingly, substantial evidence was not present so as to provide for a finding of contempt given his best efforts to comply with the maintenance provision of the parties' decree.

Lastly, the decree provides for maintenance to be paid twice per month on his first and second pay dates of each month. CP 7. Ms. McFarland's contempt motion was filed on June 9, 2016. CP 25. At the

time of the filing of the contempt motion, Mr. Harvey was a temporary employee of WSDOT; his pay dates were on the 10<sup>th</sup> and 25<sup>th</sup> of each month. CP 470-473. The first half spousal maintenance payment for the month of June 2015 was not yet past due and therefore a contempt finding was inappropriate.

**E. The Court Erred in Awarding Attorneys Fees On Contempt Or In The Alternative, Awarded An Amount Without Findings**

RCW 26.18.050 does not provide specifically for an award of attorney's fees but rather references RCW 7.21 *et seq.* RCW 26.18.050(1). RCW 7.21.030(3) provides for in relevant part: "(3) The court may... order a person found in contempt of court to pay a party for... any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees." RCW 7.21.030(3). With respect to an award of reasonable attorney's fees, discretionary or not, *SentinelC3, Inc. v. Hunt* provides for a most concise definition:

"In determining an award of attorney fees, the trial court may not rely solely on counsel's fee affidavits. *Mahler v. Szucs*, 135 Wn.2d 398, 434–35, 957 P.2d 632 (1998) *citing Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 744, 733 P.2d 208 (1987) *implied overruling on other grounds recognized in Matsyuk v. State Farm Fire & Cas. Co.*, 173

Wn.2d 643, 659, 272 P.3d 802 (2012)). Rather, it must supply findings of fact and conclusions of law sufficient to permit a reviewing court to determine why the trial court awarded the amount in question. *Id.* at 435, 957 P.2d 632 (record must explain, for example, whether the rates billed were reasonable).” *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 144, 331 P.3d 40 (2014).

Clearly here such is not the case: “The Petitioner is awarded \$7,000.00 in attorney fees. This is based on the finding of contempt of Ms. McFarland and the significant differential in incomes of the parties concerning Ms. McFarland’s Petition to Terminate/Modify Spousal Maintenance. The two issues are so intertwined that the Court is unable to distinguish the efforts devoted to each issue.” CP 205-206. Keeping in mind that the attorney’s fees award was reduced to judgment in the contempt order, CP 207, and that the attorney’s fees award is more than twice the amount of the judgment for June 2015 delinquent support (which was later satisfied by it having been subsumed into the Order Denying Adequate Cause and Judgment for Spousal Maintenance). CP 264-65 & CP 252.

Despite respondent’s counsel having filed a fees affidavit, CP 193-199, no effort was made on the part of the commissioner to make specific findings of fact as to the award of attorneys fees on contempt and as such

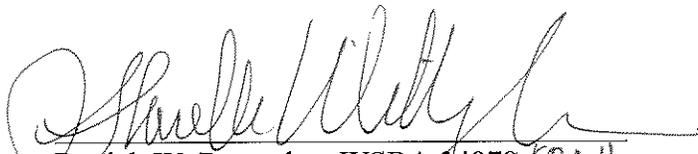
should be vacated and remanded for further proceeding to the extent this Court does not vacate the contempt finding in its entirety.

## V. CONCLUSION

After one year of debilitating litigation, Mr. Harvey has been left with a significant amount of attorneys fees expended along with crushing judgments for spousal maintenance arrears and attorney's fees. He has been forced out of his military career with only approximately 5 years left before he would have received a full retirement. He did as much damage control as he could under the circumstances and was able to at least secure a reserve retirement along with an honorable discharge. However, the commissioner's ruling which denied Mr. Harvey's petition for termination/modification of spousal maintenance ignored the plain language of the decree and was wholly inconsistent with RCW 26.09.170. The commissioner, despite the request of appellant's counsel, refused to make such additional findings differentiating between modification and review, whether there was a substantial change in circumstances or the like. CP 240-47. Lastly, the contempt finding and attendant award of attorneys fees was as equally inconsistent with the law and without the necessary findings to support same.

Appellant respectfully requests vacation of the Contempt Hearing Order (CP 207-17) and the Order Denying Adequate Cause & Judgment for Spousal Maintenance (CP 252-263) and remand back to the trial court for further proceedings with specific instructions.

DATED this 23<sup>rd</sup> day of June, 2017.

for   
Patrick W. Rawnsley, WSBA #34879, WSBA #21339  
PWR LAW, PLLC  
Of Attorneys for Appellant

### CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am a legal assistant for PWR LAW, PLLC, over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

- Email and first-class United States mail, postage prepaid, to the following:

Kimberly S. Reid  
The Law Offices of Kimberly S. Reid, PLLC  
2620 RW Johnson Road SW, Suite 212  
Tumwater, WA 98512

[kimreidlaw@gmail.com](mailto:kimreidlaw@gmail.com) and [catkrlaw@gmail.com](mailto:catkrlaw@gmail.com)

DATED this 23 day of June, 2017.

  
Tammie Pritchard

**PWR LAW, PLLC**

**June 23, 2017 - 10:56 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49496-5  
**Appellate Court Case Title:** In re the Marriage of: Natacha McFarland (fka Harvey), Respondent v. Conrad Harvey, Appellant  
**Superior Court Case Number:** 10-3-00892-7

**The following documents have been uploaded:**

- 7-494965\_Briefs\_20170623105152D2956327\_5001.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Harvey - No. 49496-5II - Opening Brief.pdf*

**A copy of the uploaded files will be sent to:**

- kimreidlaw@gmail.com

**Comments:**

Opening Brief

---

Sender Name: Tammie Pritchard - Email: tammie@pwr-law.com

**Filing on Behalf of:** Patrick William Rawnsley - Email: pat@pwr-law.com (Alternate Email: tammie@pwr-law.com)

Address:  
1411 State Ave NE Ste 102  
Olympia, WA, 98506  
Phone: (360) 754-1222

**Note: The Filing Id is 20170623105152D2956327**