

No. 50025-6-II

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

ANTHONY J.M. TABLAZON,

Appellant,

vs.

CRYSTAL H. TABLAZON,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
HONORABLE G. HELEN WHITENER

BRIEF OF RESPONDENT

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I. RESTATEMENT OF ISSUES

1) Whether the trial court abused its discretion in ordering the husband to pay the wife spousal maintenance for 10 years after a 27-year marriage when the husband is employable with greater financial resources while the wife is unable to work and cannot independently meet her own needs?

2) Whether the trial court abused its discretion in awarding the wife the family home when the wife may never receive any portion of the husband's retirement income because the husband opted to receive disability pay instead of military retirement pay, and without the home, she could become homeless?

3) Whether substantial evidence supports the trial court's finding that the wife's sister had loaned the parties \$50,000 after the trial court heard credible testimony regarding those loans and both parties acknowledged that the sister had financially assisted them in the past?

4) Whether substantial evidence supports the trial court's finding that the wife's parents had loaned the parties \$70,000 to make a down payment on the family home when the trial court was presented with consistent testimony regarding the purpose of those funds?

5) Whether the trial court abused its discretion in awarding the wife her attorney fees based on the wife's need and the husband's ability to pay, and due to the husband's repeated intransigent conduct, which included him telling multiple falsehoods and unnecessarily increasing the costs of litigation?

II. RESTATEMENT OF THE CASE

While assigning error to four of the trial court's twenty-one findings of fact, Anthony ignores the substantial evidence supporting all of the findings. The trial court's findings, attached as Appendix A, are thus verities on appeal. *Marriage of Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). The following statement of facts is based on the trial court's findings and the substantial evidence presented at trial that support those findings:

A. During the marriage, Crystal and Anthony borrowed money from her family, totaling \$120,000. The parties separated after 27 years of marriage when Anthony attacked Crystal, hospitalizing her.

Anthony and Crystal Tablazon married in 1989. (Finding of Fact ("FF") 4, CP 8) They had two children, both now adults. (RP 60; *see also* FF 18, CP 11) During most of the marriage Anthony was in the Army and often deployed overseas; Crystal was responsible for managing the household finances, paying the mortgage, bills, and debts. (RP 61-62, 74, 95-96)

In 2003, the parties purchased their home in Gig Harbor with a \$70,000 down payment borrowed from Crystal's parents, who live nearby. (FF 11, CP 10; CP 25; RP 34, 39, 143) In 2012, Crystal's sister Kailani loaned the parties \$30,000 to pay off a home equity loan on their Bremerton rental property, and an additional \$20,000 to pay off their BMW. (FF 11, CP 10; RP 55-56, 76, 101, 103) In January 2015, the parties sold the Bremerton rental property, and Crystal transferred \$130,000 from the proceeds to her own bank account and used that money to repay her sister and her parents in May 2015. (FF 11, CP 10; RP 75, 102-03, 316; CP 21)

Crystal finally left the marriage after Anthony struck her in the head, pinned her down, strangled her, and threatened Crystal with a knife, sending her to the hospital and causing permanent ringing in her ears in September 2015. (CP 2; RP 66-68; Ex. 29) Crystal commenced this dissolution action in December 2015. (CP 1)

B. Crystal stayed home during the marriage to care for the parties' two children while Anthony was deployed. She last worked in 2013 as a hairdresser, but has not worked since due to medical problems.

Crystal has a high school education. (RP 62) She worked for a number of years as a hairstylist earning low wages, but spent most of the marriage as a homemaker, raising the parties' two children while Anthony was away on deployment. (FF 3, CP 7; RP 61-62, 96;

see also CP 17; RP 312) When Crystal was working, the most she ever earned was \$28,593 a year (gross). (*Compare* Ex. 39, *with* Exs. 1, 6, 35, 40) The last time Crystal worked was in November 2013, and she has earned no income since. (RP 63; Exs. 2, 3).

Crystal is unable work due to numerous injuries and medical problems — Crystal has chronic pain in multiple areas of her body, including a torn rotator cuff, a neck injury, problems with her lower back, and arthritis. (FF 3, CP 7; RP 65-66, 161-62, 170) She also suffers from frequent severe migraines. (RP 43-44, 68-69) Due to her medical problems, Crystal is unable to work in her only trained profession because hairdressers must stand all day, “working with [their] hands and tools.” (RP 62)

Crystal’s clinical psychologist Sharon Hsu, Ph.D. testified that, in addition to her physical limitations, Crystal struggles with several mental health disorders, including anxiety, “Major Depressive Disorder, Recurrent Episodes as well as Post-Traumatic Stress Disorder” (“PTSD”), nightmares, and a “history of suicidal ideation.” (RP 69-70, 159-61) Dr. Hsu explained that Crystal lacks the “essential skills to be successful in the workplace” because her mental disorders impair Crystal’s “cognitive functioning” — Crystal has intrusive thoughts, flashbacks, problems with her memory, a

diminished ability “to think” or “concentrate on something for ten minutes,” and trouble “analyzing or finding solutions for problems, [or] learning new tasks.” (RP 164-65, 167; *see also* RP 41-42, 72, 178; Ex. 19)

Currently, Crystal is treating these medical problems with her primary care physician, a neurologist, a psychiatrist, a psychologist, is participating in dialectical behavioral therapy (“DBT”), and occasionally attends a YWCA domestic violence support group. (RP 70, 106-07, 179) Anthony admitted at trial that if “a doctor stated that Crystal could not work,” Anthony would agree with the doctor’s conclusion. (RP 201)

C. Anthony was voluntarily unemployed at the time of trial.

- 1. Anthony, a college graduate, is a U.S. army veteran with extensive training in security. After retiring from the army, Anthony worked as a civil contractor.**

For most of the marriage, Anthony served in the United States Army and was often deployed overseas for extended periods of time, usually six months to a year. (FF 3, CP 7; RP 62, 128-29) After retiring from the Army in 2006, Anthony worked as a civil contractor, again traveling overseas to Iraq and Afghanistan. (FF 3, CP 7; CP 17-18; RP 95) In 2014, Anthony returned home and

attended classes at DeVry University, receiving a degree in management. (FF 3, CP 7; CP 17; RP 140, 312)

Towards the end of the marriage and at the time of trial Anthony chose not to work. (CP 26; RP 321) Anthony claimed that, due to his violation of a domestic violence no-contact order, he was “not [currently] employable” in his preferred field as he was not able to get the necessary security clearance. (RP 139-40) Anthony also claimed that he was not currently working because he has PTSD and is designated by the military as 100% disabled. (RP 207-08) However, on appeal Anthony does not assign error to the trial court’s finding that he is “employable.” (FF 3, CP 7; *see also* CP 19-20; RP 314-15; Ex. 5) (App. Br. 1)

2. Anthony’s income, gleaned from the few documents he produced, is sufficient to meet his needs while making maintenance payments.

Anthony elected to forego his military retirement pay and, instead, claims to receive \$5,785.03 as his monthly disability income. (RP 192-96, Ex. 4 at 1; Ex. 5 at 1-6; Ex. 17 at 3. At trial, Anthony testified that Crystal is entitled to half of his retirement pay, but understood that because he receives disability pay in lieu of retirement pay, federal law prohibits the court from allotting to Crystal a portion of his disability income. (RP 194-95; *see also* 10 U.S.C. § 1408(a)(4)(A)).

Despite an order compelling responsive discovery, Anthony never fully responded to Crystal's requests for his banking records. Nor did he file a financial declaration for trial. (See RP 190-91, 239, 253, 323-24; CP 29; Ex. 21 at 8 (Request for Production No. 10 and No. 11); Ex. 26. The only financial documents Anthony produced were account statements from December 30, 2015 through September 2016. (See Ex. 14; Ex. 15; Ex. 22 at 9) These statements reveal that Anthony deposited \$12,008.14 in a savings account in December 2015 and January 2016 and regularly made deposits that *exceeded* his declared income of \$5,785.03, took out large cash withdrawals, and made substantial credit card payments in these same accounts, between January and September 2016:

<u>Month</u>	<u>Total Deposits</u>	<u>Cash Withdrawals</u>	<u>Credit Card Payments</u>
January ¹	\$7,766.77		\$1,500
February	\$5,291.40		
March	\$6,083.70	\$2,100	\$4,318.63
April	\$7,012.10	\$1,100	\$586.66
May	\$5,291.40		\$575.37
June	\$5,291.40	\$220	\$615.68
July	\$4,797.54	\$700	\$500.36
August	\$5,584.27	\$760	\$550
September	\$751	\$600	\$520

¹ The January statement includes a deposit made on December 30, 2015. See Ex. 15 at 2.

(See Ex. 14 at 1-2, 4-5; Ex. 15 at 2, 6, 11, 14, 15, 18-19, 22, 27-28, 31, 33, 35-37; see also RP 252-61)

Anthony never provided any explanation at trial regarding his higher-than-reported income, his large cash withdrawals, or his ability to make substantial credit card payments. (See RP 252-61)

D. After a 3-day trial, the trial court divided the parties' property and awarded spousal maintenance to Crystal.

- 1. The trial court awarded spousal maintenance to Crystal after finding that she is unable to work, while Anthony is employable and has the ability to pay maintenance.**

The trial court awarded Crystal \$2,647.70 in monthly spousal maintenance, finding “that there is a need by Crystal Tablazon and that Anthony Tablazon has the ability to pay.” (FF 13, CP 11; CP 26-27, 37) Supporting this award, the trial court made an unchallenged finding that Anthony was capable of employment, finding that Anthony had “increase[ed] his ability to earn substantially more than what was documented during the time frame that [had been provided]” by earning a management degree. (FF 3, CP 7; CP 20, 26; RP 315, 321) The trial court also made an unchallenged finding that Crystal “is not employable at this time” and “may not be able to work as a hairdresser again,” but that she “may be employable in the

future.” (FF 3, CP 7; CP 26; RP 313-14) The court accepted Dr. Hsu’s testimony that “one year of DBT treatment, at a minimum, would be required” and found that whether or not Crystal was “employable in the future would be determined after she completes one year of DBT treatment, and that is not guaranteed.” (CP 19; RP 314)

2. The trial court awarded the family home to Crystal because Anthony chose to forego his military retirement to take disability pay, which cannot be divided.

The trial court also awarded Crystal the family home, valued at \$380,000 to \$385,000, subject to a \$105,000 mortgage, which Crystal must pay. (CP 25, 34-35; RP 201, 320; Ex. 32) In support of the award of the house to Crystal, the trial court noted that, in addition to Crystal not being able to work, Crystal would have no retirement income because — as “is his right,” Anthony “may choose never to claim his retirement,” and it thus was “something the Court cannot factor in as a real asset being given to Mrs. Tablazon at this juncture.” (CP 24; RP 319)

3. The trial court found that Crystal properly paid the community’s debts to her family.

The trial court found that the loans from Crystal’s sister Kailani Kim, totaling \$50,000, and the \$70,000 loan from Crystal’s parents were community debts. (FF 11, CP 10) The trial court

determined that the \$130,000 used to repay the loans had been “received by the community and has now been spent” in satisfaction of the community debt. (FF 11, CP 10)

The trial court made a finding “that Kailani Kim was credible in her testimony” and that Crystal’s family “operated very informally in regards to funds and finances; and, therefore, money was exchanged without any paperwork or agreement which tends to happen in a close-knit family.” (FF 11, CP 10; CP 21; RP 316) The trial court observed that “both parties testified [that Kailani] had assisted this family” financially. (CP 21; RP 316; *see, e.g.*, RP 145: Anthony testified that occasionally Ms. Kim would give him “a hundred dollars or something like that” and say “[h]ey brother, this is . . . for you.”)

Anthony never disputed that the parties received \$70,000 from Crystal’s parents, which was used as a down payment on the Gig Harbor home. (*See* RP 56-57, 74) The only dispute was over Crystal’s interrogatory answer that the money was an “early inheritance.” (RP 112) However, at trial Crystal explained that she had been confused by the question and hadn’t known how to explain herself. (RP 112-13) “Based on the testimony the Court heard,” the trial court found that the \$70,000 was money that “Crystal

Tablazon’s parents loaned the parties . . . as a down payment on their Gig Harbor residence.” (FF 11, CP 10; CP 21-22; RP 316-17)

The court ultimately rejected Anthony’s claim that Crystal had “secreted” the \$130,000 she had used to pay back these community debts. The court accepted Crystal’s testimony that, as the one “that had been handling the family finances,” Crystal wanted to make sure that her sister and parents would “be paid back some of the money she had loaned them.” (CP 21; RP 316)

4. The trial court awarded Crystal half of her fees based on her need and his ability to pay and intransigence, which unnecessarily increased Crystal’s attorney fees.

The trial court awarded Crystal half of her attorney’s fees, \$28,585.49. (CP 33) Contrary to Anthony’s claim on appeal, the award was not based solely on his intransigence, but because the trial court found Crystal “needs help to pay [her] fees and costs,” and Anthony “has the ability to pay” – a finding that he does not challenge, thus is a verity on appeal. (FF 14, CP 11; *see also* CP 28, 33; RP 322-23); *Brewer*, 137 Wn.2d at 766.

The trial court provided two specific examples of Anthony’s intransigence in its oral ruling, but acknowledged that there were many instances “that came up during this trial.” (CP 29; RP 324) First, the court noted that “[t]o this date, this Court does not have

full financial disclosure from Mr. Tablazon which makes it extremely difficult for the Court to assess some of the divisions that have been made.” (CP 28-29; RP 323-24; *see, e.g.*, RP 190-91, 239, 253, 255)

Second, the court discussed the problems Anthony had caused when he violated a court order directing him to make temporary spousal-support payments, via direct deposit into Crystal’s account. (See Ex. 24 at 2) After making five support payments, Anthony, without permission from the court or Crystal, told the bank to discontinue the direct deposits and instead transferred his maintenance payments using a “Popmoney” account. (Ex. 31 at 1; RP 88, 212) In order to retrieve the money within the allotted 10 days, Crystal had to set up her own Popmoney account. (RP 88-89; *see also* Ex. 31) Crystal was forced to bring a motion for contempt to reinstate the court-ordered direct deposits. (CP 185-91) The trial court found that Anthony “was not forthright with the court” when he stated in both his declaration and testimony that the bank had chosen to use the Popmoney account. (CP 29-30; RP 325; *see* RP 148, 236-37; Ex. 43 at 1) The trial court noted that the Popmoney account was just “one of a number of those [intransigence] issues I’ve seen.” (CP 30; RP 325)

III. ARGUMENT

A. The ten-year spousal maintenance award was well within the trial court's discretion in light of Crystal's contributions to the marriage, her poor health, and current unemployability

Trial courts enjoy broad discretion in awarding spousal maintenance. *Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). The most important requirement is that such an award be “just.” RCW 26.09.090; *Washburn*, 101 Wn.2d at 177. And after a long-term marriage such as this one, any maintenance award also should equalize the parties’ standard of living for an “appropriate period of time.” *Marriage of Wright*, 179 Wn. App. 257, 269, ¶ 23, 319 P.3d 45 (2013) (quoting *Washburn*, 101 Wn.2d at 179), *rev. denied*, 186 Wn.2d 1017 (2014).

Here, the trial court’s award of ten years of spousal maintenance is well within its broad discretion. The trial court thoroughly considered the flexible, non-exhaustive factors from RCW 26.09.090, which include the “financial resources of the party seeking maintenance,” “ability to meet his or her needs independently,” “age, physical and emotional condition,” and the time necessary to acquire sufficient education or training” necessary to find appropriate employment.

Other than a block quote from RCW 26.09.090(a)-(f), Anthony points to no authority in support of his opposition to the 10-year maintenance award. (See App. Br. 8-9) The amount and duration of the maintenance award is reflective of Crystal's current and future financial needs and it respects Anthony's ability to pay. See *McNair v. McNair*, 64 Wn.2d 283, 284-85, 391 P.2d 549 (1964).

1. Crystal has great need for the spousal maintenance award because she cannot work and has no other income.

According to the trial court's undisputed finding, Crystal is not able to support herself — other than her support payments, Crystal has no income, and cannot work. (FF 3, CP 7; RP 63; Exs. 2, 3) Contrary to Anthony's claim that Crystal "has the ability to work, but has chosen not to" (App. Br. 9), the trial court made an undisputed finding that Anthony "chose not to work" and that Crystal is not currently employable. (FF 3, CP 7; CP 18-20, 26; RP 313-15) Crystal is not able to support herself due to her many physical ailments, PTSD, Major Depressive Disorder, and the resulting cognitive-functioning impairments. (FF 3, CP 7; see, e.g., RP 43-44, 65-66, 68-69, 70, 72, 159-62, 164, 167, 170, 178) Before the possibility of her future employability can be assessed, Crystal needs to participate in DBT for one year "at a minimum." (CP 19, RP

314; *see also* FF 3, CP 7 (finding that, although Crystal is participating in treatment, “more work is needed”)) Even then, as Dr. Hsu testified, one year of DBT treatment does “not guarantee[]” that Crystal will be able to work. (CP 19; RP 314) All of this evidence supports the trial court’s determination that Crystal is not able to support herself and, therefore, has a grave need for the ten-year maintenance award.

2. Anthony, who can work, has the means and ability to support himself while paying maintenance.

In contrast to Crystal, Anthony’s work history and qualifications paint a very different picture regarding his employability and ability to support himself. Anthony enjoyed a long career in the military and then gained further professional experience as a civil contractor. (FF 3, CP 7; CP 17-18, 24-25; RP 128, 208, 270, 319-20) He then attended school, earning a management degree which “increase[d] his ability to earn substantially more than what was documented.” (FF 3, CP 7; CP 26, RP 321) Adding to his ability to find gainful employment and support himself, Anthony is bilingual and has experience with “training programs, customer service, operations and project management, support management.” (RP 206; Ex. 10) Moreover, Anthony’s “former employer . . . would

want him back as soon as possible if he did not have the no-contact order in place” – an order that the court declined to enter. (FF 15, CP 11; CP 20, 27; RP 315, 322) None of these findings regarding Anthony’s employability are disputed, and are verities on appeal. *Brewer*, 137 Wn.2d at 766.

Even if Anthony’s claims about his unemployability were true, unlike Crystal, Anthony has a steady income stream. (RP 197, 252-61; Ex. 14, 15) The few financial records Anthony provided indicate that he has other undisclosed income sources and can afford to make large credit card payments and cash withdrawals. *See supra* table at p. 7. All of this evidence supports the trial court’s determination that Anthony is able to support himself while making necessary maintenance payments.

The trial court carefully considered the requirements of RCW 26.09.090, “[t]aking into account [Anthony’s] age, his education, and his training and contrasting that with [Crystal’s] age, education and training, coupled with their ability to work, spousal maintenance is required; but it has to be a just award.” (CP 26; RP 321)

B. The trial court’s distribution of property and debts is just, equitable, and supported by substantial evidence.

The trial court appropriately exercised its discretion when it awarded to Crystal the Gig Harbor house and characterized the \$50,000 and \$70,000 loans as community debt that had been repaid with community funds. Because “[t]he trial court is in the best position to assess the assets and liabilities of the parties,” the trial court has “broad discretion” to determine what is just and equitable based on the circumstances of each case. *Brewer*, 137 Wn.2d at 769. “Just and equitable distribution does not mean that the court must make an equal distribution.” *DewBerry v. George*, 115 Wn. App. 351, 366, 62 P.3d 525, *rev. denied*, 150 Wn.2d 1006 (2003). Rather, fairness based on the circumstances of the marriage is the essence of a just and equitable property distribution. *Marriage of Larson & Calhoun*, 178 Wn. App. 133, 138, ¶ 10, 313 P.3d 1228 (2013), *rev. denied*, 180 Wn.2d 1011 (2014).

In addition to the factors from RCW 26.09.080, which include the “economic circumstances of each spouse,” trial courts must consider all of the circumstances of the marriage, the parties’ future needs, and their relative “earning potential.” RCW 26.09.080; *Marriage of Rockwell*, 141 Wn. App. 235, 243, ¶ 12, 170 P.3d 572,

rev. denied, 163 Wn.2d 1055 (2008). A property division can only be reversed on appeal “if there is a manifest abuse of discretion.” *Larson/Calhoun*, 178 Wn. App. at 138, ¶ 11. Abuse of discretion occurs only when the trial court’s decision is “manifestly unreasonable or based on untenable grounds or untenable reasons.” *Larson/Calhoun*, 178 Wn. App. at 138, ¶ 11. Consistent with RCW 26.09.080, the trial court diligently ensured that the property distributions, supported by considerable credible evidence, were “just and equitable.” (*See, e.g.*, CP 17, 23; RP 311, 318)

1. **Awarding Crystal the house was a proper use of discretion considering Crystal’s connection to the house, its proximity to her family, and her inability to work.**

In light of all the circumstances of the marriage, it was an appropriate use of discretion for the trial court to award Crystal the family home. The trial court was legitimately concerned that, because Anthony opted for disability income in lieu of military retirement pay, Crystal, who is undisputedly “unemployed or unemployable,” “finds herself without a retirement, [and] possibly homeless.” (CP 23; RP 318; *see also* FF 3, CP 7) On the other hand, it is uncontested that Anthony is employable and capable of independently supporting himself, which includes finding a place to live. (FF 3, CP 7; *see discussion supra* at 15)

Also supporting Crystal's receipt of the family home are her "substantial" ties to that house — the home is where Crystal raised the children "substantially by herself" while Anthony was deployed and is across the street from Crystal's sister's house; Crystal's parents live just two streets away. (CP 25; RP 320; see RP 34, 39) The court noted that while the house has "sentimental value" to Anthony, the house "cannot be more of a sanctuary to him . . . than it can be to [Crystal]." (CP 25; RP 320) Considering the factors from RCW 26.09.080, the past and present circumstances of the marriage, along with the parties' future needs and relative earning potential, the trial court's decision to award Crystal the Gig Harbor home is an appropriate use of its discretion.

2. Substantial evidence supports the trial court's finding that the loans for \$50,000 and \$70,000 constituted community debt.

The trial court properly rejected Anthony's argument that the \$130,000 used by Crystal to pay debts owed by the community to her family should be credited to her as an asset because she "secreted" those funds. (App. Br. 7-8) "If one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial." *White v. White*, 105 Wn. App. 545, 549, 20 P.3d 481

(2001). Therefore, the \$130,000 was no longer “before” the trial court for distribution.

In any event, the trial court found that the \$50,000 and \$70,000 loans were community debts that Crystal had properly repaid with community funds. In doing so, rejected Anthony’s claim that the \$130,000 was available for distribution. Factual findings supporting the property characterization may only be reversed “if they are not supported by substantial evidence.” *Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002), *rev. denied*, 148 Wn.2d 1023 (2003). “Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Griswold*, 112 Wn. App. at 339 (quoting *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)).

a. The \$50,000 loan.

Both Crystal and Kailani Kim testified that Kim had loaned the parties \$50,000. (RP 55, 76, 101, 103; *see also* FF 11, CP 10; RP 51) The court specifically found that Ms. Kim “was credible in her testimony.” (FF 11, CP 10; RP 316) “Credibility determinations are for the trier of fact.” *Marriage of Zier*, 136 Wn. App. 40, 48, ¶ 23, 147 P.3d 624 (2006) (Court of Appeals would not second guess the

trial court's finding that the wife was not credible), *rev. denied*, 162 Wn.2d 1008 (2007). In addition to finding Ms. Kim credible, the trial court noted that Ms. Kim's statements regarding the loans were supported by testimony from both Crystal and Anthony — "both parties testified that [Ms. Kim] had assisted this family." (FF 11, CP 10; CP 21; RP 316) The court also accepted Ms. Kim's explanations regarding the lack of documentation for the loans, finding that Crystal's family "operated very informally in regards to funds and finances; and, therefore, money was exchanged without any paperwork or agreement which tends to happen in a close-knit family." (CP 21; RP 316).

b. The \$70,000 loan.

Anthony claims that the \$70,000 was an "early inheritance" as per Crystal's discovery responses. (RP 112; App. Br. 2) However, Crystal's explanations at trial that her confusion caused her to accidentally make an incorrect discovery response is supported by the record — as Dr. Hsu testified, Crystal suffers from impaired "cognitive functioning" that diminishes her ability to "generally understand what people are saying," to analyze and learn new tasks, and "to think or concentrate, making her more indecisive." (RP 164-65) Furthermore, that the \$70,000 was a loan and not an early

inheritance is supported both by Ms. Kim’s credible testimony and by Crystal’s consistent statements regarding those funds. (*See* RP 57, 74, 112; *see* FF 11, CP 10 (finding that Crystal’s parents loaned the parties the sum of \$70,000 as a down payment on their Gig Harbor residence”))

c. The \$130,000 repayment.

Substantial evidence supports the trial court’s determination that the \$130,000 constituted community funds that had been spent in satisfaction of community debt. (FF 11, CP 10) Notably, Anthony testified that he had given Crystal the money “because back then, we were still in [sic] good terms.” (RP 250-51) Anthony’s testimony is consistent with the court’s finding that Crystal had repaid a community debt with the funds, as Crystal “was the one that had been handling the family finances.” (FF 11, CP 10; CP 21; RP 316; *see also* RP 95-96, 99; RCW 26.12 [the statute that allows either party to manage community funds]) For these reasons, the court did not abuse its discretion in declining to offset Crystal’s property award with the \$130,000, which had been “received by the community,” because that money had been used to repay community debts. (FF 11, CP 10)

C. The trial court was well within its discretion when it awarded Crystal half her fees.

In an undisputed finding, the trial court found that an award of attorney fees to Crystal was warranted under RCW 26.09.140 because she has the need and Anthony has the ability to pay her attorney fees. (FF 14, CP 11; CP 28; RP 322-23) This alone supports the trial court's award of half of Crystal's attorney fees, regardless of Anthony's challenge to the trial court's secondary basis for awarding fees to Crystal due to Anthony's intransigence. In any event, overwhelming evidence supports the trial court's award based on Anthony's intransigence. *See supra* at 11. In making its fee-award determination, the trial court explicitly followed the directives from *Marriage of Greenlee*, 65 Wn. App. 703, 829 P.2d 1120, *rev. denied*, 120 Wn.2d 1002 (1992) and RCW 26.09.140. (*See* CP 28-29; RP 323)

Attorney fees may be awarded if "additional legal fees were caused by one party's intransigence." *Greenlee*, 65 Wn. App. at 708-09. Awarding fees based on intransigence is appropriate when a party "engaged in foot-dragging and obstruction" "or simply when one party made the trial unduly difficult and increased legal costs by his or her actions." *Greenlee*, 65 Wn. App. at 708. "If intransigence is established, [courts] need not consider the parties' resources."

Marriage of Wallace, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002), *rev. denied*, 148 Wn.2d 1011 (2003).

Alone, the two examples of Anthony's conduct that were discussed by the court are sufficient to support fee awards based on Anthony's intransigence. (See CP 29; RP 323-24: Anthony never provided the court with a "full financial disclosure" which made it "extremely difficult for the Court to assess some [property] divisions"; CP 29-30; RP 324-25: Anthony "was not forthright with the court" when he stated in both his declaration and trial testimony that the bank had chosen to use the Popmoney account) However, as the trial court noted (CP 29; RP 324; *see also* CP 30; RP 325), there were many other instances of Anthony's intransigence "that came up during this trial:"

- In a signed declaration Anthony stated that he had been "medically discharged from the U.S. Army in 2006." Anthony admitted at trial that he had not told the truth and that, instead, he had voluntarily retired. (*Compare* Ex. 41 at 1, *with* RP 222-23)
- Although claiming PTSD prevented him from working, Anthony later admitted that, after retiring from the military, his PTSD had *not* prevented him from working in the Middle

East as a private contractor from 2006 until 2014. (RP 207-08; *see also* CP 19-20)

- Anthony initially claimed that he had to leave his job as a civil contractor because the job “became too much for me physically and mentally, and I was unable to continue working in that position.” Anthony then testified that he had actually left his job “because . . . of what’s happening with my family back home.” (*Compare* Ex. 41 at 2, *with* RP 223-24)
- Although testifying that he had to stop working because of his family problems, when asked if family problems were why he couldn’t work, Anthony answered “No. I could work.” (*Compare* RP 270-71, *with* RP 278-79)
- Anthony stated in a signed declaration that he had to leave his position “as an operator at Bangor” because the job “became too much for [him],” that he has “not sought employment since,” and “[a]t this point, employment is just not possible.” Anthony later admitted that these were not true statements. (*Compare* Ex. 41 at 2, *with* RP 225)
- Anthony refused to fully respond to Crystal’s discovery requests regarding his banking statements. Anthony never provided Crystal with the requested records, despite an order

compelling production. (RP 190-92, 253, 255; Ex. 21 at 8; Ex. 26; Ex. 27 at 2)

- Despite a court order prohibiting the parties from changing the beneficiaries on any insurance policies, Anthony removed Crystal from his Survivor Benefit Plan, without permission, refused to provide proof that Crystal had been reinstated as his beneficiary, and gave conflicting testimony regarding the same. (*Compare* Ex. 23 at 3, *with* RP 73, 189-90, 209-11, *and* RP 234-35)

Anthony claims that the attorney fee award is not just because of a finding that Crystal had opened her own account “without her husband’s knowledge.” (CP 30; RP 325) However, the court also found that the money that Crystal deposited into her account had been used to pay community debts. (FF 11, CP 10: “the court has addressed and accounted for the sum of \$130,000, which was received by the community and has now been spent”) Anthony’s repeated intransigent conduct, which unnecessarily increased the time and costs of litigation, justified the award of a portion of Crystal’s fees.

D. This Court should award Crystal her fees on appeal.

Anthony's intransigence at trial, alone justifies awarding Crystal fees on appeal. *See Wallace*, 111 Wn. App at 710 (wife was entitled to attorney fees on appeal due to the husband's demonstrated intransigence at trial). A fee award is also justified based on Crystal's need and Anthony's ability to pay. RCW 26.09.140. Crystal will comply with RAP 18.1(c).

IV. CONCLUSION

This Court should affirm and award Crystal her fees on appeal.

Dated this 12th day of October, 2017.

LAW OFFICE OF JEFFREY A.
ROBINSON

By: _____

Jeffrey Robinson
WSBA No. 8294

SMITH GOODFRIEND, P.S.

By: _____

Catherine W. Smith
WSBA No. 9542
Duffy G. Romnor
WSBA No. [pending]

Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 12, 2017, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

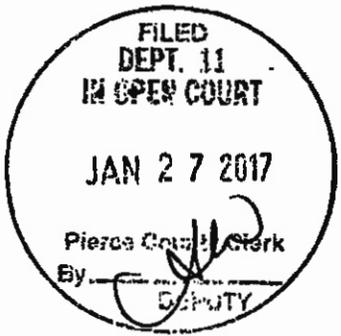
Office of Clerk Court of Appeals Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Jeffrey Robinson 4700 Point Fosdick Dr. NW, Suite 301 Gig Harbor, WA 98335-1706 (253)851-2868 jeff@jrobinsonlaw.com dalong@jrobinsonlaw.com Debbie@jrobinsonlaw.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Brett Purtzer Hester Law Group, Inc., P.S. 1008 South Yakima Ave., Suite 302 Tacoma WA 98405 brett@hesterlawgroup.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 12th day of October, 2017.



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Superior Court of Washington, County of PIERCE

In re the marriage of:

Petitioner:

CRYSTAL TABLAZON

And Respondent:

ANTHONY TABLAZON

No. 15-3-04714-0

Findings and Conclusions about a
Marriage
(FNFCL)

Findings and Conclusions about a Marriage

1. Basis for findings and conclusions

Court hearing on: January 10, 2017, where the following people were present:

- Petitioner
- Respondent
- Petitioner's Lawyer
- Respondent's Lawyer
- Other:
 1. Sharon Hsu, PhD, Petitioner's Psychologist
 2. Kailani Kim, Petitioner's sister

The Court makes the following findings of fact and conclusions of law:

2. Notice

The Respondent has appeared in this case, or has responded to or joined the *Petition*.

3. Jurisdiction over the marriage and the spouses

At the time the *Petition* was filed,

The Petitioner lived in Washington State.

The Respondent lived in Washington State.

The Petitioner and Respondent lived in this state while they were married, and the Petitioner still lives in this state or is stationed here as a member of the armed forces.

Other:

This is a 27 year marriage that is irretrievably broken.

Anthony Tablazon is 51 years of age and Crystal Tablazon is 48 years of age.

Anthony Tablazon enlisted in the U.S. Army and retired in 2006. Thereafter, he was employed as a private contractor for the State Department from 2006-2014. In 20014, he returned to school obtaining a degree from DeVry University with a 3.2 GPA.

Crystal Tablazon has either been employed as a hairdresser or as a homemaker, predominantly in more recent years a homemaker.

Both individuals have PTSD. Anthony Tablazon has been diagnosed with PTSD due to his military combat duties and is now 100% disabled but employable.

Crystal Tablazon has been diagnosed with PTSD amongst other mental disorders identified by her treating psychologist, Dr. Sharon Hsu. Crystal Tablazon is not employable at this time. She may be employable in the future. Crystal Tablazon is being treated to address emotional stability, social needs and financial needs. She is now taking the first steps of regaining her emotional stability and is engaging in what was deemed meaningful activities. She has been involved in the YWCA DV support group. However, in regard to her social situation and her financial situation, more work is needed.

Anthony Tablazon is 100% disabled but is, in fact, employable as recent as January 2017. There was no testimony to indicate the condition has changed. The Court will make a fair and equitable distribution of the assets and liabilities of the parties. The distribution of assets and liabilities is set forth in the Verbatim Transcript of Proceedings attached hereto as **Exhibit "A"** and incorporate herein by this reference.

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The Survivor Benefit Plan (SBP) for Mr. Tablazon's military retirement needs to be fully reinstated with proof filed with the Court and provided to her attorney within 30 days of the entry of the Decree of Dissolution to avoid contempt action. Further, Mr. Tablazon is to continue to make payments on the Survivor Benefit Plan and to keep the plan current.

Crystal Tablazon is awarded fifty-percent (50%) interest in Anthony Tablazon's military retirement which shall be transferred pursuant to a Military Retired Pay Order to safeguard Crystal Tablazon's fifty-percent (50%) interest in the retirement.

Conclusion: The court **has** jurisdiction over the marriage.

The court **has** jurisdiction over the Respondent.

4. Information about the marriage

The spouses were married on July 8, 1989 at Port Orchard, WA.

5. Separation Date

The marital community ended on September 19, 2015. The parties stopped acquiring community property and incurring community debt on this date.

6. Status of the marriage

Divorce - This marriage is irretrievably broken, and it has been 90 days or longer since the *Petition* was filed and the *Summons* was served or the Respondent joined the *Petition*.

Conclusion: The Petition for divorce should be approved.

7. Separation Contract

There is no separation contract.

8. Real Property

The spouses' real property is listed below:

The residence commonly known as 1201 143rd Street NW, Gig Harbor, Washington, 98322, subject to the mortgage obligation owing to Quicken Loans Mortgage Service.

Conclusion: The division of real property described in the final order is fair (just and equitable).

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9. Community Personal Property

The spouses' community personal property is listed below:

1. Any and all interest in the military pension earned by Anthony Tablazon with the Survivor Benefit Plan.
2. Respondent/Husband's disability and CRSC pay.
3. Roth IRA in the name of Crystal Tablazon.
4. Roth IRA in the name of Anthony Tablazon.
5. Thrift Savings Plan in the name of Anthony Tablazon.
6. 2010 BMW used by Crystal Tablazon.
7. 2015 Toyota Rav 4 used by Anthony Tablazon subject to an obligation owing to Navy Federal Credit Union.
8. 2012 Nissan Juke which is driven by the parties' son, Alex Tablazon.
9. 2009 Toyota Yaris, which is driven by the parties' daughter, Jasmine Tablazon.
10. Life insurance policies insuring the life of Anthony Tablazon.
11. Life Insurance policies insuring the life of Crystal Tablazon.
12. Household goods and furnishings.

Conclusion: The division of community personal property described in the final order is fair (just and equitable).

10. Separate Personal Property

The **Petitioner's** separate personal property is listed below:

1. Any property accumulated by Petitioner/Wife since the date of separation, namely September 15, 2015.

The **Respondent's** separate personal property is listed below:

1. Any property accumulated by Respondent/Husband since the date of separation, namely September 15, 2015.

Conclusion: The division of separate personal property described in the final order is fair (just and equitable).

11. **Community Debt**

The spouses' community debt is listed below:

1. Mortgage obligation in the approximate amount of \$105,000 owed to Quicken Loan Mortgage Services on the family residence.
2. Obligations owed to Kailani Kim.
3. Obligations owing to Crystal Tablazon's parents in the amount of \$70,000.
4. Obligation owed to Navy Federal Credit Union on Respondent's 2015 Toyota Rav 4 vehicle.

Other:

The Court finds that there was the sum of \$130,000 that came from the sale of Anthony Tablazon's families' home. Said sums were transferred into an account in the name of Petitioner/Wife. From those funds, Petitioner/Wife paid to Kailani Kim the sum of \$50,000 which was owed to her as a community obligation. The Court finds that Kailani Kim was credible in her testimony.

Additionally, Crystal Tablazon's parents loaned the parties the sum of \$70,000 as a down payment on their Gig Harbor residence.

Further, Respondent/Husband made payments of approximately \$10,000 towards his credit cards during the pendency of this dissolution action.

Thus, the Court has addressed and accounted for the sum of \$130,000 which was received by the community and has now been spent.

Conclusion: The division of community debt described in the final order is fair (just and equitable).

12. **Separate Debt**

The **Petitioner's** separate debt is listed below:

Any and all debts and obligations incurred by Petitioner/wife since the date of separation, namely September 15, 2015.

The **Respondent's** separate debt is listed below:

Any and all debts and obligations incurred by Respondent/Husband since the date of separation, namely September 15, 2015.

Conclusion: The division of separate debt described in the final order is fair (just and equitable).

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13. Spousal Support

Spousal support was requested.

Conclusion: Spousal support should be ordered because:

The Court does award spousal maintenance to Crystal Tablazon as set forth in the Decree of Dissolution. The Court finds that there is a need by Crystal Tablazon and that Anthony Tablazon has the ability to pay.

14. Lawyer Fees and Costs

The Petitioner incurred fees and costs, and needs help to pay those fees and costs. The other spouse has the ability to help pay fees and costs and should be ordered to pay the amount as listed in the final order. The court finds that the amount ordered is reasonable.

Other findings:

The Court awards attorney's fees and costs due to intransigence on the part of Anthony Tablazon. The Court awards Crystal Tablazon judgment as and for attorney's fees and costs in the amount of fifty-percent (50%) incurred by Crystal Tablazon. The Court finds that Anthony Tablazon has the ability to pay these attorney's fees and costs.

15. Protection Order

Crystal Tablazon requested an *Order for Protection* in this case.

Conclusion: The court should not approve an *Order for Protection* because:

The Court declines to order a permanent no contact order. However, Anthony Tablazon is to abide by any and all outstanding no contact orders that are in place.

16. Restraining Order

No one requested a *Restraining Order* in this case.

17. Pregnancy

Neither spouse is pregnant.

18. Children of the marriage

The spouses have no children together who are still dependent.

19. Jurisdiction over the children (RCW 26.27.201 – .221, .231, .261, .271)

Does not apply. The spouses have no children together who are still dependent.

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20. Parenting Plan

The spouses have no children together who are still dependent.

21. Child Support

The spouses have no children together who are still dependent.

22. Other Findings or Conclusions

N/A



1/27/2017
Date

G. Helen Whitener
Judge or Commissioner

Petitioner and Respondent or their lawyers fill out below. **JUDGE G. HELEN WHITENER**

This document:
Is presented by me

This document:
May be signed by the court without notice to me

[Signature] 8294
Petitioner signs here or lawyer signs here + WSBA #

[Signature] 17283
Respondent signs here or lawyer signs here + WSBA #

JEFFREY A. ROBINSON
Print Name Date

BRETT A. PURTZER
Print Name Date

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Exhibit "A"

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TABLE OF CONTENTS

IN RE THE MARRIAGE OF CRYSTAL TABLAZON AND ANTHONY TABLAZON

No. 15-3-04714-0

Proceedings of January 11, 2017

Page:

The Court's Ruling.....3

1 BE IT REMEMBERED that on Wednesday, the
2 11th day of January, 2017, the above-captioned cause came on
3 duly for hearing before THE HONORABLE G. HELEN WHITENER,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:

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8 <<<<< >>>>>

9
10 THE COURT: We're back on the record on
11 the Tablazon matter, Cause No. 15-3-04714-0. Counsels,
12 before I give my opinion or my decision, depending on what
13 terminology you want to use, is there anything you'd like to
14 state for the record?

15 MR. ROBINSON: No, Your Honor.

16 THE COURT: The Petitioner?

17 MR. PURTZER: No, Your Honor.

18 THE COURT: Okay. All right. This is a
19 27-year marriage that is irretrievably broken, and there are
20 no longer any dependents, and Mrs. Tablazon is not pregnant;
21 so, therefore, all of the elements in regards to ordering
22 the dissolution of this marriage have been met, and the
23 marriage will be dissolved this afternoon.

24 Within this dissolution, however, the Court is asked to
25 make a determination regarding basically three things, the

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1 division of the assets and debts, whether or not spousal
 2 support is deemed appropriate, and whether or not attorney
 3 fees to the Petitioner is deemed appropriate. In regards to
 4 the division of the assets and debts, the standard the Court
 5 has to use is just and equitable distribution. In regards
 6 to the spousal support, if deemed appropriate, the Court has
 7 to look at a just award; and in regards to attorney fees to
 8 the Petitioner, if deemed appropriate, ability to pay.

9 Before I get into my decision, I think a brief review of
 10 the facts that will be relevant throughout is necessary. As
 11 I indicated, this is a 27-year marriage. Mr. Tablazon is 51
 12 years old. Mrs. Tablazon is 48 years old. Mr. Tablazon was
 13 enlisted in the U.S. Army in 1985. The couple got married
 14 in 1989. Mr. Tablazon was retired in 2006. Subsequent to
 15 his retirement, he was employed as a private contractor for
 16 the State Department from 2006 to 2014. In 2014, he
 17 returned to school, obtaining a degree from Devry with a
 18 3.20 GPA. Mrs. Tablazon, throughout the marriage, has
 19 either been employed as a hairdresser or as a homemaker,
 20 predominantly in the more recent years as a homemaker.

21 In regards to their respective employments, I reviewed
 22 Exhibit 1, the 2013 taxes. I did note that the family filed
 23 jointly with two dependents at that time, claiming \$149,000
 24 of which a substantial portion of that was earned from a
 25 foreign earned income. Mr. Tablazon indicated his

1 occupation on that document as a foreign contractor.
2 Mrs. Tablazon's occupation was deemed hair designer.
3 Exhibit 2, 2014 tax return, filed jointly with one
4 dependent, and I believe the older son, at that point in
5 time, was no longer a dependent. The income indicated a
6 substantial drop, a little less than 24,000, thereabouts.
7 Mr. Tablazon's occupation was listed as a foreign
8 contractor. Mrs. Tablazon's employment was identified as
9 homemaker. Exhibit 3, 2015 tax returns, married, jointly
10 with one dependent, again, Mr. Tablazon's occupation was
11 listed as a logistic analyst; and Mrs. Tablazon's occupation
12 was listed as homemaker.

13 The reason I'm making reference to that is there are
14 documents where both parties, under penalty of perjury in
15 regards to their taxes, identified their occupations as they
16 saw it; and it appears as recent as 2014, Mrs. Tablazon was
17 deemed to be a homemaker in this family by Mr. Tablazon who
18 signed the document as well. His employment was foreign
19 contractor or logistic analyst.

20 I will note that both individuals are equal as far as
21 their mental status. By that, I mean, Mr. Tablazon has been
22 diagnosed with PTSD due to his military combat duties; and
23 he is now a hundred percent disabled but employable.
24 Mrs. Tablazon has been diagnosed, as well, with PTSD,
25 amongst other mental disorders, identified by her treating

1 psychiatrist or psychologist; but they're both on the same
2 page in regards to they both are diagnosed with PTSD.

3 In regards to Mrs. Tablazon, her status, as far as
4 employment, is may be employable in the future. I asked her
5 psychologist a number of questions, and I don't think her
6 counsel understood where I was going in regards to my
7 questions given his follow-up questions; but I'll make it
8 clear here. There was testimony that she may be employable
9 in the future. I understood the testimony to indicate three
10 things in regards to treating Mrs. Tablazon, one, her
11 emotional stability; two, her social needs; and, three, her
12 financial needs. The testimony indicated that she is now
13 working on the first step towards regaining her emotional
14 stability and is engaging in what was deemed meaningful
15 activities. She has been involved at the YWCA DV support
16 group and seems to be making inroads in regards to that
17 aspect of her emotional stability. However, her social
18 situation and financial situation, more work is needed. The
19 psychiatrist indicated one year of DBT treatment, at a
20 minimum, would be required; so the earliest it appears
21 Mrs. Tablazon may be employable in the future would be
22 determined after she completes one year of DBT treatment,
23 and that is not guaranteed.

24 In regards to Mr. Tablazon and his employability, I will
25 note that Exhibit 5, his CRSC pay statement, indicated that

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1 as recent as effective January 21, 2016, where they laid out
 2 his employment, when it came to being unemployable, they
 3 indicated "no" which means he is employable, even though his
 4 DBA disability is a hundred percent. So, he's a hundred
 5 percent disabled, but he is, in fact, employable as recent
 6 as January 21st of 2016, which is the most recent document
 7 we have there; and there was no testimony to indicate that
 8 condition has changed. When asked why he is not presently
 9 employed, his testimony was, pretty much, he left his job
 10 because of what was happening with his family. It was not
 11 regarding DV, and he was not medically discharged. That is
 12 supported by Exhibit 5 as far as him not being medically
 13 discharged. He also made the statement that his former
 14 employer, or supervisor, would want him back as soon as
 15 possible if he did not have the no-contact order in place
 16 which, again, supports his employability.

17 So, the easy part, as far as what is asked of the Court,
 18 is the following: Each party will keep their respective
 19 vehicles. In regards to household goods and furnishings,
 20 Mr. Tablazon is to have a third party, agreed upon by the
 21 parties, retrieve his items within 30 days of the entry of
 22 this decree. If not retrieved, the items will be deemed
 23 abandoned. Mrs. Tablazon is to, in no way, hinder or delay
 24 the retrieval of these items by the third party. Third,
 25 both parties agreed to keep their respective Roth IRAs; and

1 that will be granted. I will note that it is a bit
2 troubling that Mr. Tablazon has not disclosed the final
3 amount of his IRA to the Court. However, since the parties
4 agreed, it'll be awarded as per their agreement.

5 In regards to debts, \$130,000 was mentioned throughout
6 the trial. I believe it's money that came from a number of
7 things, maybe the sale of Mr. Tablazon's family, I think,
8 residence. Mrs. Tablazon transferred that amount in an
9 account in her own name without her husband's knowledge.
10 Now, that was a little troubling to the Court. She did
11 indicate, however, that the reason she did it was because of
12 the DV situation that was alleged; and since she was the one
13 that had been handling the family finances, she wanted to
14 make sure that a couple of things occurred, one of which was
15 that her sister, who both parties testified to had assisted
16 this family, be paid back some of the money she had loaned
17 them. I did find the sister -- I think, it's Kailani is how
18 you pronounce her name -- credible. I do find that this
19 family operated very informally in regards to funds and
20 finances; and, therefore, money was exchanged without any
21 paperwork or agreement which tends to happen in a close-knit
22 family when things are going okay.

23 So, \$50,000 of that \$130,000 appeared to be accounted
24 for; and the Court finds no problem with that. It went to
25 pay a debt of the community property, which left \$80,000

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1 unaccounted for. There was testimony that \$70,000 was
 2 loaned to this family, and there's a question as to whether
 3 it was a loan or an inheritance. Based on the testimony the
 4 Court heard, I believe it was more a loan than an
 5 inheritance; and that loan, I am finding, is going to be
 6 offset by the \$80,000 that was placed into the account.
 7 That is \$70,000 that Mrs. Tablazon will be wiped out of to
 8 take care of the loan to the father; so if she still has the
 9 \$80,000, that \$70,000 loan is paid which, then, leaves
 10 \$10,000 remaining from the \$130,000 in question.

11 The testimony of Mr. Tablazon regarding his credit card
 12 debt was rather interesting to this Court; and in reviewing
 13 his testimony and the amounts, the large amounts that were
 14 paid, it appears that about \$10,000 was paid towards his
 15 credit card debt during the pendency of this dissolution; so
 16 that \$10,000 is, now, gone from the \$130,000 which leaves
 17 zero in regards to that debt. All remaining credit card
 18 debt in each party's name is their individual
 19 responsibility.

20 The Survivor Benefit Plan is to be fully reinstated.
 21 Exhibit 4: Based on the Court's knowledge, also, of the
 22 Survivor Benefit Plan, it's troubling that Mr. Tablazon was
 23 able to remove Mrs. Tablazon without her consent; but that's
 24 for another day. In regards to the Survivor Benefit Plan,
 25 it is to be fully reinstated. Exhibit 4 shows, as recent as

1 December 3, 2015, Mrs. Tablazon was listed on Mr. Tablazon's
2 Survivor Benefit Plan; and it showed a hundred percent
3 share. That needs to be reinstated with proof filed to her
4 counsel within 30 days of the entry of this decree in order
5 to avoid contempt actions. Mr. Tablazon has indicated that
6 has already been done, so it should not be problematic for
7 him to provide proof of that. Subsequently, he's ordered to
8 continue making payments on the Survivor Benefit Plan.

9 The next matter is the Thrift Savings Plan. This was
10 acquired during the marriage, and it'll be divided equally,
11 for Mr. Tablazon, 50 percent; 50 percent to Mrs. Tablazon.

12 In regards to the retirement/disability, this is the most
13 troubling to the Court. After 27 years of marriage,
14 Mrs. Tablazon and Mr. Tablazon, equal partners in a
15 marriage, Mrs. Tablazon finds herself without a retirement,
16 possibly homeless, as I haven't addressed that yet, and
17 unemployed or unemployable. Mr. Tablazon elected to claim a
18 hundred percent disability in lieu of his retirement. This
19 is an optional decision. He could choose retirement, or he
20 can choose disability. The Government doesn't allow
21 double-dipping, so Mr. Tablazon chose disability, which is
22 his right, but it prohibits this Court from allowing
23 Mrs. Tablazon to get her 50 percent share of his retirement
24 which, he testified to, she's entitled to.

25 As I indicated, the Court has to do a just and equitable

1 distribution of the assets earned during this marriage.
2 Mrs. Tablazon earned 50 percent of Mr. Tablazon's
3 retirement; and since Mr. Tablazon elected to choose
4 disability and can elect at any point in time, to include
5 tomorrow after I've signed the decree, to reinstate his
6 retirement, I am going to award Mrs. Tablazon her half in
7 that retirement. Mr. Tablazon is to buy a QDRO, or a
8 Qualified Domestic Relations Order, and to safeguard
9 Mrs. Tablazon's 50 percent interest in that retirement. But
10 Mr. Tablazon may choose never to claim his retirement which,
11 again, is his right; so that is something the Court cannot
12 factor in as a real asset being given to Mrs. Tablazon at
13 this juncture, at least today.

14 So, the next matter is the Gig Harbor home. As
15 previously indicated, Mr. Tablazon is employable;
16 Mrs. Tablazon is not and may not be. During Mr. Tablazon's
17 employment, Mrs. Tablazon raised their children, kept a
18 stable location for his returns to the United States; and
19 Mr. Tablazon's statements throughout this testimony,
20 throughout this trial, are that what she did really doesn't
21 count; what he did, not just for her and his country, is all
22 that matters. I don't agree. I do believe Mr. Tablazon
23 served his country well and supported his family well
24 throughout this marriage, but the marriage is ending, and
25 Mrs. Tablazon's actions throughout this marriage afforded

1 Mr. Tablazon the opportunity to acquire sergeant major
2 status in the United States Army. Mrs. Tablazon's actions
3 afforded this couple the opportunity to raise two reasonably
4 well adjusted children. One, I believe, is graduating or
5 has graduated from the University of Washington; and the
6 other is still trying to find his way which is not unusual
7 given their ages; but I didn't hear that either one has a
8 criminal history. In fact, Mr. Tablazon's only contact with
9 law enforcement, and Mrs. Tablazon's only contact with law
10 enforcement, was because of the breakup of this family and
11 the problems they were encountering as this family was
12 falling apart which says something about not only the two of
13 them but Mrs. Tablazon's actions in raising these children
14 substantially by herself while her husband was deployed.
15 She was an active participant in this relationship; yet, she
16 has no retirement.

17 The home is situated very close to her family. She is
18 the one that raised the children in that location. She has
19 substantial ties not only to the location but to the home
20 and her family. Mr. Tablazon also has a connection to the
21 home. I believe he said it's his sanctuary; but it cannot
22 be more of a sanctuary to him, since he was deployed
23 substantially throughout his marriage, than it can be to
24 her. Therefore, I'm awarding the house to Mrs. Tablazon one
25 hundred percent.

1 In regards to spousal support, this is a long-term
2 marriage. Mr. Tablazon has failed to provide this Court
3 with an accurate showing of his income. What I do know is
4 that of a 27-year marriage and a review of his taxes and the
5 documents that were provided, there was a substantial dip in
6 his income towards the end of this marriage; but that was
7 because Mr. Tablazon, the Court is finding, chose not to
8 work. He did go to school, however, and did increase his
9 ability to earn substantially more than what was documented
10 during the time frame that we do have numbers for; so the
11 Court was left with no other option than to average out his
12 income to get an idea of what it is exactly Mr. Tablazon has
13 made or is likely to make, and the average is about 83 to
14 \$85,000 a year.

15 Taking into account his age, his education, and his
16 training and contrasting that with Mrs. Tablazon's age,
17 education and training, coupled with their ability to work,
18 spousal maintenance is required; but it has to be a just
19 award. I do believe with the proper training and
20 counseling -- and Mrs. Tablazon already indicated through
21 testimony -- her sister, of her abilities -- she may not be
22 able to work again as a hairdresser; but what I did see is
23 someone who is very good in handling finances, not just
24 family finances. They had investment finances, and it
25 appears Mrs. Tablazon was the individual who handled that;

1 so, therefore, spousal support will be awarded, but it will
2 be for ten years in the amount of \$2,647.70. Within that
3 time frame, Mrs. Tablazon should be able to support herself;
4 and Mr. Tablazon should be able to move on and should be
5 making substantially more than he has in the past.

6 That leads me to the no-contact order. Given
7 Mr. Tablazon's background and the type of work that he does
8 as a foreign contractor and the type of work he has done for
9 his country and given his degree and my review of his
10 résumé, a no-contact order, indefinite, would prohibit him
11 from fulfilling not only the duties and the requirements
12 that are going to be ordered by the Court, but it's going to
13 limit his ability to obtain and attain the level of
14 lifestyle that he has grown accustomed to. Seeing that it
15 would not only affect him but it would affect Mrs. Tablazon,
16 I am not ordering a permanent no-contact order.

17 Mr. Tablazon, however, is to abide by any and all
18 outstanding no-contact orders that are in place; and
19 hopefully, he understands that this marriage, once the order
20 has been entered today, is over with. Mrs. Tablazon would
21 like to move on with her life. He needs to move on with
22 his; and, I think, having gone through this process and now
23 having a DV conviction for violating a protection order, he
24 understands the ramifications of not following through, not
25 only with court orders but that certain actions can get him

1 into trouble that can affect his ability to take care of
2 himself going forward.

3 In regards to attorney fees, I am finding that there were
4 some actions by Mr. Tablazon that were -- and I'll get the
5 exact language -- that created an intransigence but not to
6 the extent that I will order that he pay a hundred percent
7 of attorney fees. I do believe that part of the delay in
8 the case Mrs. Tablazon is equally responsible for; and,
9 therefore, attorney fees for the Petitioner in this case in
10 the amount of 50 percent is appropriate. Mr. Tablazon has
11 the ability to pay -- and I really wanted that language
12 because I marked it off, but the Court is finding it
13 appropriate that 50 percent be ordered.

14 And the language is out of In the Matter of Marriage -- I
15 believe -- well, I apologize, Counsels. It's In the Matter
16 of Marriage of Greenlee, 65 Wn. App. 703, a 1992 case; and
17 it talks about attorney fees, and it references RCW
18 26.09.140 and indicates that I'm to "balance the needs of
19 the spouse requesting them with the ability of the other
20 spouse to pay. The burden of proving need rests on the
21 spouse asserting the request." And it says, "When
22 intransigence is established, the financial resources of the
23 spouse seeking the award are irrelevant. Awards of attorney
24 fees based upon the intransigence of one party have been
25 granted when the party engaged in 'foot-dragging' and

1 'obstruction'; or simply when one party made the trial
2 unduly difficult and increased legal costs by his or her
3 actions."

4 To this date, this Court does not have full financial
5 disclosure from Mr. Tablazon which makes it extremely
6 difficult for the Court to assess some of the divisions that
7 have been made. I will note an action that the Court took
8 into consideration -- it's just one of many that came up
9 during this trial -- and it's in Exhibit 43 and compared to
10 Exhibit 31. Exhibit 43, this is a declaration in response
11 to a motion for contempt filed under penalty of perjury by
12 Mr. Tablazon. And he states, "Contrary to Crystal
13 Tablazon's declaration, I've been making the required
14 spousal maintenance payments of \$2,647.70 per month as
15 directed by this Court. I am still not clear why the bank
16 chose to use a Popmoney account for purposes of depositing
17 money into Crystal Tablazon's account; but once I learned
18 that this had occurred, I went into the bank and made sure
19 that the direct deposit that had, previously, been set up
20 was continued." And he testified something along the lines
21 of that.

22 When the Court looked at Exhibit 31, the first page --
23 it's an e-mail from Mr. Tablazon; and it says, "I sent you
24 money" -- to Mrs. Tablazon. And the front page says,
25 "Anthony Tablazon sent you \$2,647.00. Crystal, get your

1 money now." This is something that it looks like it's
2 generated from the system of this Popmoney. The last page
3 reads, "Your payment is waiting for Crystal. Dear Anthony,
4 we've noticed that Crystal hasn't deposited the money you
5 sent, and we've sent a reminder. We know you want to make
6 sure Crystal receives the payment, so we suggest you contact
7 her, Crystal, in case our notifications haven't arrived.
8 Crystal has seven days left to let us know what bank account
9 to deposit the money into. Otherwise, we'll return the
10 money to you."

11 Payment details indicates it's from the Navy Federal
12 Credit Union checking account ending in 8185. This
13 indicated to the Court that Mr. Tablazon's statement in his
14 declaration that he isn't clear why the bank chose to use a
15 Popmoney account, it wasn't a bank. They could not have
16 done it without Mr. Tablazon's directive; so his declaration
17 indicated that he was not forthright with the Court, one of
18 a number of those issues that I've seen.

19 Taking that into account and taking into account the case
20 law in regards to intransigence and given Mrs. Tablazon's
21 actions, as well, regarding the opening of that account in
22 her name only without her husband's knowledge is why the
23 Court is allowing only 50 percent of her attorney fees to be
24 paid by Mr. Tablazon as opposed to the hundred percent that
25 she asked for.

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1 I believe I've covered all of the issues raised by the
 2 Petitioner as well as the Respondent in this case. I'll
 3 just look at my notes to make sure. Counsel for the
 4 Petitioner, did I not address any issues you raised?

5 MR. ROBINSON: No, Your Honor. I believe
 6 you've covered everything.

7 THE COURT: Counsel for Mr. Tablazon?

8 MR. PURTZER: Your Honor, I agree.

9 THE COURT: All right. I thank both
 10 Counsels for your professionalism during this trial. It was
 11 a pleasure to sit and listen to this case, and I wish your
 12 clients the best going forward. The Court will be in recess
 13 at this time.

14 (Court was adjourned.)

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SMITH GOODFRIEND, PS

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