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DIVISION II

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STATE OF WASHINGTON

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CASE NO. <sup>5</sup> 636391-II  
COURT OF APPEALS, DIVISION II  
of the State of Washington

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Lawrence L'Hommedieu, Respondent

v.

Shelane L'Hommedieu, Appellant

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APPEAL  
OPENING BRIEF OF APPELLANT

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SHELANE L'HOMMEDIEU (Appellant/PRO SE)  
9511 NE HAZEL DELL AVE. #133  
VANCOUVER, WA 98665

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**I. Assignment of Errors**

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**NO. 2** The court's ruling regarding the division of the bank accounts at time of separation

**NO. 3** The court's ruling regarding the division of 1500 ounces of Silver

**NO. 4** The court's ruling regarding the vacant land on River Glen Rd.

**NO. 5** The court's ruling on regarding the division of the marital vehicles

**NO. 6** The court's ruling regarding the cashed and hidden marital assets (ING financial 401K, Nationwide 457 plan, Interactive Brokers Stocks)

**NO. 7** The court's ruling regarding Mr. L'Hommedieu's removal of Mrs. L'Hommedieu as the survivor beneficiary on the Oregon PERS retirement pension.

**NO. 8** The court's non-ruling of the violation of the temporary orders and unpaid health insurance by Mr. L' Hommedieu.

NO. 9 The court's ruling regarding the spousal support awarded to Mrs. L'Hommedieu.

**II. Statement of the case**

The two parties in this dissolution are Lawrence L'Hommedieu, age 50, and Shelane L'Hommedieu, age 53. They were married in April of 1998. Both Mr. and Mrs. L'Hommedieu worked for the fire department before marrying. His employment began there in May of 1996 two years before the marriage, and she in 1997, about a year before marriage. Mr. L'Hommedieu has not provided any evidence showing when he became a member of Oregon PERS, nor when he became vested; however these dates are easily calculated through the Oregon Revised Statutes which shows there is a six month waiting period to become a member(ORS 238.015) and in 5 years or 600 hours of consecutive employment, the member becomes fully vested(ORS 238A.115).

(ORS 238.015) Membership

- (1) No person may become a member of the system unless that person is in the service of a public employer and has completed six months' service uninterrupted by more than 30 consecutive working days during the six months' period.

ORS 238A.115

A member of the pension program becomes vested in the pension program on the earliest of the following dates:

**(a)** The date on which the member completes at least 600 hours of service in each of five calendar years

Mrs. L'Hommedieu whom was pregnant with their first child at the time of marriage, left her job at the fire department; to be a stay at home mother, and homeschool teacher. The couple had two children during the course of the marriage. Mr. L'Hommedieu continued to work at the fire department, and was afforded both the time and money to continue his education and training in order to promote through the ranks of the fire department to eventually Captain. Mr. L'Hommedieu alleges that in May of 2009, he injured his back in a training exercise at work. He claims to suffer with chronic back pain and PTSD. However, he did not provide any medical evaluations, records or recommendations indicating what disabilities he has. After his back-injury Mr. L'Hommedieu received workman's compensation from SAIF Corporation each month, with a final lump sum payment of \$117,000 in June of 2013<sup>1</sup>. In February of 2011, he applied for early service retirement from Oregon PERS, and his application was accepted in March of 2011. After being accepted for early retirement; Oregon PERS began

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<sup>1</sup> EX. Trial #169

providing a monthly retirement pension<sup>2</sup>. Mr. L'Hommedieu testified that his back pain prevents him from doing his job as a firefighter and that his PTSD prevents him from wearing a fire apparatus on his face. He further claimed that it is hard for him to keep track of his finances and that he isolates himself a lot.<sup>3</sup> However, after being questioned further, he admitted to purchasing an off-road motorcycle after injuring his back, and admitted to purchasing scuba diving gear with a face apparatus in 2016, after being diagnosed with PTSD. He also testified that he frequently travels to out of town casinos for weeks and months at a time, having the mental skill to play in poker tournaments and winning many of them. In fact, winning so many of the tournaments that Oregon PERS calls his poker earnings additional income. Mr. L'Hommedieu also testified that his last known monthly salary before retiring was approx. \$8000 a month before taxes. However, Oregon PERS currently pays him approx. \$6200 a month, in addition to receiving disability insurance each month from Social Security at \$2558 and \$3600 from the Veterans Administration. His total pay being retired is approximately \$12,350.00 a month.

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<sup>2</sup> EX. Trial #12

<sup>3</sup> \*RP Page 50 lines 1-25 Page 51 lines 1-25 Page 52 lines 1-25 Page 53 lines 1-25 Page 54 lines 1-16

Mr. L'Hommedieu originally testified that he had to pay taxes on these income, however 63 days after the trial, he filed a motion in Superior Court for which he admitted that he does not pay any taxes. The evidence shows that two years after Mr. L'Hommedieu retired from Oregon PERS, Mrs. L'Hommedieu suffered a Vertebrobasilar Left Hemisphere Stroke in late May of 2013. The stroke left her with daily dizziness, vertigo and balance problems. She suffered occipital lobe nerve damage, and has neuropathy in her hands and feet. She also suffered cognitive brain damage affecting her short-term memory; along with problems in organizing, learning and reasoning. Although Mrs. L'Hommedieu had wanted her physician to testify in person at trial, she could not afford to pay those costs. Therefore, her physician provided a written medical evaluation and recommendations regarding Mrs. L'Hommedieu's disabilities<sup>4</sup>. Mr. L'Hommedieu testified that it was three months after Mrs. L'Hommedieu suffered her stroke that in September of 2013, he left her and his children in the family home and moved to Truckee, California, with the intent of ending the marriage. He testified that when he left the home, he also took control of marital bank accounts, without receiving consent from Mrs. L'Hommedieu

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<sup>4</sup> \*EX. Trial #166 and #167

to do so. He testified that after he took control of the bank accounts, he began providing Mrs. L'Hommedieu with regular monthly support checks, and continued to do so until the entering of the temporary orders in November of 2015.<sup>5</sup> However, as his evidence, he provided, one check in December of 2013, one check in May of 2014, and three in July, August and September 2015. Another check he provided was made out to his own attorney, not Mrs. L'Hommedieu. He further testified, that he also took with him, the couple's collection of silver (1500 ounces). The evidence shows that in April of 2014, Mrs. L'Hommedieu received a default notice on the family home<sup>6</sup>. Mr. L'Hommedieu filed for dissolution in July of 2014. Also, in July of 2014, a vacate notice was sent to Mrs. L'Hommedieu and the children due to foreclosure of the home. She and the children were forced to move to an apartment, with her rent, utilities, food and attorney's fees being paid through continual loans she kept obtaining from her father. She also applied for disability insurance pay from Social Security, but was denied due to a lack of work credit history<sup>7</sup>. She also filed for welfare in March of 2015, and received approx. \$450 each month. However, after two

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<sup>5</sup> \*Ex. Trial #65 and 67

<sup>6</sup> \*Ex. Trial #178

<sup>7</sup> \*Ex. Trial 194

months, the welfare benefits were sanctioned down to \$120 a month, because unbeknownst to her there were apparent social security benefits that were being paid out from Social Security for the children. It was then discovered that Mr. L'Hommedieu had been receiving these child benefits when the children were not living with him. He had received approx. \$18,000 worth of child benefit payments<sup>8</sup>. These child benefits were separate from the disability pay Mr. L'Hommedieu was receiving from Social security, nor did they affect the benefit amount he was receiving for himself. When the temporary orders were signed in November of 2015; Mr. L'Hommedieu was allowed to pay a significantly lesser amount in child support than that of the Washington State child support calculation table (RCW 26.19.020). This was due to him refusing to provide any documents indicating his true income. According to the tables under RCW 26.19.020, support should have been approx. \$2354.00 a month for both children. However, Mr. L'Hommedieu paid only \$1500 a month in total child support. After the temporary orders were signed, Mrs. L'Hommedieu changed all of the future child benefits from Social Security out of Mr. L'Hommedieu's name, in order for the children to begin receiving them. Mr. L'Hommedieu,

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<sup>8</sup> \*Ex. Trial 188 & 191

then deducted each month's child benefit that the children received, from his own child support obligation. After these deductions, Mr. L'Hommedieu paid approx. \$648 a month out of his pocket for child support. He paid this amount for one year, until the eldest child turned 18 years old. At which point Mr. L'Hommedieu no longer paid child support out of his pocket for the remaining child. When Mr. L'Hommedieu left the home in September of 2013, the children were at the ages of 11 and 14 years old. When the temporary orders were finally signed in November of 2015, the children were 13 and 17 years old. The children had already gone a significant amount of time without receiving substantial support. By the time the final ruling was entered in July of 2019, the remaining dependent child was 17 years old. It was not until the final orders, that Mr. L'Hommedieu was ordered to pay a child support amount that is in accordance to the Washington State Child Support Calculation table. The temporary orders further stated that Mrs. L'Hommedieu would be awarded \$3500 in total for attorney's fees. The rest of the \$60,000 in attorney's fees, were funded through continual loans from her retired father, which came directly out of his retirement savings. In August of 2016, Mrs. L'Hommedieu's attorney at that time, filed a motion requesting an award in

additional attorney's fees, or if the party's classic car with an estimated value of \$50,000 could be sold to help aid in the costs. The court denied that request, which resulted in Mrs. L'Hommedieu having to let her attorney go, due to not having enough money. Mrs. L'Hommedieu has sought out friends, family and even strangers to look up laws, and compose and organize court documents for her. We have tried to provide as much aid to her as we possibly could. However, none of us are attorney's, and we have feared that she was not being adequately represented in this case. These fears were brought to the trial courts attention in many motions, Mrs. L'Hommedieu submitted to the trial court. The temporary orders further stated that Mr. L'Hommedieu was to continue paying the family's health insurance policy with Regence. It stated that he was not to change or modify the health insurance<sup>9</sup>. This policy also covered both dental and vision. However, six months after the temporary orders were signed, Mr. L'Hommedieu did stop paying for the family's health insurance plan<sup>10</sup>. Before Mrs. L'Hommedieu's attorney withdrew from the case, she filed a contempt motion for the health insurance. However, the court did not find Mr. L'Hommedieu in contempt and instead chose to tell him

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<sup>9</sup> \*CP Index #30, 31, & 33

<sup>10</sup> EX. Trial 197

to pay the past owed payments for the family's insurance policy. The court also did not reimburse the attorney's fees to Mrs. L'Hommedieu. The court stated that Mrs. L'Hommedieu was going to need to get used to paying for her own health insurance as soon as this case was over. Mr. L'Hommedieu never did pay the back owed payments on the family's insurance, and it was closed. Mrs. L'Hommedieu was hospitalized shortly after, and accumulated \$11,000 worth of uninsured medical debt.<sup>11</sup> In February 2017, Mrs. L'Hommedieu had to purchase her own health insurance policy at her own costs<sup>12</sup>. The policy did not cover her dental or vision, or her blood thinners which are \$580.00 for a three-month prescription, out of pocket<sup>13</sup>. Mr. L'Hommedieu without a court order, placed the two children on an inferior health insurance policy that was free to him through the Veterans Administration. The policy did not cover their dental or vision, and required them to leave the physician they had been with since birth. It also did not cover the majority of their prescriptions. The two children remained on that inferior policy throughout the remainder of this dissolution case. The final ruling left the remaining child on this inferior policy and she is still without

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<sup>11</sup> \*EX. Trial #198

<sup>12</sup> \*EX. Trial 199, 200

<sup>13</sup> \*EX. Trial #201

dental or vision coverage. However, Mr. L'Hommedieu testified that he still has dental and vision coverage<sup>14</sup>.

### **III. Issues and Arguments Pertaining to** **Assignments of Errors**

#### **NO. 1 (ISSUE):**

Mrs. L'Hommedieu believes that Mr. L'Hommedieu did not meet the clear and convincing burden of proof needed to change the character of this property from community to his separate property, and thus the court erred by ruling it as his separate property.

#### **NO. 1 (ARGUMENT)**

Mr. L'Hommedieu began receiving his expedited retirement pension under ORS238.320 (Disability Retirement) from Oregon PERS in March of 2011. This was during the marriage, thus per the time rule of acquisition, Mrs. L'Hommedieu believes this asset should have been characterized as community property and subject to division.

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<sup>14</sup> \*RP Page 33 line 20-21

In re Marriage of Gillespie, 89 Wash.App. 390, 399, 948 P.2d 1338 (1997); Pollock v. Pollock, 7 Wash.App. 394, 399, 499 P.2d 231 (1972).

"The status of the property is determined as of the date of its acquisition."

Stokes vs. McDowell, 70 Wn. 2d 694, 424 P.2d 910 (1967).  
"All property acquired during the marriage is presumed to be community property"

In re Marriage of Shannon, 55 Wash. App. 137, 140, 777 P.2d 8 (1989).

"Because Washington law favors community property, "all property acquired during marriage is presumptively community property, regardless of how title is held." *Dean v. Lehman*, 143 Wash.2d 12, 19, 18 P.3d 523 (2001);

Mr. L'Hommedieu requested the court to award the disability retirement pension from Oregon PERS, as his own separate property, however he did not provide the necessary evidence needed to make that claim.

*RCW 26.16.030. "The burden of rebutting this presumption is on the party challenging the asset's community property status, and can be overcome only by clear and convincing proof that the transaction falls within the scope of a separate property exception." Id. at 19-20, 18 P.3d 523 (citation omitted).*

Berol v. Berol, 223 P. 2d 1055 - Wash: Supreme Court, 1st Dept. 1950 "The burden rests upon the spouse asserting the separate character of the property *E.I. DuPont de Nemours & Co. v. Garrison*, 13 Wn. (2d) 170, 174, 124 P. (2d) 939, and cases cited therein. The requirement of clear and satisfactory evidence is not met by the mere self-serving declaration of the spouse claiming the property in question is separate property"

Beam v. Beam, 569 P. 2d 719 - Wash: Court of Appeals, 3rd Div. 1977 “ *It is fundamental that property acquired during marriage is presumed to be community property. This presumption can be overcome only by clear and convincing evidence and the burden of proof is on the party claiming the separate nature of the property. See also In re Estate of Smith, 73 Wn.2d 629, 440 P.2d 179 (1968)*”

KENNETH W. WEBER, WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW § 10.1, at 133 (1997) (“Possibly more than in any other area of law, presumptions play an important role in determining ownership of assets and responsibility for debt in community property law.”). *The presumptions are true presumptions, and in the absence of evidence sufficient to rebut an applicable presumption, the court must determine the character of property according to the weight of the presumption.*

Estate of Niccolls, 164 Cal. 368 [129 P. 278] *Property acquired by purchase during a marriage is presumed to be community property, and the burden is on the spouse asserting its separate character to overcome the presumption.*

(Johnson v. Johnson, 317 NC 437 (1986); Brackney v. Brackney, 199 NC App 375 (2009). “*the party claiming a particular classification of property has the initial burden of presenting evidence to support the classification and to support the court’s valuation of the asset.*”

State ex rel. Marshall v. Superior Court, 119 Wash. 631, 206 P. 362 (1922). “*Property in the possession of a married person is presumed to be community property “until the contrary is shown;” this presumption “is not a very strong presumption and is one that may be easily overcome.” Marshall, 119 Wash. at 637 (quoting 5 ruling case law Community Property § 26, at 844 (1914)).*”

Mr. L'Hommedieu testified that although the pay he was receiving was tied to his retirement pension; the pay was being given to him as disability pay<sup>15</sup>:

Mrs. Cohen to Mr. L'Hommedieu: (Question) "Under the Oregon PERS is that from your employment with the fire department in Tualatin?"

Mr. L'Hommedieu: (Answer) "Yes"

Mrs. Cohen to Mr. L'Hommedieu: (Question) "So that was tied to your retirement benefits, but it is being released to you as a disability allowance?"

Mr. L'Hommedieu: (Answer) "Yes exactly."

Mr. L'Hommedieu provided his 1099 tax statements<sup>16</sup> from Oregon PERS and was asked by his attorney<sup>17</sup>:

Mrs. Cohen to Mr. L'Hommedieu (Question): "So, what are those documents?"

Mr. L'Hommedieu: (Answer) "These are the, I think, 1090's tax forms for the State of Oregon PERS."

Mrs. Cohen to Mr. L'Hommedieu (Question): "And this is the benefit that you're receiving?"

Mr. L'Hommedieu (Answer): "Yes"

Mrs. Cohen to Mr. L'Hommedieu (Question): "This is your disability benefit?"

Mr. L'Hommedieu (Answer): "Yes"

The problem for Mr. L'Hommedieu is, the 1099's he provided from Oregon PERS, clearly show that the pay he receives is from retirement/pensions/annuities and not disability pay. There was no

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<sup>15</sup> SEE Report of Proceedings Page 21 Lines 15-22

<sup>16</sup> SEE Trial Exhibit 12

<sup>17</sup> SEE Report of Proceedings Page 24 line 5 through 13

other evidence presented from Oregon PERS, by Mr.

L'Hommedieu, to establish that he is receiving anything other than a retirement pension. Mr. L'Hommedieu did not meet the clear and convincing burden of proof required to change the community status of this asset to his separate property. In fact, his own evidence contradicted his claim.

In re Marriage of Pearson-Maines, 70 Wn. App. 860, 865, 855P.2d 1210 (1993). "Property acquired during marriage is presumptively community property. A party may rebut this presumption by offering clear and convincing evidence

Mrs. L'Hommedieu both read and submitted into the record the Oregon Revised Statute 238.320 under "disability retirement allowance" which states:

"Whenever an employee who is a member of the system is found, after being examined by one or more physicians selected by the board, to be mentally or physically incapacitated for an extended duration, as determined by medical examination, and thereby unable to perform any work for which qualified, by injury or disease sustained while in actual performance of duty and not intentionally self-inflicted, the member shall receive a disability retirement allowance consisting of:

(b) A current service pension provided by the contributions of employers equal to:

(A) For a police officer or firefighter, the pension to which the member would have been entitled if the member had worked continuously until attaining the age of 55, or if the

member has attained the age of 55, the pension which the member would receive were the member to retire for service, as provided in this chapter”.

Further evidencing that it is a retirement pension that Mr. L’Hommedieu is receiving, was by his own statements for which he stated to the court that he needed to remove Mrs. L’Hommedieu as the survivor beneficiary on the retirement pension when he retired, in order to receive a higher payment each month. The court was clearly not convinced by Mr. L’Hommedieu’s evidence that the pay he was receiving from Oregon PERS was solely disability pay. In its finding of fact, the court states;<sup>18</sup>

“A hybrid situation exists where the payments are not clearly denominated or classified as either retirement benefits or disability benefits”.

“In examining the benefits that the Petitioner receives, it is not clear in each instance whether or not they are more like retirement benefits or disability benefits”.

“Here, Petitioners benefits from Oregon PERS are a form of hybrid benefits that were made available to him due to his disability, but are also a form of retirement benefit”

However, despite having clearly stated several times that it had not been fully convinced of what type of pay Mr. L’Hommedieu is

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<sup>18</sup> See Courts ruling on Page 5 (#1) and Page 6 (#2 and #3),

receiving; the court contradicts its own finding of fact, and rules as follows<sup>19</sup>:

“It is clear that the payments he has received and will receive until age 55 represent payment for income not received due to his disability, and this asset is his separate property, not subject to division.”

By its own prior statements of confusion, the court could not have made its ruling based upon any evidence it had found. The court would have had to assume, and ignore the community property retirement element in this asset.

Friedlander v. Friedlander, 58 Wn.2d 288, 362 P.2d 352 (1961)

“A trial court's finding of fact must be accepted as a verity where there is substantial evidence to support it”.

Mr. L'Hommedieu's word should not have been considered by the court to be clear and convincing evidence.

In re Marriage of Skarbek, 100 Wn. App. 444, 449, 997 P.2d 447

(2000). “The requirement of clear and satisfactory evidence is not met by the mere self-serving declaration of the spouse claiming the property in question”.

To prohibit Mrs. L'Hommedieu from having the same access to this community asset benefit, the court should not have had any doubts. But the court did have doubts, and clearly had not been fully

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<sup>19</sup>CP. Courts ruling on Page 6 (#4)

convinced. If Mr. L'Hommedieu's claim that the pay he is receiving from Oregon PERS is in fact really disability pay, he would not have had any problems in obtaining the necessary evidence from Oregon PERS, in order to remove any doubts for the court. He did not.

In re marriage of Geigle 83 Wash. App. 23 920 P.2d 251 (1996) "...Although we know of no authority directly on point, we think that if part of a stream of income is divisible between spouses as deferred compensation earned during the marriage, and part is not divisible because it replaces future income, the recipient spouse has the burden of providing the documents or other information needed to segregate. We also think that the recipient spouse has the burden of asking the trial court to make the segregation. The first burden is appropriate because the recipient spouse, not the other spouse is the one with ready access to the needed information. The second burden is appropriate because in the general run of cases in which parties wittingly or unwittingly put a trial court to an all-or-nothing choice, it will be less unfair to include and equitably distribute the income, then to exclude or ignore it. Here we find Wallace failed to bear either burden. He did not provide the trial court with the information need to segregate deferred compensation from future income. Nor did he request such segregation. We think he waived the right to have a segregation and that he is not now entitled to complain".

Consider that Mr. L'Hommedieu not only receives his retirement pension from Oregon PERS, he also receives two additional disability insurance payments from Social Security and the Veterans Administration equaling approximately \$12,350.00 a

month. This affords him a \$4000 a month increase, and over, what he had received when he was working. Compared to Mrs. L'Hommedieu, who also suffers with her own disabilities, and yet cannot receive any disability or retirement benefits for a lack of work history credits.

IN RE MARRIAGE OF KITTLESON, 21 Wn. App. 344, 585 P.2d 167 (1978), REVIEW DENIED, 92 Wn.2d 1009 (1979) "An inflexible rule that required a disability pension to be classified as separate property would ignore the fact that some "disability" pensions step into the place of a regular retirement pension and permit an earlier retirement and/or retirement with increased payments, others contain elements in the ward attributable to an earned regular retirement pension along with elements which compensate for physical injury, and yet other awards are made for disability alone. We hold that to require an unwinding of such awards in all cases would add a complexity to the trial court's task which is not warranted and which we find to be unwarranted in this case. Further, we hold that it would be unwise by our pronouncement of an absolute rule to preclude an award to the other spouse in the future from a "disability" pension when the extreme situation arises that would find one spouse able to look to a more than adequate disability pension while the other would be left destitute".

Mrs. L'Hommedieu believes the court erred by giving this asset to Mr. L'Hommedieu as his separate property without first receiving clear and convincing evidence to do so. The court erred by ignoring the community property element in the retirement pension.

## **NO. 2 (ISSUE)**

Mrs. L'Hommedieu believes the court erred by not protecting her community property interest in the money that was in the bank accounts at the time Mr. L'Hommedieu took possession of them in September of 2013. She believes the court further erred by placing the full burden of proof on her to prove where those bank account funds went after he had taken possession of them, and releasing Mr. L'Hommedieu from having any burden of proof to show where they went. WASH. REV. CODE § 26.16.210:

“In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith.”

## **NO 2 (ARGUMENT)**

Mr. L'Hommedieu testified that he left the home in September of 2013, at which point he intended to end the marriage. At that same time, he stated that he took possession of all of the bank accounts with a cash value of \$158,000<sup>20</sup>. He took possession of the bank accounts without having received consent from Mrs. L'Hommedieu to do so. Mrs. L'Hommedieu was not in either a medical or mental state to resist his actions, since she was recovering from a stroke.

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<sup>20</sup> \*EX. Trial #173

When he took possession of the martial bank accounts, he also took the responsibility upon himself, of keeping a traceable record of where those community funds went. However, he did not. The court in its finding of fact stated the following:<sup>21</sup>:

“There is not sufficient evidence on this record that the money in the parties bank account at separation and the silver and gold assets that respondent claims are subject to division are actually assets that are available for distribution. Similarly, there is not sufficient evidence on this record to conclude precisely what became of these assets or that either party is entitled to an offsetting judgement in this matter to account for these unavailable assets.”

The evidence that was provided to the court, came from only Mrs. L’Hommedieu. None came from Mr. L’Hommedieu. She provided the bank account statement showing the amount that was in the martial bank accounts when Mr. L’Hommedieu took possession of them. Of course, there would not be sufficient evidence in the record to show what became of those funds, since Mr. L’Hommedieu had not provided any. Mrs. L’Hommedieu believes, the court erred by disregarding this \$158,000 asset, nor of Mr. L’Hommedieu actions in taking the funds without having consent from Mrs. L’Hommedieu.

### **NO. 3 (ISSUE)**

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<sup>21</sup> Final Ruling dated July 9, 2019 Page 2 (#9)

Mrs. L'Hommedieu believes the court erred by not protecting her community property interest in the 1500 ounces of silver that Mr. L'Hommedieu took with him in September of 2013. She believes the court further erred by placing the full burden of proof on her to prove where the silver went after he had taken it, and releasing Mr. L'Hommedieu from having any burden of proof to show where it had went. WASH. REV. CODE § 26.16.210:

“In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith.”

### **NO. 3 (ARGUMENT)**

When Mr. L'Hommedieu left in September of 2013, he additionally took the parties collection of silver. The parties had purchased 1500 ounces of silver in June of 2013 with an estimated value of \$34,000<sup>22</sup>. He took the silver without receiving consent from Mrs. L'Hommedieu to do so. Mrs. L'Hommedieu was not in either a medical or mental state to resist his actions, since she was recovering from a stroke. When he took possession of the 1500 ounces of silver, he also took the responsibility upon himself, of keeping a traceable record of where the silver went after that.

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<sup>22</sup> \*EX. Trial #170

However, he did not. The court in its finding of fact stated the following:<sup>23</sup>:

“There is not sufficient evidence on this record that the money in the parties bank account at separation and the silver and gold assets that respondent claims are subject to division are actually assets that are available for distribution. Similarly, there is not sufficient evidence on this record to conclude precisely what became of these assets or that either party is entitled to an offsetting judgement in this matter to account for these unavailable assets.”

The evidence that was provided to the court, came from only Mrs. L’Hommedieu. None came from Mr. L’Hommedieu. The court did not provide any value to the silver in its ruling, nor did it calculate \$34,000 going to Mr. L’Hommedieu in its division of the assets.

#### **NO. 4 (ISSUE)**

Mrs. L’Hommedieu believes the court erred by not protecting her community property interest in the vacant land on River Glen Rd. She further believes the court erred by placing the full burden of proof on only her to try to prove that Mr. L’Hommedieu had acted in bad faith by giving the land over to his father, and releasing Mr. L’Hommedieu from having any burden of proof to show the

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<sup>23</sup> Final Ruling dated July 9, 2019 Page 2 (#9)

transaction was made in good faith. WASH. REV. CODE §

26.16.210:

“In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith.”

**NO. 4 (ARGUMENT)**

In 2006, Mr. and Mrs. L’Hommedieu purchased land that was adjacent to their home. They purchased it with the intention of placing a septic tank on a small portion, to use for their home. Mr. L’Hommedieu verified the land had been purchased by he and Mrs. L’Hommedieu with these intentions. According to county records, Mr. and Mrs. L’Hommedieu put down \$52,500 of their own cash, and then obtained a loan for the remaining \$147,500<sup>24</sup>. Mr. L’Hommedieu testified that the loan was obtained through his father. Mr. L’Hommedieu’s mother verified in her testimony that the land had also been purchased solely by Mr. and Mrs. L’Hommedieu, and that she and her husband had only provided a loan. Mr. L’Hommedieu testified that each month he and Mrs. L’Hommedieu would make payments for the loan by placing cash directly into the ATM machine linked to his father’s US bank

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<sup>24</sup> \*Ex. Trial #180

account. During discovery, Mr. L'Hommedieu was requested to provide all of the loan documents and payment history regarding the loan that his parents provided to he and Mrs. L'Hommedieu for the land. However, he told the court that there were no loan documents showing the original loan amount, loan agreement, interest rates, remaining balance or payment history. There were also no loan agreement documents to provide. Mrs. L'Hommedieu obtained sales history from the county, and learned that when she and Mr. L'Hommedieu purchased the land, Mr. L'Hommedieu's father had fraudulently placed his name as co-owner. Mr. L'Hommedieu further stated that he had recently given the land over to his father, without receiving any financial compensation, but was still paying his father for the loan. Mrs. L'Hommedieu submitted to the court, the Skamania County Tax record, indicating that Mr. L'Hommedieu had continued to still pay the taxes on the land, each year "after" having allegedly given the land to his father<sup>25</sup>. In December of 2018, three months before trial, Mrs. L'Hommedieu received a letter from Schwabe and Wyatt indicating they were attorneys for Mr. L'Hommedieu's father. The letter threatened suit against Mrs. L'Hommedieu, if she would not sign

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<sup>25</sup> EX. Trial #185 and 186

away her community property rights in the land<sup>26</sup>. However, she did not sign away her rights on the land. Mrs. L'Hommedieu was informed a month later in January of 2019, the land had been sold for \$179,000, regardless of Mrs. L'Hommedieu's remaining ownership in it. When Mr. L'Hommedieu gave the land over to his father, EPG investments filed suit against both he and his father, claiming the transaction was a fraudulent transfer.<sup>27</sup> The suit resulted in an accumulation of attorney's fees, and Mr. L'Hommedieu testified that Mrs. L'Hommedieu should also be responsible for this debt, even though she had not been informed of the transaction, nor had she given any consent to it. Mrs. L'Hommedieu believes the court has erred in its final ruling by not protecting her community ownership interest in the land. In the court's finding of fact, it states:

“I find, that the property in Skamania County on River Glen Rd, was purchased by the Petitioner and his father in or around 2006 for approximately \$250,000. This real property was then subsequently sold in 2018, for approximately \$179,000. The Petitioner is currently making monthly payments to his parents to repay for the investment they made in this property. The substantial evidence on the record established that the sale of this property did not provide any profit that would be subject to division in this action”.

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<sup>26</sup> EX. Trial 181

<sup>27</sup> See trial exhibit 183

The court could not have been convinced by any evidence that the land had been purchased for \$250,000, by Mr. L'Hommedieu and his father, nor that there was not any profit, since the court had clearly not been provided with any financial documents showing the original loan, the payment history, or even a remaining balance. The courts findings were also contradictory. By its own statements, the court should have seen the fraud element. Mr. L'Hommedieu's father could not be co-owner and being paid back. The courts finding also ignores Mrs. L'Hommedieu's community interest in the property, or that the loan for the land was being paid with community funds. The court should have also recognized that Mr. L'Hommedieu would have had no reason to give the land to his father, and still continue to make the payments on the loan. The fact is, the court was not provided with any evidence to substantiate its own ruling or that of its findings.

Friedlander v. Friedlander, 58 Wn.2d 288, 362 P.2d 352 (1961).

“A trial court's finding of fact must be accepted as a verity where there is substantial evidence to support it”.

The court's ruling simply removed Mrs. L'Hommedieu from this community property equation. The court further disregarded, that Mr. L'Hommedieu had not been given consent by Mrs. L'Hommedieu to give the land to his father.

WASH. REV. CODE § 26.16.030:

“Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage or after registration of a state registered domestic partnership by either domestic partner or either husband or wife or both, is community property. Either spouse or either domestic partner, acting alone, may manage and control community property, with a like power of disposition as the acting spouse or domestic partner has over his or her separate property, except:

- (1) Neither person shall devise or bequeath by will more than one-half of the community property.
- (2) Neither person shall give community property without the express or implied consent of the other.
- (3) Neither person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.
- (4) Neither person shall purchase or contract to purchase community real property without the other spouse or other domestic partner joining in the transaction of purchase or in the execution of the contract to purchase.
- (5) Neither person shall create a security interest other than a purchase money security interest as defined in \*RCW 62A.9-107 in, or sell, community household goods, furnishings, or appliances, or a community mobile home unless the other spouse or other domestic partner joins in executing the security agreement or bill of sale, if any.
- (6) Neither person shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses or both domestic partners participate in its management without the consent of the other.

The court further erred by placing the full burden of proof on Mrs. L'Hommedieu to try to prove that Mr. L'Hommedieu had acted in bad faith when he gave the land over to his father, and releasing Mr. L'Hommedieu from having any burden of proof, proving this transaction was made in good faith. WASH. REV. CODE § 26.16.210 which states:

“In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith.”

The ruling deprived Mrs. L'Hommedieu alone. The court disregarded the land value in its division of assets.

#### **NO 5 (ISSUE)**

Mrs. L'Hommedieu believes the courts division of the Mazda 3 with an estimated value of \$1800 awarded to her, and the Plymouth Cuda awarded to Mr. L'Hommedieu with an estimated value of \$50,000 was not indicative of a just and fair division. Furthermore, the court did not disperse all of the remaining marital vehicles between the parties which had an estimated value of \$9800<sup>28</sup>. Mr.

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L'Hommedieu was allowed to keep these vehicles without showing any divisional value to them in the ruling.

**NO. 5 (ARGUMENT)**

The court awarded Mrs. L'Hommedieu the marital vehicle she had been driving, a 2008 Mazda 3, with 185,000 miles with an estimated value of \$1800. The court awarded Mr. L'Hommedieu the parties classic car (Plymouth Cuda) with an estimated value of \$50,000. In relation to the value of the other assets that were divided between the parties; Mrs. L'Hommedieu believes the division of these two vehicles does not indicate a just and equitable division between both parties. The court erred by not dispersing the other remaining vehicles which include a Nissan Xterra, Kawasaki Motorcycle, Chevy Nova, Subaru, thus allowing Mr. L'Hommedieu to keep them without showing any divisional value.

**NO. 6 (ISSUE)** .

Mrs. L'Hommedieu believes that regardless of the court having a clear understanding that Mr. L'Hommedieu had cashed out marital assets prior to filing for this dissolution, it released him from having any burden of proof to show where they went after he cashed them. The court placed the burden of proof on Mrs. L'Hommedieu to have

to try and prove what became of these assets after Mr.

L'Hommedieu had cashed them out. These assets are in regard to the 401K from ING financial, a 457 plan from Nationwide, and stocks from Interactive brokers for an estimated total of \$131,919.93.<sup>29</sup>

#### **NO. 6 (ARGUMENT)**

Mrs. L'Hommedieu tried for three years to obtain the discovery of the parties marital assets. There was a 401K plan with ING Financials with an estimated value of \$65,133.00<sup>30</sup>. A 457 plan with Nationwide estimated at \$11,693.00<sup>31</sup>. Stocks with Interactive Brokers estimated value of \$55,093.93.<sup>32</sup> Mr. L'Hommedieu told the court that it was not necessary to provide discovery of those assets since he had already cashed in these assets prior to this dissolution. At trial, he stated the reason he had cashed in these assets was to keep Mrs. L'Hommedieu from liquidating them<sup>33</sup>. However, he did not provide any documentation to show where these assets were, nor did he make them available for a just and equitable division between the parties. The court did not feel that

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<sup>29</sup> EX. Trial 157,158, 159, 160.162.163,164

<sup>30</sup> EX. Trial 158

<sup>31</sup> EX. Trial 157

<sup>32</sup> EX. Trial 159, 160, 162. 163, 164

<sup>33</sup> \*RP. Pages 80-82

any assets that Mr. L'Hommedieu had cashed out prior to filing dissolution were relevant. At one- point also telling Mrs.

L'Hommedieu:

“I don't believe that Mr. L'Hommedieu denied that he stated, in his statement when you cross examined him about, that he did liquidate some accounts. These accounts were liquidated prior to filing dissolution in this matter. So is there a way to short circuit this”.<sup>34</sup>

Mrs. L'Hommedieu believes the court restricted her questioning of Mr. L'Hommedieu to try to find where these assets went. She believes the court further erred by not finding this information relevant to aid in the court's findings and ruling. She believes the court further erred by requiring her to bare the burden of proof as to where these assets went after Mr. L'Hommedieu had cashed them, and releasing Mr. L'Hommedieu from having any burden of proof. WASH. REV. CODE § 26.16.210:

“In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith.”

**NO. 7 (ISSUE)**

Mrs. L'Hommedieu believes the court erred by not finding Mr. L'Hommedieu had acted in bad faith by removing her as the

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<sup>34</sup> \*RP. Page 101 lines 10-18

survivor beneficiary of the Oregon PERS retirement pension. Mrs. L'Hommedieu further believes that the court erred by releasing Mr. L'Hommedieu from having any burden of proof in proving that the removal of Mrs. L'Hommedieu name as beneficiary was made in good faith. WASH. REV. CODE § 26.16.210:

“In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith.”

#### **NO. 7 (ARGUMENT)**

Mrs. L'Hommedieu believes the court first erred by finding that she wanted the court to find fraud in Mr. L'Hommedieu's "selection" for beneficiary of the Oregon PERS retirement pension. Mrs. L'Hommedieu was requesting the court to find Mr. L'Hommedieu had acted in bad faith and/or committed fraud by "removing" her name as survivor beneficiary. Mrs. L'Hommedieu was the survivor beneficiary on the Oregon PERS retirement pension, "until" Mr. L'Hommedieu removed her.

ORS 238.462: (Spousal Consent Required) "A member of the Public Employees Retirement System who is married on the effective date of the member's retirement shall receive a service retirement allowance in the form provided for in Option 3 under ORS 238.305 (Optional service retirement allowance calculations) (1) or a disability

retirement allowance in the form provided for in Option 3 under ORS 238.325 (Optional disability retirement allowance calculations) (1) unless the member provides proof of spousal consent for other than Option 3”

ORS 238.325 (Optional disability retirement allowance calculations)  
Option 3. A reduced disability retirement allowance payable during the period of incapacity, with the provision that after death, if death shall occur after the effective date of the disability and during the period of incapacity, such allowance shall continue at one-half the rate paid to the member and be paid for the life of the beneficiary whom the member has designated in writing duly acknowledged and filed with the board at the time of election, should the beneficiary survive the member”

Before retiring, Mr. L’Hommedieu told Mrs. L’Hommedieu that she was required to sign some documents in order for him to retire.

Mrs. L’Hommedieu then accompanied him to the Oregon PERS office, and there she signed a spousal consent form for which showed “survivor joint annuity” that indicated she was still the beneficiary<sup>35</sup>. This was also explained to her by the Oregon PERS representative. A few days later, Mr. L’Hommedieu approached Mrs. L’Hommedieu once again, and told her that PERS was requesting that the document be filled out again. Mrs.

L’Hommedieu accompanied Mr. L’Hommedieu to the Oregon PERS office, and signed another form, this one stating 50% FAS, which meant she was still the beneficiary<sup>36</sup>. Once again this was

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<sup>35</sup> EX. Trial 151

<sup>36</sup> EX. Trial 152

explained to her by the PERS representative. Only a few days later, Mr. L'Hommedieu approached Mrs. L'Hommedieu a third and final time, and once again told her there was a problem with the document. However, this time he stated that he did not have the time to drive to the PERS office. This time he took Mrs. L'Hommedieu to his bank to have her sign the same document<sup>37</sup>. The notary provided a notary of seal page which showed the option number chosen as 3, however she did not define the option number that had been chosen in her signature book<sup>38</sup>. It was not until during discovery in this dissolution, that Mrs. L'Hommedieu found out that Mr. L'Hommedieu had changed the Option number on the document from 3 to 1, before submitting it to PERS.

ORS 238.325 Optional disability retirement allowance calculations

“Option 1. (a) A life annuity (nonrefund) payable during the member’s life only.”

The change in number placed Mr. L'Hommedieu as a single man without any beneficiaries. Mr. L'Hommedieu alleged at trial, that this had been done upon a mutual agreement made between he and Mrs. L'Hommedieu in order for him to receive a higher amount each month from his retirement pension. He provided no evidence to

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<sup>37</sup> EX. Trial #154

<sup>38</sup> EX. Trial #155

show this transaction was made in good faith. The court placed the burden on Mrs. L'Hommedieu to have to try to prove the transaction was made in bad faith which is not in accordance with WASH. REV. CODE § 26.16.210:

“In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of a third person or persons, the burden of proof shall be upon the party asserting the good faith.”

Mrs. L'Hommedieu provided a letter from PERS which stated there had not been a notary of seal page submitted with the spousal consent form that Mr. L'Hommedieu had provided.<sup>39</sup> The notary seal page would have shown that option 3 had been chosen. Mr. L'Hommedieu was the only person benefiting from this transaction. When only one person is benefiting in contracts or prenuptials, it indicates that there was pressure placed upon the person not benefiting, or it was obtained under fraudulent circumstances. Clearly it was made in bad faith, since Mrs. L'Hommedieu did not receive any benefit in the transaction.

In re Marriage of Matson, 730 P. 2d 668 - Wash: Supreme Court 1986 " Parties to a [prenuptial] agreement do not deal at arm's length with each other. Their relationship is one of mutual trust and confidence. They must exercise the highest degree of good faith, candor and sincerity in all

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<sup>39</sup> EX. Trial # 156

matters bearing on the proposed agreement." The Court of Appeals stated the beneficial aspects of a prenuptial agreement must be obtained without abuse, and in particular, without any overreaching on the part of the spouse initiating the agreement". *In re Marriage of Matson*, 41 Wn. App. 660, 663, 705 P.2d 817 (1985)

*In re Marriage of Hadley*, 565 P. 2d 790 - Wash: Supreme Court 1977

"This brings us to the nature of the good faith disclosure required by a prenuptial agreement. To render such an agreement valid there must be a fair and reasonable provision for the wife, or, in the absence thereof there must be a full, frank disclosure of the future husband's property and his worth. *Juhasz v. Juhasz*, supra [134 Ohio St. 257, 16 N.E.2d 328, 117 A.L.R. 993 (1938)]; *Warner v. Warner*, supra [235 Ill. 448, 85 N.E. 630 (1908)]; 2 A. Lindey, § 90, at 36-37. ...she must at least have a full and fair disclosure of all material facts relating to the amount, character and value of the property involved so that she will not be prejudiced by the lack of information, but can intelligently determine whether she desires to enter the prenuptial contract. *Juhasz v. Juhasz*, supra; *Warner v. Warner*, supra; 2 A. Lindey, § 90, at 44; 41 Am.Jur.2d *Husband and Wife* §§ 313-14 (1968). Viewed in the light of this test, we hold that plaintiff failed to sustain his burden of proof. Further, the prospective spouse must sign the agreement freely and voluntarily on *independent advice* with full knowledge of her rights. *Hamlin v. Merlino*, supra at 864; 2 A. Lindey, § 90, at 36-38. It is clear that defendant did not have such advice prior to signing the agreement. *Hamlin* and *Friedlander* each point out that parties to a nuptial agreement do not deal with each other at arm's length. The relationship is one of trust and confidence which imposes a fiduciary duty upon one to the other, and this includes the duty of fair and full disclosure".

Mrs. L'Hommedieu believes the court should have required Mr.

L'Hommedieu to prove this transaction was made in good faith.

There was not any possible way for Mr. L'Hommedieu to show this transaction was made in good faith, since he was the only one

benefiting from it. The fact that Mr. L'Hommedieu needed Mrs. L'Hommedieu's signature to receive a higher amount each month, further evidences that what Mr. L'Hommedieu is receiving from Oregon PERS is a retirement pension and not disability pay. The court should have recognized this community property element when it characterized the retirement pension as Mr. L'Hommedieu's separate property.

**NO. 8. (ISSUE)**

Mrs. L'Hommedieu believes the court erred by failing to act and provide a remedy regarding Mr. L'Hommedieu's violation of the temporary orders by stopping the payments for the family health insurance policy with Regence. The court disregarded this matter in its ruling.

**NO. 8 (ARGUMENT)**

Mrs. L'Hommedieu's disabilities require her to have health coverage<sup>40</sup>. Mrs. L'Hommedieu believes the court should have ordered reimbursement for her costs she acquired having to obtain her own health insurance policy.<sup>41</sup>.

**NO. 9 (ISSUE)**

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<sup>40</sup> EX. Trial #198

<sup>41</sup> EX. Trial #200

Mrs. L'Hommedieu believes the court's award in Spousal Support to Mrs. L'Hommedieu is not indicative of being just and equitable between the parties, nor that the court fairly considered Mrs. L'Hommedieu's age, medical condition, disabilities, lack of skills, work history, financial obligations when it made its ruling. Mrs. L'Hommedieu believes the courts spousal support award indicates an abuse of the court's discretion, in relation to the values in the assets it awarded to Mr. L'Hommedieu.

#### **NO. 9 (ARGUMENT)**

Throughout this case and at trial, Mrs. L'Hommedieu believes the court placed itself in an ally position with Mr. L'Hommedieu. Anything that Mr. L'Hommedieu said, was taken as true, regardless of the evidence, or lack of evidence. Two examples, for instance; the evidence clearly shows Mr. L'Hommedieu took the social security child benefits when the children were not living with him. This is evident by his own bank statements<sup>42</sup>. However, the court found Mr. L'Hommedieu did not take the child benefits. Mr. L'Hommedieu provided only a handful of checks to indicate he made regular monthly support after he left in September of 2013,

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<sup>42</sup> Ex. Trial 188 & 191

however the court found there was no evidence to indicate Mr. L'Hommedieu had not paid regular support<sup>43</sup>. This is only two examples, and there are truly too many examples throughout this case, to place in this one brief. Mrs. L'Hommedieu could not afford representation, and the court denied her request for additional attorney's fees. Being not allowed to quit, she was forced to represent herself. The court then determined her representation of herself, undermined her claims that she is disabled. To force Mrs. L'Hommedieu to represent herself, and then use this against her, is deeply concerning. It is not only Mrs. L'Hommedieu who claims she is disabled; her physician claims it as well<sup>44</sup>. Even Mr. L'Hommedieu, himself, verified that Mrs. L'Hommedieu suffered a stroke. The court states that because Mrs. L'Hommedieu represented herself, it might be hard for her to find any job, however it is not impossible. The court makes no mention in its ruling that it would also be hard for Mr. L'Hommedieu to find a job, but not impossible. The court stated, Mrs. L'Hommedieu's claims that her disabilities prevent her from doing any job, is undermined by her performance at trial. However, there is no mention of the court's observation regarding, Mr. L'Hommedieu purchasing an off-

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<sup>43</sup> \*EX. Trial #65 and 67

<sup>44</sup> EX. Trial #166 and #167

road motorcycle and riding it, while claiming to have chronic back pain. There is no mention of Mr. L'Hommedieu's recent purchase of scuba gear, while claiming he cannot wear a face apparatus for work. Nor that Mr. L'Hommedieu has the mental capacity to continue to play poker and win numerous tournaments<sup>45</sup>. There is no mention of the court's observation of Mr. L'Hommedieu's performance when he chose to represent himself numerous times during this case. During trial, when Mr. L'Hommedieu was being questioned by Mrs. L'Hommedieu about his abilities and disabilities, the court told her:

“I would like you, if you could, focus your questions upon the matter before the court”<sup>46</sup>

The fact is, Social Security tests Mr. L'Hommedieu's disabilities upon the duties of his past job, not if he can do any job. Therefore, if the court was going to use an assumption standard for Mrs. L'Hommedieu's disabilities, should it have not also used that same assumption standard for Mr. L'Hommedieu? For example, would it not also be hard for Mr. L'Hommedieu to also find any job, but not impossible. Mrs. L'Hommedieu believes that if the court demand

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<sup>45</sup> RP. Page 50 lines 1-25 Page 51 lines 1-25 Page 52 lines 1-25 Page 53 lines 1-25 Page 54 lines 1-16

<sup>46</sup> RP. Page 54 lines 15-16

she tries to find any job, then it should have also demanded Mr. L'Hommedieu also find any job. Mrs. L'Hommedieu was a secretary 22 years ago. Being a secretary requires exceptional organization skills, the ability to multi- task in stressful situations, complete projects quickly, type at high speeds, answer phones quickly and answer questions efficiently, learn and understand new software, learn new things quickly and efficiently, read quickly and comprehensively, write quickly and comprehensively, undergo and understand mathematical computations, dictate competently, use all of the office machines, and have a high level of reasoning and memory skills. These skills, abilities and duties are very much different than asking your husband a few questions relating to their marriage at trial. The evidence shows that Mrs. L'Hommedieu struggled throughout the trial. There were not multiple witnesses to question. It was only Mr. L'Hommedieu and his mother that testified. The majority of the first day of trial was dedicated to Mr. L'Hommedieu's attorney presenting her case. The second day lasted only a couple hours. The record shows Mrs. L'Hommedieu asked only a handful of questions between both witnesses, and she apologizes numerous times to the court for being confused. Mrs. L'Hommedieu believes the court abused its discretion, by testing

her disabilities upon her performance at trial, and not by the evidence on the record. She further believes that if the court was going to test Mrs. L'Hommedieu's disabilities solely by her performance at trial, then in order to remove any prejudices; Mr. L'Hommedieu should have also been required to undergo that same test. The court's ruling allows Mr. L'Hommedieu to have full access to the community retirement pension now, in addition to receiving disability pay from both Social Security and the Veterans Administration for a total of \$12,350.00. Mrs. L'Hommedieu being three years older than Mr. L'Hommedieu will not be allowed to access these retirement funds until Mr. L'Hommedieu turns 55 years old. This means she will have to wait until she is almost 60 years old before she can use any of these community retirement funds for her own care and needs. She applied for disability pay from Social Security and was denied due to a lack of work credit history. Mrs. L'Hommedieu believes the court did not fairly consider her age, health, disabilities, lack of work history, future prospects, and/or financial obligations when making its ruling. Nor does she believe the court considered the asset division disparity between the parties in its division of assets. She believes the court also did

not factor in Mr. L'Hommedieu's ability to provide a more adequate support award without compromising his own financial obligations.

. In re Marriage of Kile and Kendall, 347 P. 3d 894 - Wash: Court of Appeals, 3rd Div. 2015

*"...a trial court is not only permitted to consider the division of property when deciding whether to award maintenance, it is required to do so". In re Marriage of Rink, 18 Wash.App. 549, 552-53, 571 P.2d 210 (1977)*

**SPOUSAL SUPPORT AWARD ESTIMATION EACH YEAR AND THE INCOME DIFFERENCES BETWEEN EACH PARTY PER THE CURRENT COURT RULING**

	<b>Shelane L'Hommedieu each month  (Approximate)</b>	<b>Lawrence L'Hommedieu each month  (Approximate)</b>
8/1/2019 – 8/1/2020  FIRST YEAR	Receives \$1500.00 in spousal support \$1523.00 child support for a total of <b><u>\$3023.00 a month and</u></b> <b><u>\$36,276.00 a year</u></b>	After deducted spousal and child support will receive approx. <b><u>\$10,246.00 a</u></b> <b><u>month and</u></b> <b><u>\$122,952.00 a</u></b> <b><u>year</u></b>
9/1/2020 - 9/1/2021  SECOND YEAR	Receives <b><u>\$1500.00 in spousal</u></b> <b><u>support for a total of</u></b> <b><u>\$1500.00 a month and</u></b> <b><u>\$18,000 a year</u></b>	After deducted spousal support will receive approx. <b><u>\$10,850.00 a</u></b> <b><u>month and</u></b> <b><u>\$130,200.00 a</u></b> <b><u>year</u></b>
10/1/2021- 10/1/2022 THIRD YEAR	Receives \$1500.00 in spousal support for a total of <b><u>\$1500.00 a month and</u></b> <b><u>\$18,000 a year</u></b>	After deducted Spousal Support will receive approx. <b><u>\$10,850.00 a</u></b> <b><u>month and</u></b>

		<b><u>\$130,200.00 a year</u></b>
11/1/2022-11/1/2023 THIRD YEAR	Receives \$1500.00 spousal support for a total of <b><u>\$1500 a month and \$18,000 a year</u></b>	After paying spousal support will receive approx. <b><u>\$10,850.00 a month and \$130,200.00 a year</u></b>
12/1/2023-12/1/2024 FOURTH YEAR	Receives <b><u>\$0 support a month and \$0 a year</u></b>	\$0 deducted for support will receive approx. <b><u>\$12,350.00 a month and \$148,200.00 a year</u></b>
1/1/2025-4/1/2025 (Mr. L'Hommedieu turns 55 on 4/12/69)	Receives <b><u>\$0 support a month and \$0 a year</u></b>	\$0 deducted for support will receive approx. <b><u>\$12,350.00 a month and \$148,200.00 a year</u></b>
5/1/2025-12/1/2025 END OF FIFTH YEAR	Begins receiving approx. <b><u>\$2666.00 a month and \$31,992.00 a year</u></b> from Oregon PERS retirement pension	Receives Approx. <b><u>\$9684.00 a month and \$116,208.00 a year</u></b>
9/1/2026 and going forward	Receives approx. <b><u>\$2666.00 a month and \$31,992.00 a year</u></b> However, this retirement payment will end upon Mr. L'Hommedieu's death since she was removed as survivor beneficiary of the Oregon PERS retirement pension	Receives Approx. <b><u>\$9684.00 a month and \$116,208.00 a year</u></b> until his death

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OTHER ASSET DIVISION BETWEEN THE PARTIES PER THE COURT'S RULING

<u>ASSET</u>	<u>SHELANE</u>	<u>LAWRENCE</u>	<u>Total VALUE</u>
	<u>L'HOMMEDIEU</u>	<u>L'HOMMEDIEU</u>	
Oregon PERS I.A.P account	Approx. \$47,300.00	Approx. \$62,700.00	Approx. \$110,000.00
Mazda 3	Approx. \$1800.00		Approx. \$1800.00
Plymouth CUDA	\$0	Approx. \$50,000.00	Approx. \$50,000.00
Other vehicles not dispersed by the court	\$0	Approx. \$9800.00	Approx. \$9800.00
Money in the bank accounts when Mr. L'Hommedieu took them	\$0	Approx. \$158,000.00	Approx. \$158,000.00
1500 Ounces of Silver	\$0	\$34,000.00	\$34,000.00
Land on River Glen Rd	\$0	\$179,000.00	\$179,000.00
401K, 457 plan and stocks	\$0	\$131,919.93	Approx. \$130,000.00
	<b>Shelane</b>	<b>Lawrence</b>	

	L'Hommedieu	L'Hommedieu	Total Assets
<b>TOTAL</b>	<b>Approx. \$49,100.00</b>	<b>Approx. \$625,419.93</b>	<b>Approx. \$672,600.00</b>

**IV. REQUEST FOR REIMBURSEMENT FOR COSTS**  
**ASSOCIATED WITH FILING THIS APPEAL**

Mrs. L'Hommedieu respectfully request an award in the associated costs to bring this appeal. (Report of Proceedings and Designation of Clerks Papers for a cost of \$1904.00)

**V. IN CONCLUSION:**

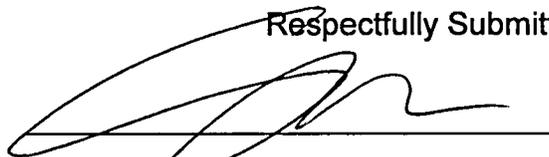
Mr. L'Hommedieu is currently receiving \$4000 a month over what he earned while working. Mrs. L'Hommedieu respectfully requests the appellate board would change the trial court's ruling, to allow her access to the Oregon PERS retirement pension immediately, rather than requiring her to wait until Mr. L'Hommedieu turns 55. Being Mrs. L'Hommedieu is three years older than Mr. L'Hommedieu; and as the court ruling stands, she will not be able to access these retirement funds until she is almost 60 years old. Especially in light that she has no other alternative way of obtaining her own disability pay from social security to aid her with her disabilities, needs and care. If Mr. L'Hommedieu would not have

cashed and hid the couple's marital assets prior to filing for dissolution, there would not have been such a vast financial disparity between Mr. L'Hommedieu and Mrs. L'Hommedieu. This ruling leaves her with an immediate eviction from her apartment, and the loss of her health insurance plan and blood thinners. Mrs. L'Hommedieu requests the appellate board would allow her to have a life insurance policy placed upon Mr. L'Hommedieu at his costs. A life insurance policy that would provide her with an equal annuity return that is comparable to the 50% annuity she would have received, if her name had not been removed from the Oregon PERS retirement pension. She further requests the appellate board would consider the lesser child support Mr. L'Hommedieu paid, and not having to pay for health insurance; which afforded him the ability to save a substantial amount of money. To consider Mrs. L'Hommedieu expenses she incurred from having to acquire health insurance. To also consider the value of martial assets that were cashed out prior to Mr. L'Hommedieu filing for dissolution (land, 401K, 457 plan, Stocks, bank accounts and the silver). Mrs. L'Hommedieu was not requesting additional spousal support in her proposed settlement, but rather was asking for reimbursement of these martial assets, in order to create a more just and equitable

division for both parties. Mrs. L'Hommedieu would respectfully request the board to consider her proposed settlement brief submitted to the trial court on June 6, 2019, when making its determination in this case<sup>47</sup>. In closing, Mrs. L'Hommedieu would not request any further litigation be ordered and/or new trial, as she is not adequately represented, nor can she afford to have adequate representation. For there to be even longer litigation at this point, would dramatically affect Mrs. L'Hommedieu's health, for which her physician has also warned against. She further believes Mr. L'Hommedieu was given substantial time to provide the court with all of the necessary documents in order to avoid there be any confusion or doubts for the courts ruling. Mrs. L'Hommedieu thanks the appellate court for its time and consideration in this matter.

DATED 12/13/2019

Respectfully Submitted



Shelane L'Hommedieu (PRO SE)

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<sup>47</sup> CP. Index #316, 317, 318

FILED  
COURT OF APPEALS  
DIVISION II

2019 DEC 13 PM 3:16

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

WASHINGTON STATE APPEALS COURT DIVISION II

SHELANE L'HOMMEDIEU

APPELLANT

and

LAWRENCE L'HOMMEDIEU

RESPONDENT

CERTIFICATE OF SERVICE

APPEALS CASE NO. 536391-II

(APPELLANT OPENING BRIEF)  
W/full Copy of the Report of  
Proceedings)

CERTIFICATE OF SERVICE (2 PAGES)

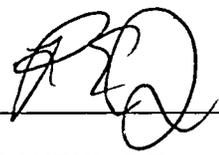
I DECLARE:

I, Ron Stewart, not being party in this matter, and being over the age of 18, do swear that on December 13, 2019, at 12:44 pm, I hand delivered the foregoing documents to Landerholm Law located at 900 Washington Street, #8001, Vancouver, WA 98660. An employee for Landerholm Law, accepted service of the document(s), having authority to do so, on behalf of Tessa Cohen, Attorney on record for Lawrence L'Hommedieu. A signature verification from that employee has been attached herein.

I CERTIFY I HAVE MADE SERVICE OF THE DOCUMENT(S) LISTED AS FOLLOWS:

Appellant's opening brief dated 12/12/2019

FULL copy of the Report of Proceedings for Skamania Superior Court case 14-3-00035-4 hearing dates 5/24/2019 and 5/28/2019 (transcribed by Schmitt Reporting Transcribers in Vancouver, WA.)



RON STEWART

18460 SE Stephens St.

Portland, OR 97233

12/13/19  
DATE

(OFFICIAL COPY)

Ron Stewart (Server)  
18460 SE Stephens St.  
Portland, OR 97233  
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**EMPLOYEE SIGNATURE VERIFICATION OF SERVICE**

**Appellate case #536391-II - L'Hommedieu v, L'Hommedieu**

I DECLARE:

I, being an employee of Landerholm Law, located at 900 Washington Street, #8001, Vancouver, WA 98660, verify and having authority, do accept receipt of the following documents on behalf of Tessa Cohen, attorney on record for Lawrence L'Hommedieu:

DOCUMENTS RECEIVED:



Appellant's opening brief dated 12/12/2019



FULL copy of the Report of Proceedings for Skamania Superior Court case 14-3-00035-4 hearing dates 5/24/2019 and 5/28/2019 (transcribed by Schmitt Reporting Transcribers in Vancouver, WA)

PRINTED NAME: Julie M. Chappelle

SIGNATURE: Julie M. Chappelle

DATE: 12/13/19

TIME: 11:44 a.m.

(OFFICIAL COPY)