

NO. 28890-1-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

---

In re Marriage of:

JUDITH WENDELL CORAM,

Petitioner/Appellant,

vs.

ROBERT HUGH MAIR,

Respondent/Respondent.

---

BRIEF OF APPELLANT JUDITH WENDELL CORAM

---

Bevan J. Maxey, WSBA #13828  
Attorney for Appellant

Maxey Law Offices  
1835 West Broadway Avenue  
Spokane, WA 99201  
(509) 326-0883

NO. 28890-1-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

---

In re Marriage of:

JUDITH WENDELL CORAM,

Petitioner/Appellant,

vs.

ROBERT HUGH MAIR,

Respondent/Respondent.

---

BRIEF OF APPELLANT JUDITH WENDELL CORAM

---

Bevan J. Maxey, WSBA #13828  
Attorney for Appellant

Maxey Law Offices  
1835 West Broadway Avenue  
Spokane, WA 99201  
(509) 326-0883

## TABLE OF CONTENTS

A.	ASSIGNMENTS OF ERROR.....	1
B.	ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....	10
C.	STATEMENT OF THE CASE .....	13
D.	STANDARD OF REVIEW.....	22
E.	ARGUMENT .....	24
F.	CONCLUSION.....	33

## TABLE OF AUTHORITIES

### Table of Cases

<u>Eggert v. Vincent</u> , 44 Wn.App. 851, 723 P.2d 527 (1986), <u>review denied</u> , 107 Wn.2d 1034 (1987) .....	23, 26, 28, 32
<u>Green Thumb, Inc. v. Tiegs</u> , 45 Wn.App. 672, 726 P.2d 1024 (1980) .....	22
<u>In re Marriage of Bernard</u> , 137 Wn.App. 827, 155 P.3d 171 (2007) .....	22, 23
<u>In re Marriage of Crosetto</u> , 82 Wn.App. 545, 918 P.2d 954 (1996).....	24
<u>In re Marriage of Foran</u> , 67 Wn.App. 242, 834 P.2d 1081 (1992).....	23
<u>In re Marriage of Miracle</u> , 101 Wn.2d 137, 675 P.2d 1229 (1984).....	26, 28
<u>In re Marriage of Schweitzer</u> , 81 Wn.App. 589, 915 P.2d 575 (1996).....	31
<u>In re Marriage of Tang</u> , 57 Wn.App. 648, 789 P.2d 118 (1990) .....	24, 27, 29, 30, 32, 33
<u>In re Marriage of White</u> , 105 Wn.App. 545, 20 P.3d 481 (2001) .....	24
<u>Olmstead v. Department of Health</u> , 61 Wn.App. 888, 812 P.2d 527 (1986) .....	22
<u>Silverdale Hotel Assocs. v. Lomas &amp; Nettleton Co.</u> , 36 Wn.App. 762, 677 P.2d 773 (1984) .....	23, 26, 29, 32
<u>State v. Bourgeois</u> , 133 Wn.2d 389, 945 P.2d 1120 (1997) .....	23
<u>State v. Cauthron</u> , 120 Wn.2d 879, 846 P.2d 502 (1993).....	23
<u>State v. Dawkins</u> , 71 Wn.App. 902, 863 P.2d 124 (1993) .....	23
<u>State v. Dunn</u> , 125 Wn.App. 582, 105 P.3d 1022 (2005).....	23

<u>State v. Horrace</u> , 144 Wn.2d 386, 28 P.3d 753 (2001).....	22, 23
<u>State v. Medina</u> , 112 Wn.App. 40, 48 P.3d 1005 (2002) .....	23
<u>State v. Robinson</u> , 79 Wn.App. 386, 902 P.2d 652 (1995) .....	24, 27, 29, 30, 32, 33
<u>Thorndike v. Hesperian Orchards, Inc.</u> , 54 Wn.2d 570, 343 P.2d 103 (1959) .....	22
<u>Weems v. North Franklin School District</u> , 109 Wn.App. 767, 37 P.3d 354 (2002) .....	23

**Court Rules**

RAP 12.2.....	27, 29, 30, 32, 33
---------------	--------------------

**Statutes**

RCW 26.09.080.....	24, 29, 30, 32
--------------------	----------------

## **A. ASSIGNMENTS OF ERROR**

1. The Superior Court of Spokane County, State of Washington, erred in entering its oral decision on August 7, 2009, with respect to its determination and calculation of a general credit towards a transfer or equalization payment of twenty-five thousand dollars [\$25,000.00] to the husband in connection with his alleged community share of uncompleted projects begun on the separate real property of the wife located at 2911 West 16th Avenue in Spokane, Spokane County, State of Washington, and where the parties resided during the course of their relationship. [Trial RP 467-68; CP 59-62, 71, 75-76].

2. The Superior Court of Spokane County, State of Washington, also erred in entering its oral decision on August 7, 2009, with respect to its further determination and calculation of a general credit towards a transfer or equalization payment of ten thousand dollars [\$10,000.00] to the husband in contention with his alleged community share of "efforts towards improvements" performed on the separate property of the wife identified as the "Black Lake cabin" property and acreage located in Stevens County, State of Washington. [Trial RP 469-70; CP 62, 71, 75-76].

3. The Superior Court of Spokane County, State of Washington, likewise erred in entering its oral decision on August 7, 2009, with respect to its determination that, concerning the wife's "I.R.S. refund in 2007, the

husband should have an interest of at least \$3,000 in" the same regardless of the fact the husband had not similarly shared his tax refund with the wife. [Trial RP 439; CP 67].

4. The Superior Court of Spokane County, State of Washington, likewise erred in entering its oral decision on August 7, 2009, with respect to its determination that the wife is "going to take that [Washington State Employees Credit Union] home equity line of credit [which was taken out by the husband in the approximate amount of seventy thousand dollars [\$70,000.00]] on the [Black Lake] cabin" when, as the court acknowledged in its ruling, funds from that particular loan or line of credit went to retire and pay off the personal credit card and other debts and obligations incurred by the husband. [Trial RP 346-47, 385, 388, 392, 471, 478-79; CP 69, 70, 165-66].

5. The Superior Court of Spokane County, State of Washington, also erred in entering its oral decision on August 7, 2009, with respect to valuation its determination that the total thirty-five thousand dollars [\$35,000.00] representing the subject transfer payment associated with the foregoing real estate, as well as the award of various personal assets awarded to the wife valued at nine thousand dollars [\$9,000.00] by the court, would be taken into taken into account, and applied, in terms of the percentage of husband's community share of the wife's PERS-I pension account when the value of that pension was determined by the parties.

[CP 64, 71, 76-77].

6. The Superior Court of Spokane County, State of Washington, also erred in entering its oral decision on August 7, 2009, with respect to its failure to take into account the innumerable assets, as the value and character of the same, which the husband and his friends had taken from the family home after separation. [Trial RP 200, 207, 265-66, 275-76, 456-57, 486; CP 54-78, 111-12, 173-93].

7. The Superior Court of Spokane County, State of Washington, erred on January 24, 2010, in failing to grant all relief requested in appellant's motion for reconsideration [CP 224-28, 306-08, 309], directed to the court's December 3, 2009, "Findings of Fact and Conclusions of Law" [CP 195-208] and "Decree of Dissolution" [CP 209-19], and in entering its "Order on Reconsideration," to the same effect. [CP 224-28].

8. The Superior Court of Spokane County, State of Washington, erred in entering its oral decision on February 26, 2010, by upholding its original decision on December 3, 2009 [CP 208, 213], 216] to award the husband a 75 percent of the community interest in the wife's PERS-1 Pension. [February 26, 2010 RP 52, 58].

9. The Superior Court of Spokane County, State of Washington, erred on February 26, 2010, in entering that part of finding no. 2.9 of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," which states "[t]he husband has the following real or

personal separate property . . .[a]ny asset acquired post separation." [CP 274-75].

10. The Superior Court of Spokane County, State of Washington, also erred on February 26, 2010, in entering that part of finding no. 2.9 of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to the wife's "house located at 2911 West 16th, Spokane," and which states:

1.j. Over the course of the period of time the husband undertook at least \$25,000 worth of community "efforts towards improvements", . . . . This will be a general credit as the court as the court evaluates a transfer payment.

[CP 275].

11. The Superior Court of Spokane County, State of Washington, similarly erred on February 26, 2010, in entering that part of finding 2.9 of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," again relating to the wife's "house located at 2911 West 16th, Spokane," and which states:

1.k. Each party of the parties bears responsibility for the low value of this asset.

[CP 276].

12. The Superior Court of Spokane County, State of Washington, erred on February 26, 2010, in entering that part of finding no. 2.9 of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to the wife's "Black Lake Cabin," and which

states:

2.b. The value of the improvements on the land is \$10,000 as segregated by Mr. [Bill] Lewis.

[CP 276].

13. The Superior Court of Spokane County, State of Washington, further erred on February 28, 2010, in entering that part of finding no. 2.9 of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to the wife's "Black Lake Cabin," and which states:

2.d. The husband is to receive a credit of \$10,000 in 1/2 [sic] the community efforts toward the improvements.

[CP 276].

14. The Superior Court of Spokane County, State of Washington, also erred on February 26, 2010, in entering that part of finding no. 2.10 of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to "Community Liabilities" assigned to the wife, and which states:

Line of credit on Lake Cabin, WSECU \$62,872 (w).

[CP 277].

15. The Superior Court of Spokane County, State of Washington, erred on February 26, 2010, in entering that part of conclusion no. 3.8 of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to "Other," and which states:

A QDRO allocating 75% of the wife's pension, or the lump

sum of \$103, 509.10 to the husband, and a transfer payment from the wife to the husband of \$14863.15, is necessary.

i. The husband's \$25,000 and \$10,000 community improvement efforts is roughly distributed to him by allocation to him 75% of the wife's PERS I retirement by QDRO [298-301].

ii. . . . The husband retains the wife's [1/2] community portion of his PERS II pension, valued at \$18,886.85 and will receive an additional \$14,483.16 to equal the \$30,000.

[CP 279].

16. The Superior Court of Spokane County, State of Washington, similarly erred on February 26, 2010, in entering that part of "Exhibit A" to its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to "Community Property," and which states:  
14. IRS refunds from '07; (husband to receive judgment for \$3,000 equalizing value);

[CP 285].

17. The Superior Court of Spokane County, State of Washington, also erred on February 26, 2010, in entering that part of "Exhibit A" to its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to "Community Property," and which states:  
19. Husband's PERS II retirement benefits, Oct. 1990 - Jan. 2008, to husband;

[CP 286].

18. The Superior Court of Spokane County, State of Washington,

further on February 26, 2010, in entering that part of "Exhibit A" to its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to "Community Property," and which states:  
22. Wife's PERS I benefits from Oct. 1990 through the date of separation in Jan. 2008. A QDRO [CP 298-301] shall be entered allocating IRS refunds from '07; (husband to receive judgment for \$3,000 equalizing value);

[CP 286].

19. The Superior Court of Spokane County, State of Washington, likewise erred on February 26, 2010, in entering that part of "Exhibit A" to its "Amended Findings of Fact and Conclusions of Law Following Reconsideration," relating to "Community Property," and which states:  
23. \$25,000 of husband's efforts towards W. 16th home repairs and \$10,000 of husband's efforts towards lake cabin improvements plus an equitable property adjustment in an additional transfer payment from wife to husband of \$14,863.16.

[CP 286].

20. The Superior Court of Spokane County, State of Washington, also erred on February 26, 2010, in entering its "Qualified Domestic Relations Order." [CP 298-301].

21. The Superior Court of Spokane County, State of Washington, erred on February 26, 2010, in entering that paragraph 1.3 of its "Amended Decree of Dissolution Following Reconsideration," relating to "Money Judgment Summary" and which provides such judgment is entered in

favor of "Robert Hugh Mair," as "A. Judgment creditor," and as against "Judith Wendell Coram," as "B. Judgment debtor," in the "C. Principal judgment amount" of "\$14,863.16" along with provision other related provisions including, but not limited to, "H. . . .interest at 12 % per annum . . . until paid." [CP 288].

22. The Superior Court of Spokane County, State of Washington, erred on February 26, 2010, in entering that paragraph 3.2 of its "Amended Decree of Dissolution Following Reconsideration," relating to "Property to be Awarded the Husband," and which states: "The husband is warded as his separate property the property listed in Exhibit A attached hereto and incorporated herein. [CP 288].

23. The Superior Court of Spokane County, State of Washington, similarly erred on February 26, 2010, in entering that paragraph 3.3 of its "Amended Decree of Dissolution Following Reconsideration," relating to "Property to be Awarded the Wife," and which states: "The wife is warded as her separate property the property listed in Exhibit B attached hereto and incorporated herein. [CP 288].

24. The Superior Court of Spokane County, State of Washington, also erred on February 26, 2010, in entering that paragraph 3.5 of its "Amended Decree of Dissolution Following Reconsideration," relating to "Liabilities to be Paid by the Wife," and which states, in part:  
The wife shall pay the following community or separate liabilities:

...

WSECU HELOC, Black Lake Property \$ 62,872.00 Community

...

Other: . . . The wife shall pay the judgment of \$3,000 (one-half of 2007 tax refund) . . . .

[CP 289].

25. The Superior Court of Spokane County, State of Washington, also erred on February 26, 2010, in entering that paragraph 3.15 of its "Amended Decree of Dissolution Following Reconsideration," relating to "Other" and which states, in part:

A QDRO shall be entered allocating \$103,509.10 to the husband from the wife's PERS I pension. An additional transfer payment of \$14,863.16 from wife to husband shall occur as an equitable transfer included in the judgment.

The wife shall re-finance the loan against the cabin within 60 days, removing the husband's name therefrom.

[CP 290-91].

26. The Superior Court of Spokane County, State of Washington, also erred on February 26, 2010, in entering that part of "Exhibit A" to its "Amended Decree of Dissolution Following Reconsideration," relating to relating to "Property to be awarded the Husband," and which states, in part:

17. PERS II acquired by husband . . . marriage . . . with an employee contribution of \$64,587;

[CP 294].

27. The Superior Court of Spokane County, State of Washington, further erred on February 26, 2010, in entering that part of "Exhibit A" to its "Amended Decree of Dissolution Following Reconsideration," relating

to "Property to be awarded the Husband," and which states, in part:

20. The husband to receive 75% of the wife's PERS I pension from Sept. 1990 through January 2008 valued in an amount of \$103,509.10 through a QDRO, as well as an additional \$14,863 as equalization for his portion of the community improvement efforts in the wife's separate real estate and personal property transfer equalization payment.

[CP 294].

28. The Superior Court of Spokane County, State of Washington, further erred on February 26, 2010, in entering that part of "Exhibit B" to its "Amended Decree of Dissolution Following Reconsideration," relating

to "Property to be awarded the Wife," and which states, in part:

9. The wife's PERS I retirement minus the husband's \$103,509.10 interest.

[CP 297].

## **B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the decision and judgment of the Superior Court of Spokane County, State of Washington, awarding the husband a general credit towards a transfer or equalization payment of twenty-five thousand dollars [\$25,000.00] in connection with his putative share of alleged

community improvement, to wit: innumerable uncompleted building projects begun on the 2911 West 16th Avenue home in Spokane, Spokane County State of Washington, were without factual or legal foundation, thus, constituting a manifest abuse of discretion on the part of the trial court? [Assignments of Error nos. 1, 5, 7 and 8, 10 and 11, 15, 17, 19 through 21, 24 and 25, 27 and 28].

2. Whether the like decision and judgment of the superior court awarding the husband an additional general credit to the husband towards a transfer or equalization payment of ten thousand dollars [\$10,000.00] in contention his alleged one-half community share of improvements associated with the Black Lake cabin, situated in Stevens County, Washington, were without factual or legal foundation constituting a manifest abuse of discretion on the part of the trial court? [Assignments of Error nos. 2, 5, 7 and 8, 12 through 15, 19 through 21, 24 and 25, 27 and 28].

3. Whether the superior court further abused its discretion in awarding the husband one-half the community interest in the wife's I.R.S. tax refund in 2007, when the husband had not in turn shared his tax refund with the wife? [Assignments of Error Nos. 3, 21, 24].

4. Whether the superior court abused its discretion, in terms of a fair and just distribution of property and assets as between the parties, (a) in failing to require the husband to account for, (b) in failing to make a

determination as to the community or separate nature of said property, and (c) in failing to impute a value as to those assets which he and his friends removed from the home following the date of separation? [Assignments of Error nos. 6 through 9, 15, 17 through 19, 21 through 23, 25 through 28].

5. Whether the superior court abused its discretion in directing that the wife would be responsible for the husband's WSECU line of credit against the Black Lake cabin, when a part of said loan proceeds was utilized by him to pay off and retire credit card debts and other obligations incurred by him, consistent with the parties' tacit agreement from the outset of their relationship and marriage to keep their income and debts separate from one another, and without the other spouse's knowledge or input? [Assignments of Error nos. 4, 7, 14, 24, 25].

6. Whether, as a result of the foregoing infirmities directly affecting a fair and just distribution of property and debts, the superior court went on to abuse its discretion (a) in allowing the husband to keep for himself the entire community interest in his PERS II pension, (b) in awarding the husband a 75/25 split of the community interest in wife's PERS I pension and, thereby, giving the husband by way of a court-ordered QDRO [CP 298-301] a \$103,509.10 interest in said pension plan, and (c) in turn imposing upon the wife a final transfer, or equalization, payment and money judgment in the amount of 14,863.16 in favor of the

husband? [Assignments of Error nos. 1 through 3, 5 through 13, 15 through 23, 25 through 28].

### C. STATEMENT OF THE CASE

1. Factual Background. The parties were married in Spokane, Spokane County, State of Washington on May 4, 1996. [Trial RP 36; CP 220, 274]. They separated on or about January 18, 2008 [Trial RP 36, 384, 401, 490; CP 220, 274], with the wife filing a petition for separation on February 28, 2008 in the Superior Court of Spokane County, State of Washington, under cause no. 08-3-300452-8. [CP 3-5]. Prior to the marriage, the parties cohabitated beginning in 1991. [Trial RP 51; CP 220, 274].

During the entire of their relationship, the couple resided at 2911 West 16th Avenue in Spokane [hereinafter referred to as the "16th Avenue property" or "the home"]. [Trial RP 51; CP 220]. The residence had been acquired by the petitioner, JUDITH WENDELL CORAM, and her ex-husband, Larry M. Snider, on April 6, 1984. [Trial RP 1, 50, 52; CP 220]. The home was awarded to Ms. CORAM when her divorce from Mr. Snider became final on November 2, 1993. [Trial RP 2, 53-54, 55; CP 220].

In additional to her ownership of the 16th Avenue property, in June

1992, Ms. CORAM purchased on her own certain unimproved lakefront real estate commonly referred to as the "Black Lake property." [Trial RP 61, 182-183, 443-44; CP 220]. This purchase took place during her pending divorce from Mr. Snider. [Trial RP 61, 182-83; CP 220]. This real estate is located in Stevens County, State of Washington. [CP 220].

Both of these two [2] properties remained solely in the name of the petitioner. [CP 220]. Furthermore, although the parties had no prenuptial or separate property agreement in place [Trial RP 76], the respondent, ROBERT HUGH MAIR, and Ms. CORAM, strictly maintained their individual incomes and financial affairs separate from one another, and without the other's input, knowledge or involvement. [Trial RP 2, 77; CP 221]. In other words, the parties incurred indebtedness and purchased personal assets without the knowledge or consent of each other. [Trial RP 2, 351; CP 221].

In this vein, they maintained separate bank accounts and had no joint accounts during their relationship. [Trial RP 2, 60, 77; CP 221]. The parties consistently filed separate federal income tax returns. [Trial RP 3; CP 221, 239]. Their practice was not to share any refund they received from the IRS. [CP 221].

During the course of their relationship, and this separate treatment of finances, Ms. CORAM became concerned about the level of her debt after she lost her job at Eastern State Hospital and, as a consequence, made

monthly payments to a debt reduction service in order to pay off past creditors. [Trial RP 180, 181; CP 221]. It took her three years to pay off the same. [Trial RP 181]. This was in addition to her always paying the mortgage and other expenses on the properties. [Trial RP 76, 180, 349]. Mr. MAIR never helped her with these of other bills, including her credit card debt, even when she lost her job and was unemployed. [Trial RP 180].

In contrast, Mr. MAIR continued to accumulated debt over the course of the marriage on his own, including that which he incurred on his personal credit cards. [Trial RP 2; CP 221]. His credit card debt alone was roughly \$35,000 when he moved into her home. [Trial RP 182]. However, some, if not all, of Mr. MAIR's accumulated debt were eventually paid off by way a \$70,000 loan or line of credit Mr. MAIR obtained from Washington State Employees Credit Union in February 2005, as a result of his having forced his wife by threat of divorce to encumber a cabin which by the couple had construct on her Black Lake property in 1994 and 1995. [Trial RP 189-91, 385, 388, 392, 471-72; CP 220, 307]. After the parties separated, Mr. Mair and his friends removed from the home much of the personal property he had accumulated as a result of the same credit card debt. [Trial RP 7, 48-49, 200, 207, 265-66, 275-76, 277, 401, 456-57, 472, 486; CP 111-12; 173-93].

The 16th Avenue property was originally built in 1907. [Trial RP

55, 69]. During the roughly 18 years they resided at the 16th Avenue property, Mr. MAIR, along with occasional assistance and advise of his father, Robert A. Mair [Trial RP 78-79, 327-30], undertook to make certain repairs, renovations and improvements to his wife's home and other structures on the premises. [Trial RP 55-56, 62-68, 69; CP 221]. However, many, if not all, of these planned projects or improvements were never completed, and the home was essentially left after 10 to 15 years of uncompleted work in a deteriorated state. [Trial RP 3-4, 79-87, 175-76, 179; CP 221].

During the course of this construction work, Ms. CORAM refinanced her home on several occasions in order to pay for all materials associated with these putative repairs and improvements undertaken by her husband. [Trial RP 60, 61, 77-78, 248; CP 221]. Mr. MAIR was never a participant or co-borrower with respect to these equity loans against the home. [Trial RP 60; CP 221]. All appraisals were based upon the assumption that the repair and remodel work would be completed. [Trial RP 87].

When she first received the 16th Avenue property from her prior divorce, the mortgage on the property was \$29,813.05. [Trial RP 75-76]. At the time of her separation from Mr. MAIR, the mortgage balance on her home had risen to \$105,147.90. [Trial RP 75-76].

Because of this unfinished condition of the home and, in some

instances, the resulting deterioration and "uninhabitability" of portions the home due in part to a lack of plumbing and electricity, as well as the decay of other surrounding outbuildings and structures, the 16th Avenue property dropped in value to roughly \$180,000 in 2009. [Trial RP 111-12, 114, 122, 123-24, 234, 236]. Prior to this time, the home has been appraised at \$245,000, when the home was being refinance in 2004 [Trial RP 68; CP 221], and \$250,000 when it was again appraised in 2006. [Trial RP 74]. Again, these earlier appraisals were based upon the subject remodels being done and in workman-like condition; which they were not in this case. [Trial RP 87, 88-102, 125].

The unfinished condition in which the home was left also resulted in mice and squirrel infestation, as well as weather deterioration of the structures, over the years. [Trial RP 81, 85, 88-90, 92, 95-96, 249]. Later at trial, evidence was presented by a real estate appraiser, Bill Lewis, and Mr. MAIR's father, that the cost of completing, refurbishing, correcting or remedying the work undertaken by Mr. MAIR would cost between \$60,000 to \$100,000. [Trial RP 3-4, 124, 319].

In addition to work done on the 16th Avenue property, Mr. MAIR also worked to build a two-story cabin on his wife's Black Lake property in 1994 and 1995. [Trial RP 184; CP 220]. This cabin, at best, could be described as rustic and its functional utility questionable at best. [Trial RP 134, 140]. Further, the structure was built in part with re-cycled materials,

and not to code. [Trial RP 127, 131, 140]. There was no sub-floor. [Trial RP 185-86]. It has no toilet, plumbing or outhouse [Trial RP 127, 135, 140], nor does it have any source of running, potable water. [Trial RP 127, 134, 186]. It likewise had no source of lighting, power, heat or electricity. [Trial RP 127, 134, 140, 186-87]. In addition, the first and second stories of the structure had no common access area or entry way; both could only be accessed by separate entrances. [Trial RP 127, 161]. Finally, much of the interior of the cabin was never completed by Mr. MAIR including, but not limited to, insulation. [Trial RP 186].

2. Procedural History. On July 27 through 31, 2009, trial was held before Linda Tompkins, judge of the superior court of Spokane County, State of Washington. [Trial RP 1, et seq.]. Following trial, the court entered its oral decision of August 7, 2009. [CP 54-78]. During the course of this decision, the court ruled that the husband was to receive a general credit towards a transfer or equalization payment of twenty-five thousand dollars [\$25,000.00] in connection with his alleged community share or efforts associated with the uncompleted projects begun on the 16th Avenue property. [CP 59-62, 75-76]. The court made the further determination that the husband was entitled to a like credit towards a transfer or equalization payment of ten thousand dollars [\$10,000.00] in contention with his alleged community share of "efforts towards improvements" performed on Black Lake cabin. [CP 62, 71, 75-76]. In

addition, the husband was awarded a one-half interest of at least \$3,000 in the wife's 2007 IRS tax refund. [CP 67].

As to the balance on February 2005 Washington State Employees Credit Union home equity line of credit which the husband had taken out against the wife's Black Lake cabin, and the proceeds of which was applied in part to pay off and retire his quasi-separate credit card and other debts, the court ruled that this liability would be the sole responsibility of the wife to repay. [CP 69, 70].

The court then went on to rule that, with respect to the thirty-five thousand dollars [\$35,000.00] representing the subject general credits or transfer payment associated with the foregoing real estate, as well as the award of assets awarded to the wife valued at nine thousand dollars [\$9,000.00] by the court, these amounts would be applied in terms of the percentage of husband's community share of the wife's PERS-I pension account when the value of that pension was later determined by the parties. [CP 64, 71, 76-77]. Notwithstanding these aspects of the court's oral decision, the court failed to take into account the assets, as the value and character of the same, which the husband and his friends had taken from the family home after the parties separated. [CP 54-78, 111-12, 173-93]. On December 3, 2009, the court entered its finding of fact and conclusions of law, as well as the decree of dissolution. [CP 195-208, 209-19].

Thereafter, on December 14, 2009, Ms. CORAM filed a motion and

declaration for reconsideration. [224-28, 306-08, 309].

Principally, the petitioner argued that court had failed to offset the percentage of the husband's interest in the wife's PERS I account with the wife undoubtedly also having an interest in the husband's PERS II pension, and the subject transfer payment to be made by the wife should be reduced by the amount of such interest in the husband's pension. [CP 225]. In essence, the court had ordered that the husband was to receive 75 percent of the wife's PERS I pension and why, without explanation, the wife was not entitled to at least one-half of the husband's PERS II pension. [CP 227].

Second, counsel argued that the court's distribution of community debt failed to take into account that all of these debts totaling \$108,411.56, including the February 2005, Washington State Employees Credit Union loan, had been incurred by the husband and not the wife. [CP 221, 226,

307]. Third, it was pointed out by counsel that the disparate personal property received by the wife was not offset by and value of the pages of personal property removed by the husband at the time of separation and valued by the wife, by testimony, at \$10,000.00.

. . .

Most prejudicially to the wife, the court has valued all of the property left behind by Mr. Mair when he left the house and no value has been placed on the property he removed over the several months before the restraining orders were in place. Presumably, the items he took were of more value than the items he left behind.

[CP 226-27]. Counsel went on to argue that this factor should also serve to reduce the amount of any transfer payment from the wife to the husband. [CP 227]. In effect, the court's figures associated with the transfer payment imposed by the December 13 decree "simply do not add up." [CP 227].

Mr. MAIR opposed this motion of the wife. [CP 233-48, 249-64]. On January 28, 2010, the court entered in order on reconsideration. [CP 270-72]. Specifically, the court only granted reconsideration with respect to its "failure to consider the fair value and distribution of the community portion of Mr. Mair's PERS II retirement." [CP 270]. All other relief sought by way of reconsideration was denied. [CP 271-72]. Following a further hearing and valuation of the same on February 26, 2010, the court awarded the husband his entire PERS II pension account, but recalculated the subject transfer payment of the wife taking into account her one-half community interest in the same. [February 26, 2010 RP 41-60]. The 75/25 percent split of the wife's PERS I account in favor of husband remained unchanged. [February 26, 2010 RP 52].

Amended findings of fact and conclusions of law, and decree of dissolution, were entered to this effect on that same date. [CP 273-86, 287-97]. This appeal follows. [CP 302].

Additional facts are set forth below as they relate to argument on a specific issue.

#### D. STANDARD OF REVIEW

The issues raised by appellant on appeal are governed by the following standards of review insofar as those particular issues entail a combination of (1) issues of fact, (2) mixed issues of law and fact, (3) issues of law and (4) issues concerning the abuse of discretion by the trial court. Errors of fact are reviewed in terms of whether there is substantial evidence in the underlying record to support the same. Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 343 P.2d 103 (1959). Substantial evidence only exists when there is evidence of a sufficient quantum to persuade a fair-minded person of the truth of the declared premise set forth in a finding of fact. Olmstead v. Department of Health, 61 Wn.App. 888, 893, 812 P.2d 527 (1986); Green Thumb, Inc. v. Tiegs, 45 Wn.App. 672, 676, 726 P.2d 1024 (1980).

In contrast, mixed questions of law and fact are considered both in terms of a quantitative determination of substantial evidence as to the latter and, as to the legal aspects of such issue, are reviewed de novo. See, State v. Horrace, 144 Wn.2d 386, 392, 28 P.3d 753 (2001). The evaluation of the fairness of a division of property and debt on appeal involves mixed question of legal policy and fact. See, In re Marriage of Bernard, 137 Wn.App. 827, 832, 155 P.3d 171 (2007). Such issues are generally considered both in terms of a quantitative determination of substantial evidence as well as to the legal aspects entailed in the distribution and are,

thus, reviewed de novo. See, Bernard, at 832; see also, In re Marriage of Foran, 67 Wn.App. 242, 251, 834 P.2d 1081 (1992); Horrace, at 392.

In other words, such review is treated as a question of law, to be viewed in the light of the facts and evidence presented. Bernard, at 832. By the same measure, errors which are purely legal in nature are reviewed de novo. State v. Cauthron, 120 Wn.2d 879, 887, 846 P.2d 502 (1993); State v. Dunn, 125 Wn.App. 582, 105 P.3d 1022 (2005); State v. Medina, 112 Wn.App. 40, 48 P.3d 1005 (2002).

If the findings of fact of the trial court are supported by substantial evidence, the issue remains whether those finding support the conclusions of law and judgment of the trial court. See, Eggert v. Vincent, 44 Wn.App. 851, 854, 723 P.2d 527 (1986), review denied, 107 Wn.2d 1034 (1987); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn.App. 762, 766, 677 P.2d 773 (1984). If they do not, then reversal of the trial court is in order. Id.

Finally, with respect to issues addressing the exercise of discretion by the trial court, the standard of review is abuse of discretion. State v. Bourgeois, 133 Wn.2d 389, 406, 945 P.2d 1120 (1997). In this vein, a challenge to the denial of a defendant's motion for a post-trial relief is ultimately reviewed on appeal for manifest abuse of discretion by the trial court. Weems v. North Franklin School District, 109 Wn.App. 767, 37 P.3d 354 (2002); State v. Dawkins, 71 Wn.App. 902, 863 P.2d 124

(1993). The trial court may be said to have so abused its discretion when the court acted on untenable grounds or for untenable reasons, or has erroneously interpreted or ignored the governing law. In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995).

### **E. ARGUMENT**

The property and debt division as set forth in the amended decree of dissolution following reconsideration [CP 287-97] does not reflect an equitable and fair apportionment in light of the factors listed in RCW 26.09.080 including the considerations which follow in this argument. While a property distribution does not have to be necessarily equal in proportion so as to be deemed fair and equitable, the disparate nature of this particular division of property and debt constitutes nothing short of a manifest abuse of discretion. See generally, In re Marriage of White, 105 Wn.App. 545, 549, 20 P.3d 481 (2001); In re Marriage of Crosetto, 82 Wn.App. 545, 918 P.2d 954 (1996).

Issue no. 1: As petitioner's counsel accurately stated in closing argument at trial there was no evidence whatsoever to establish the value of any claimed "improvements" undertaken to the 16th Avenue home by the respondent, Mr. MAIR [Trial RP 467], let alone to support the superior court's suggestion that the community contribution as being \$50,000 as

stated during the court's oral decision on August 9, 2010, and that Mr. MAIR's one-half contribution was \$25,000. [CP 75-76]. In fact, the record amply reflects that, because of this unfinished condition of the home and, in some instances, the resulting deterioration and "uninhabitability" of portions the home due in part to a lack of plumbing and electricity, as well as the decay of other surrounding outbuildings and structures, the 16th Avenue property dropped in value to roughly \$180, 000 in 2009. [Trial RP 111-12, 114, 122, 123-24, 139, 141, 147-48, 234, 236].

Prior to this time, the home had been appraised at \$245,000, when the home was being refinance in 2004 [Trial RP 68; CP 221], and \$250,000 when it was again appraised in 2006. [Trial RP 74]. However, these appraisals were based upon the assumption that subject remodels by Mr. MAIR would be completed and done in workman-like condition; which in this case they were not. [Trial RP 87, 88-102, 125].

This unfinished condition in which the home was left by Mr. MAIR resulted in mice and squirrel infestation, as well as weather deterioration of the structures, over the years. [Trial RP 81, 85, 88-90, 92, 95-96, 249]. Ultimately, the task associated with completing, refurbishing, correcting or remedying the work undertaking by Mr. MAIR was estimated to cost between \$60,000 to \$100,000. [Trial RP 3-4, 124, 319].

In sum, the work undertaken by Mr. MAIR substantially

devaluated the home. Plus, Ms. CORAM is left with the increased mortgage on her property amounting to \$105,147.90. [Trial RP 75-76]. In a parallel situation, with respect to Mr. MAIR's Worldmark time share having dropped in value from the time it was purchased by him during the marriage, the court declined to award the wife any community interest in the same. [CP 62, 281, 293]. This same rule should have been applied with the respect any community interest in the 16th Avenue residence.

On one final note, the law clearly provides that the right to reimbursement will not arise if the community has been adequately compensated by its use and benefit of one spouse's separate property. See, In re Marriage of Miracle, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984). Here, the couple resided in the wife's separate home throughout the course of their relationship. The court totally failed to take this fact into account when awarding the husband a general credit of \$25,000 for his "efforts toward improvements" on the 16th avenue home.

In short, the findings of the court [see, Assignments of Error nos. 1, 5, 7 and 8, 10 and 11] are supported by substantial evidence and, consequently, those findings cannot support the challenged conclusions of law and amended decree of the court [see, Assignments of Error nos. 15, 17, 19 through 21, 24 and 25, 27 and 28]. See, Eggert v. Vincent, 44 Wn.App. 851, 854, 723 P.2d 527 (1986), review denied, 107 Wn.2d 1034 (1987); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn.App.

762, 766, 677 P.2d 773 (1984). As a result, there can be no doubt the superior court manifestly abused its discretion when granting this general credit to the husband. See, In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Hence, the division of property and debt in this case is subject to reversal. RAP 12.2.

Issue no. 2. Once again, as Ms. CORAM attorney stated in closing argument there was likewise no evidence whatsoever to establish the value of any claimed "improvements" undertaken in terms of the construction of the Black Lake cabin by the respondent, Mr. MAIR [Trial RP 467], let alone to support the superior court's suggestion that the community contribution was \$20,000 as indicated during the court's oral decision on August 9, 2010, and that Mr. MAIR's one-half contribution was \$10,000. [CP 75-76]. Contrary to the court's valuation of this structure, Bill Lewis testified at trial that the replacement value, or reconstruction cost, of the cabin alone was at best \$17,500. [Trial RP 130, 159]. He tempered this valuation by further testifying that the functional utility of the cabin is not particularly great because of its unfinished and rustic nature in terms of the lack of various, basic amenities. [Trial RP 134-35].

Curiously enough, even the superior court noted in its finding no. 2.9(2)(e) of its "Amended Findings of Fact and Conclusions of Law Following Reconsideration that "based on the testimony, that the best

future use of the [cabin] would be to remove the structure and look to the [Black Lake] real property itself for any additional value in the future." [CP 276]. In other words, the court itself acknowledges the questionable value of the cabin in terms of any improvement value to the wife's lake front real estate. [CP 276].

Again, as in the case of Mr. MAIR's Worldmark time share, the parallel rule set from the superior court [CP 62, 281, 293] of not granting the other spouse a community interest in the same should apply in this instance concerning any credit Mr. MAIR might otherwise be entitled as against the subject cabin structure situated on the wife's Black Lake property. Furthermore, as in the case of the 16th Avenue home, no right of reimbursement should arise in this case since the community has been adequately compensated by its use and benefit of the subject cabin. See, In re Marriage of Miracle, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984). The court did not take this fact into account when further awarding the husband a general credit of \$10,000 for his constructing the subject "cabin."

Once again, the findings of the court [see, Assignments of Error nos. 2, 5, 7 and 8, 12 through 14] are supported by substantial evidence and, consequently, those findings do not support the challenged conclusions of law and amended decree of the court [see, Assignments of Error nos. 15, 19 through 21, 24 and 25, 27 and 28]. See, Eggert v. Vincent, 44 Wn.App. 851, 854, 723 P.2d 527 (1986), review denied, 107

Wn.2d 1034 (1987); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn.App. 762, 766, 677 P.2d 773 (1984). As a result, there can be no doubt the superior court manifestly abused its discretion when granting this general credit to the husband. See, In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Hence, the division of property and debt in this case is subject to reversal. RAP 12.2.

Issue no. 3. In terms of the subject property distribution, the superior court likewise abused its discretion in awarding the husband one-half the community interest in the wife's I.R.S. tax refund in 2007, when the husband had not in turn shared his tax refund with the wife. [CP 221]. The parties consistently filed separate federal income tax returns throughout their relationship [Trial RP 3, 439; CP 221] and, again, their practice was not to share any refund they might receive individually from the IRS. [CP 221]. As in the case of the court's disparate treatment of the husband's Worldmark time share, the wife should have been allowed to keep her tax refund when the husband was allowed to keep his. As the old adage dictates, "What is good for the gander should be good goose." RCW 26.09.080.

Since the court failed to divide the parties' tax refunds consistently [see, Assignments of Error Nos. 3, 21, 24], there can be no doubt the superior court manifestly abused its discretion when granting the husband

an interest in the wife's 2007 refund. See, In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Hence, the division of property and debt in this case is subject to reversal. RAP 12.2.

Issue no. 4. The superior court also abused its discretion, in terms of a fair and just distribution of property and assets as between the parties, (a) in failing to require the husband to account for, (b) in failing to make a determination as to the community or separate nature of said property, and (c) in failing to impute a value as to those assets which he and his friends removed from the home following the date of separation. Suffice it to say, a fair and just distribution of property and debt cannot be achieved unless all items of property are taken into account and their values made known to the court. See, RCW 26.09.080.

Since the superior court failed in its responsibility under that statute [see, Assignments of Error nos. 6 through 9, 15, 17 through 19, 21 through 23, 25 through 28], there can be no doubt once again that the court manifestly abused its discretion when granting dividing the property and debts as between the parties. See, In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Hence, the division of property and debt in this case is once more subject to reversal. RAP 12.2.

Issue no. 5. The superior court once more abused its discretion in

directing that the wife would be responsible for the husband's WSECU line of credit against the Black Lake cabin, when a part of said loan proceeds was utilized by him to pay off and retire credit card debts and other financial obligations incurred solely by him and for his benefit alone. Again, the parties' operated throughout their relationship under a tacit agreement to keep their income and debts separate from one another, and without the other spouse's knowledge or input. [Trial RP 2, 60, 77; CP 221]. The record is clear in this regard including, for example, Mr. MAIR purchase of the Worldmark time share during his "mid-life crisis" without the wife's knowledge or consent. [Trial RP 351-52].

As a result, at least a part of the subject WSECU loan or line of credit balance of \$62,872 [CP 277, 289] should have given to the husband as his sole financial responsibility or liability, since said loan proceeds were utilized by him to pay off and retire credit card debts and other financial obligations, incurred solely and independently by him and for his single benefit [Trial RP 189-91, 385, 392, 471-72; CP 220, 307]. See generally, In re Marriage of Schweitzer, 81 Wn.App. 589, 597, 915 P.2d 575 (1996). In turn, he never gave his wife money to pay off or retire those credit card debts she incurred. [Trial RP 180].

Consequently, the challenged findings of the court in this regard [see, Assignments of Error nos. 4, 7 and 14] are not supported by substantial evidence and, hence, those findings do not support the

challenged conclusions of law and amended decree of the court [see, Assignments of Error nos. 24 and 25]. See, Eggert v. Vincent, 44 Wn.App. 851, 854, 723 P.2d 527 (1986), review denied, 107 Wn.2d 1034 (1987); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn.App. 762, 766, 677 P.2d 773 (1984). As a result, there can be no doubt the superior court manifestly abused its discretion when granting this general credit to the husband. See, In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Hence, the division of property and debt in this case is subject to reversal. RAP 12.2.

Issue no. 6. As a result of the foregoing infirmities directly affecting a fair and just distribution of property and debts as mandated and required under RCW 26.09.080, it can ultimately be said that the superior court manifestly abuse its discretion in reaching a division of property and debt (a) when allowing the husband to keep for himself the entire community interest in his PERS II pension, (b) when awarding the husband a 75/25 split of the community interest in wife's PERS I pension and, thereby, giving the husband by way of a court-ordered QDRO [CP 298-301] a \$103,509.10 interest in said pension plan, and (c) in turn, imposing upon the wife a final transfer, or equalization, payment and money judgment in the amount of 14,863.16 in favor of the husband [see, Assignments of Error nos. 1 through 3, 5 through 13, 15 through 23, 25

through 28]. In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Hence, the such division of property and debt in this case is without question subject to reversal on this appeal. RAP 12.2.

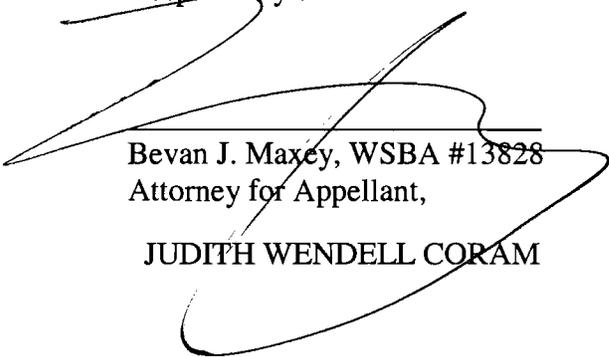
#### **F. CONCLUSION**

Based upon the foregoing points and authorities, the appellant, JUDITH WENDELL CORAM, respectfully requests that, in accordance with RAP 12.2 that (1) the above-identified, challenged aspects of the debt and property distribution of the superior court including, but not limited to, (a) the underlying \$35,000 general credit awarded the husband for alleged community improvement to the wife's separate properties, (b) underlying the award of a one-half community interest in the wife's 2007 tax refund, (c) the court's failure to require the husband to account for and impute a value on those community assets which he and his friends removed from the home following the date of separation, (d) the \$62,872 liability imposed upon the wife for the WSECU line of credit against the Black Lake Cabin, (e) the continuing, resulting 75/25 split of the wife's PERS I pension benefit impose by court order QDRO [CP 298-301] giving the husband a \$103,509.10 interest in said pension plan, while allowing the husband to retain the full amount of his pension plan, (f) and similarly resulting court-ordered transfer, equalization payment and money

judgment awarded to the husband in the amount of \$14,863.16 against the wife, as set forth and contained in the "Amended Finding of Fact and Conclusions of Law Following Reconsideration" [CP 273-86] and "Amended Decree of Dissolution Following Reconsideration" [CP 287-97], of the superior court be reversed; and (2) this matter be remanded for further proceedings consistent with the decision of this court concerning the debt and property distribution in this case.

DATED this 15<sup>th</sup> day of October, 2010.

Respectfully submitted:



Bevan J. Maxey, WSBA #13828  
Attorney for Appellant,

JUDITH WENDELL CORAM