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DEC 12 2011

COURT OF APPEALS
CLERK OF COURT
1000 WEST WALWORTH AVENUE
SPOKANE, WASHINGTON 99201

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In re the Marriage of:

Melissa McCarthy,
Respondent

Vs.

Sean McCarthy,
Appellant

ON APPEAL FROM THE SUPERIOR COURT
FOR SPOKANE COUNTY
The Honorable James M. Triplet
Judge of the Superior Court No. 10-3-01047-3

No. 300293

APPELLANT'S OPENING BRIEF

Sean McCarthy, Pro Se
PO Box 10830
Spokane, WA 99209

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ASSIGNMENTS OF ERROR

1. Appellant assigns error to the trial courts finding that an equity relationship, (meretricious, or intimate committed) commenced prior to the marriage in this case which occurred on Oct 14, 2002.
2. Appellant assigns error to the trial court for applying the concepts of the Francesco v Connell decision incorrectly, as well as RE: the marriage of Pennington on duration of because there was a marriage in this case and the length cohabitation prior to the marriage in this case was only three months starting on July 5, 2002, not March 2, 2002 and was insufficient in length therefore only laws on dissolution of marriage should have been applied in this case.
3. Appellant assigns error to the trial court which improperly classified property acquired prior to the parties living together and prior to marriage as community property. Appellant's home, 1996 Mercury Cougar, and his retirement account, all were acquired prior to Melissa moving in with appellant. Blood v. Blood, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966)].
4. Appellant assigns error to the trial courts ruling that ordered an Equalization payment of \$15,000.00 (50% of the equity on appellants Home) to be made to Petitioner .
5. Appellant assigns error to the trial courts declaring appellants retirement account community rather than separate property thereby ordering the division of appellants retirement account (Fers and TSP accounts).
6. Appellant assigns error to the trial court for finding a 10k balance on one Capitol One credit card belonging to George Robertson (Melissa's father) to be community debt. Debts incurred by Melissa either prior to marriage or after separation, which appellant knew nothing about should not be called community debt and should not have been figured into the distribution scheme by the trial court as it was a separate debt of Mr. Robertson who is not a party to this case.
7. Appellant assigns error to the trial courts deviation from the child support schedule per RCW 26-19-001; RCW 26-19-071
8. Appellant assigns error to the trial court for declaring the parties child's toys, PlayStation which sells new for 249.00 and with some used games community property awarded to the appellant with an excessive amount for \$2000.00 when no appraised values were presented at trial and appellant testified that the system was not his personal items but were purchased for the parties child and belongs to LM. The trial court listed this toy belonging to LM as an asset worth 2000 , and

figured in the amount as it effected the equalization payment appellant was ordered to pay.

9. Appellant assigns error to the trial courts 0 valuation of Melissa's separate trust account share even though Melissa testified at trial that the value was \$ 1, 000, 000.00 (1 million) and shared with her three sisters then making an unfair distribution order of appellants separate and community property. In re Marriage of Hall, 103 Wn.2d 236, 246, 692 P.2d 175 (1984)
10. Appellant assigns error to the trial courts ruling and order for payment from Appellants retirement account of **\$36,638.00 to Melissa as her half share of community property** when the retirement account was started prior to the parties cohabitation or legal marriage and is the Appellants separate property.
11. Appellant assigns error to the trial court's ruling ignoring the evidence of prior ownership and which gave petitioner Appellants 1996 Mercury Cougar which had been purchased by Appellant in 1999 and is appellants separate property. (RPIII 383)
12. Appellant assigns error to the trial court for not addressing imminent post-secondary child support issues of LM even though the child was a senior in a prepatory high school and the issue of the child's private school tuition was addressed and post secondary needs were an apparent certainty before the trial court at dissolution. per RCW 26.09.090(1)(a)
13. Appellant assigns error to the trial court for denying his request based on court rules of procedure which allow late submission of evidence which corrects false testimony presented with appellants request for reconsideration to review documents which corrected the facts at trial that Melissa had not testified truthfully about her prior employment with Catholic Charities which ended late 2009 just prior to separation, and due to Melissa knowingly and purposefully violating company agreement by accepting a gifts and valuables from elderly residents in her care.
14. Appellant assigns error to the trial court for not imputing income in computing a need for maintenance and setting child support transfer credit at only 50.00 per month as Melissa's share of child support while setting the Washington State Child support schedule aside. RCW 26.09.090(1)(a)
15. Appellant assigns error to the trial court's ruling finding Melissa proved a financial need for maintenance that she cannot meet by her own means and for an amount and length of maintenance ordered per RCW 26-09-090 because the trial court refused to fairly take into account Melissa's voluntary unemployment by choosing to live in a geographically isolated

area over one hour outside of town, and that she failed to prove she conducted a credible job search, failing to provide any job search records at trial or that she already has a college degree, good work history, and inherited wealth, and income from other members of her household as well as the free home provided to her for her sole use by her trust account.

16. Appellant assigns error to the trial court's ruling setting Melissa's child support at a minimal amount of only \$ 50.00 per month, deviating from the state's child support schedules established by the state legislature, and failing to impute income given her talents, wealth, and other sources of income. Per RCW 26-19-071 (6)
17. Appellant assigns error to the court for failing to find that Melissa is voluntarily unemployed.
18. Appellant assigns error for trial court setting amount for maintenance for such amounts that effectively exhaust the resources of the custodial parent.
19. Appellant assigns error to the trial court for giving Melissa a full four months to pack and move out of appellants home then failing to take into consideration that Melissa, who had sole custody of all community property, failed to provide the court an accurate list of community property in her possession before absconded with everything, including all furniture, LMs furniture and left the 3300 square foot home essentially bare with the exception of broken items.

II. TABLE OF AUTHORITIES

Washington Cases

Connell v Francisco, 127 Wn.2d 33, 898 P.2d 831 (1995) 18, 19, 20, 23
Pennington v Pennington, 142 Wn.2d 592(2000) 19, 20
Gormley v Robertson 120 Wn 31, 83 P.3d 1042 (2004) 18
In re: the meretricious relationship of Sutton & Widner, 85 Wash. App. 487, 489-91, 933 P.2d, 1069, 1070-1071(1997)
In re Marriage of Pollard, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000) 27
In re Marriage of Blickenstaff, 71 Wn. App. 489, 493, 859 P.2d 646 (1993).
In re Marriage of Griffin, 114 Wn.2d 772, 776, 791 P.2d 519
In re Marriage of Fiorito, 112 Wn. App. 657, 664, 50 P.3d 298 (2002) 28, 29
IN RE MARRIAGE OF HADLEY, 88 Wn.2d 649, 656, 565 P.2d 790 (1977).
Latham v. Hennessey, [87 Wn.2d 550, 554, 554 P.2d 1057 (1976)].
In re Marriage of Spreen, 107 Wn. App. 341, 347-48, 28 P.3d 769 (2001) 34
In re Marriage of Terry, 79 Wn. App. 866, 869, 905 P.2d 935 (1995) 34
MARRIAGE OF MIRACLE, 101 Wn.2d 137, 675 P.2d 1229 21, 37
IN RE MARRIAGE OF HARSHMAN, 18 Wn. App. 116, 567 P.2d 667 (1977)
Latham v. Hennessey, [87 Wn.2d 550, 554, 554 P.2d 1057 (1976)]. 33
Blood v. Blood, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966)].
In re Marriage of Hall, 103 Wn.2d 236, 246, 692 P.2d 175 (1984)

Other authorities Blacks Legal definition of cohabitation
74 Wash. L. Rev 1243

Statutes

RCW 26-19-001
RCW 26-19-071
RCW 26-16-010
RCW 26-09-080
RCW 26-09-090
RCW 26-60-080
RCW 26-60-030
RCW 26-60-015
RCW 26.09.090(1)(a)

III INTRODUCTION

This case involves a marriage not a meretricious relationship. Appellant denies the alleged meretricious relationship met the legal standards and test of Washington's judicial system prior to acquisition of his home and retirement account. The distinction has both personal and legal consequences. In Washington when parties to a couple do not marry or cannot legally marry the Court may, at separation or death, distribute quasi-community property, but only if the facts establish the existence of a marital like relationship. Unlike with marriage, where the parties' intent is made explicate by the legal doctrine of law as it was in this case, the meretricious doctrine requires uncovering several factors and proving the relationship looking back requires an exacting standard. That is because the committed intimate relationship doctrine is invoked only to prevent an unjust enrichment, and should not be invoked to create one by the Courts. In this case the trial court looking backwards incorrectly applies the committed intimate relationship doctrine and tacks on four months to the beginning, or just enough prior to the party's cohabitation and thereby unjustly classifying appellants separate property as community. Appellant purchased the home prior to cohabitation, with separate funds made the down payment, all payments on the mortgages, and all major repairs were made from settlement funds resultant from injuries sustained prior to parties meeting. Appellant began his retirement account with VA effective 1999 while the marriage occurred on Oct 14, 2002.

Appellant arrives alone in Washington state¹ for the first time from his separate residence March 2002, having driven up in a rented 24 ft. U-Haul towing his 1996 Mercury Cougar from Louisiana to Silverdale, Washington

Appellant moved alone from Silverdale, Washington to Spokane on June 23, 2002, again renting a U-Haul and towing his mercury cougar.

Petitioner leaves her separate home, which she still owns in Lafayette, La on July 1, 2002 and arrives in Spokane July 5th, 2002 and moves into petitioner/appellant's home.

Parties Married on October 14, 2002.

Parties were not living together prior to Appellants purchasing the home in Spokane or obtaining his retirement account benefits which included credit for 3 years of military service.

The report of proceedings will be referred to as follows:

RP I will refer to the trial testimony taken on February 14, 2011

RP II will refer to the trial testimony taken on February 15, 2011

RP III will refer to the trial testimony taken on February 16, 2011

RP 3/1/11 will refer to the trial courts oral ruling of March 1, 2011

¹ Appellant notes that there are two individuals Sean P McCarthy currently living in Spokane County. All reference infractions prior to 2002 listed on Washington Courts web page are in reference to another person with the same name as appellant.

IV. STATEMENT OF THE CASE

Melissa and Sean McCarthy were married on October 14, 2002. (RP 3/1/11 3)

The original petition for separation was filed on April 23rd, 2010 and amended on November 12, 2010 asking for dissolution. (RP 3/1/11 3) Trial was held on February 14, 15, 16, 2011. The oral ruling was issued on March 1, 2011 and the effective date of the parties' decree of dissolution is April 21, 2011. (RP 3/1/11 3) A timely motion for reconsideration was requested within 10 days and denied by the trial court. This appeal followed.

V. ARGUMENT

Sean vacated his separate Doc Duhon Rd rental apartment in Lafayette before lease ended March 1, 2002 and arrived alone in Washington State on about March 6, 2002 (RP 3/1/11 5) needing to set up residence prior to starting his new employment on March 11, 2002. Appellant signed a lease agreement with an apartment complex in Silverdale, WA. Sean remained greatly concerned about his son LM but knowing that without employment and income other issues would present down the road. Sean was in Washington State for three months first in Silverdale, and then moving again alone into his separate home purchased entirely with his own funds prior to Melissa moving up here in July 2002. ((RP II 171-172) (RP II 241 ln14-18) Melissa Testified that Sean had his own apartment just prior to relocation.

Cohabitation of the parties ceased in 1995 (RP 3/1/11 3) and did not resume until Sean obtained suitable employment and Melissa joined him in Spokane with her children GW and AB, (RP 3/1/11 8) and the pair's son LM after he had obtained employment and after he has purchased a home in Spokane sufficiently large enough to house everyone. Melissa arrived and moved in on July 5, 2002. (RP I 43 ln 2) (RP 3/1/11 8) Melissa testifies she left Louisiana around July 4th 2002. This was a good opportunity for GW to have a fresh start and AB as well and got them out of Lafayette, La where Melissa's two older children had become heavily involved in gangs and drugs. (RP 3/1/11 5) Melissa and Sean discussed that prior disagreements on sharing parenting from the past needed to be put aside and that some basic consistent parenting needed to be

agreed to and Melissa agreed that Sean would be respected in his home that basic rules would be the norm and Sean made the effort at responsible parenting but soon realized he was going this route alone, in short order Melissa informed Sean that she was the primary parent and the children once again were allowed to run amuck. (CP 1-6)

Once in Spokane however, particularly after the October marriage, the parenting nightmare continued. (CP 1-6) Melissa flatly and physically refused to allow the children any sort of counseling or assistance that could enable them to prosper and Melissa resumed her classic enabling approach while accusing Sean of being threatening and abusive if he tried to parent her children and grandchildren, or if he did not fully comply and agree with her. Sean was also aware that Melissa had falsely accused him and the three prior husbands of violence which she recited again in her testimony at trial, Melissa testifies that GW's father Ron Gardner was a " Very violent man" (RP II 168) " I think I had a history of choosing violent men (RP II 168).

At the outset of these proceedings Melissa apparently began seeing another man and because she was bring another man to appellants home she sought and obtained a temporary protection, using county sheriff's services for notice to appellant with his separation/eviction papers. This was eventually changed to a restraining order. (RP II 268) Melissa presented no evidence of arrest record to support her allegations and her full protection order was denied finding no basis for her allegations. On the surface her charges were false. Within two weeks

after appellant's eviction from his home, LM informed him that a new man was living in his house with Melissa, Jerry Divis. (CP 1-6)

Melissa had also taken all of appellants records and papers after separation and eviction, (RP II 271) so that appellant had no records to prepare for his defense against her contentions at trial while Melissa was able to cherry pick through boxes and boxes of appellants personal and separate records in a failed attempt to convince the court that the pair was in a meretricious relationship and had cohabitated continuously since 1992. The trial court failed to find so, but erred by still finding a meretricious relationship began on March 1st 2002, (RP 3/1/11 13)because in March the record clearly shows the parties were 3000 miles apart, living in separate residences, paying separate bills, no pooling of resources, joint accounts. (RP II 173) At trial respondent testifies that she never resided at any of appellants separate residences, (RP II 174)

I believe the trial court erred when it ruled finding for meretricious or equity relationship occurring outside of the scope of the exacting standards as espoused in the various decisions on the topic, *Connell v Francisco*, 127 Wn.2d 33, 898 P.2d 831 (1995) 18, 19, 20, 23. *Pennington v Pennington*, 142 Wn.2d 592(2000) 19, 20 Melissa and Sean were not living together and were 3000 miles apart. They had not cohabited in over seven years.

So at the time Sean departed Louisiana for Washington State the pair had not cohabited for several years. Both Melissa and Sean testified that appellant maintained separate residences nearby, with utilities in Sean's name beginning in 1995 until the parties resumed cohabitation in Sean's home on July of 2002 (RP 3/1/11 PG 12) (RP II 169 ln 20-) Melissa testifies Sean had separate residences immediately preceding Sean relocating to Washington State.

Trial court ruling that March 1st 2002 the parties were in a committed intimate relationship fails the standard set by (Francesco vs. Connell,)because the parties were not cohabiting in the same residence, had never held joint financial accounts, purchased property jointly, had never pooled money or other resources and the intent in Sean's case was to do what he could to be there for his son LM.

Melissa resided in Lafayette, La while Sean had left his separate apartment and headed to his new job in Seattle, setting up residence in Silverdale, WA, until June 23, 2002 when he moved into his new home alone, in Spokane. (RP III 241 ln14-18)

Sean testified at trial that under the intolerable circumstances he chose to move into a separate residence in 1995(RP III -369-371) and Melissa testified to this and this was accepted by the trial court. Intolerable meaning the activities of Melissa's out of control children and the fact that she was allowing their involvement with bad and dangerous people and, drugs, gangs, crime, violence and chaos along with the interaction between the parties. Living in Melissa's

home presented a real danger. The child of this relationship, LM was less than 2 years old when Sean moved out in 1995. (RP III -369-371) While there was a continuous parent child relationship, there was not a continuous dating relationship because Melissa and Sean had broken up repeatedly prior to July 5, 2002 when Melissa moved up to Join Sean.

While the cohabitation ceased in 1995 the relationship continued off and on because Sean never stopped being a full time parent to his child. The pair dated, visited, argued about Melissa's negligent parenting and broke up and rekindled frequently. Sean stayed close to help with his child on a daily basis. (RP II 169 ln 3-) Sean was and remains involved with parenting LM on a daily basis. (RP II 169 ln 4-) Melissa took child to Sean separate residence for care. Sean hoped that if given enough information and parenting skills development that Melissa would stop being the most permissive parent in the United States as she was frequently described by police and many that knew her. It was a difficult, high conflict relationship because of not so much because of the constant behavioral problems of the children, as it was the inability of the pair to team up on parenting concepts in a steady, consistent fashion. (RP III -369-371)

Melissa continues to accuse any man that shows a concern for her children she is involved with of violence and abuse for not going along and or otherwise agreeing with her extremely permissive to the point of being illegal and negligent parenting style. At trial Melissa accused all four of her husbands of being violent while not presenting any objective records or evidence to that accusation. (RP II 168 ln 21-) (RP III -369-371) Sean testified at trial under oath that the

conditions in Melissa's home made it dangerous and impractical for cohabitation to occur. The trial concluded that Melissa failed in her efforts to prove sufficient cohabitation to define a committed intimate relationship (RP 3/1/11 PG 12-13) but made error by attributing the date Sean relocated from his separate residence Lafayette, La upon accepting a job to Silverdale, WA in March of 2002 as the start of a Meretricious relationship and should be remanded for correction. In March of 2002 Melissa testified that she had not even fully agreed to relocation, was still weighing her options (RP II 179)was still in her own home, only visited for 4 days in April 2002, and did not move into appellants home until July 2002. *Connell v Francisco*, 127 Wn.2d 33, 898 P.2d 831(1995) should not be applied to this case because there is a lawful marriage and the parties were not cohabiting prior to July 2002, neither did they pool resources, or share joint bank accounts, and had plans to legally marry once settled in up in Spokane, which occurred in October 2002. (RP II 217-218) Melissa testifies on timeline to her visit to Washington.

The trial court agreed with appellant when it recognized that the relationship did not provide the proper level of stability and was without cohabitation sufficient to define it as a meretricious or committed intimate relationship between this unmarried pair while they both resided separately in Louisiana. (RP 3/1/11 PG 12-13) The fact emerged so that the trial court ruled the parties had separated and ended the relationship altogether in Louisiana, Melissa was dating other men, the parties kept separate bank accounts and

residences, and each paid their own way, as both parties sworn testimony to the trial court explained and is not an issue on appeal. (RP 3/1/11 PG 12-13)

Appellant contends the trial court should not have tacked on 8 months prior to the marriage as the parties had stopped cohabiting, had broken up, kept separate residence, never pooled resources, never held joint accounts, (RP 3/1/11 PG 12-13) *Connell v Francisco*, 127 Wn.2d 33, 898 P.2d 831 (1995) *Pennington v Pennington*, 142 Wn.2d 592(2000) should not apply in the absence of cohabitation and other factors.

Appellant contends the trial court improperly ruled the relationship meretricious as of March 2002, four months prior to Melissa moving to Washington State and ruling property acquired by Appellant from that point to be community. (RP 3/1/11 PG 12-130)

The property had been purchased with appellants separate funds, (RP II 177)and ownership transferred to Sean before the relationship was not sufficiently reestablished, prior to resuming cohabitation, as parties were living separately in different states on June 21, 2011, parties had never comingled funds, and had not cohabited for several years. The only reason there was any relationship at all was because of the son LM whom Sean maintained a daily relationship with. (RP II 169)

Sean accepted employment offer in Washington State January 2002 leaving his separate Doc Duhon Rd apartment on March 1, 2002 to move to Silverdale, WA to begin work in Seattle on March 11, 2002. Sean and Melissa

had not cohabited for several years prior to his move to Washington. (RP 3/1/11 PG 12-13)

Therefore, on review Appellant ask should the trial court have cited *Connell v Francisco*, 127 Wn.2d 33, 898 P.2d 831 (1995) *Pennington v Pennington*, 142 Wn.2d 592(2000) as the basis to weigh the evidence and declare the pair to be in a meretricious relationship beginning March 2002, at a time when the pair were 3000 miles apart, knowing that no cohabitation existed, and that they were lawfully married on October 2002. While the trial court reasoned in its decision that the pair lived separately for approximately seven years prior to March of 2002. (RP II 170- 172) Melissa testifying that Sean had separate addresses.

March 2002 is identified by the trial court as the date the meretricious relationship started between the parties. The trial court reasoned in its decision now on appeal that March 2002 as the date to define the relationship as a meretricious because this is the date that Sean took employment and moved from his separate residence in Louisiana to his separate residence in Washington State, a move he made alone. While the trial court decision mistakenly states this is the date that Sean said goodbye at the airport, (RP 3/1/2008p 15-28) Sean actually drove the 3000 miles. However Sean departed his separate residence in Louisiana and arrived in Washington state alone, neither meets the exacting standards used to prevent an unfair enrichment. Allowing Sean to keep his separate property is not unfair in this case because he paid for everything, while Melissa made no contribution. She did not even move in until July 5, 2002 three

months after the appellant purchased his home and obtained a retirement program. The trial court overreached and abused its authority and discretion by declaring a meretricious relationship began prior to the parties cohabitation. The trial court also concedes in the decision on appeal, that Melissa was not actually cohabiting with Appellant March 2002. (RP 3/1/11 PG 12-13) (RP II 169 ln 20-) Sean had separate residences

Melissa and Sean both testified and the trial court noted in its decision that Melissa did not arrive in any permanent capacity to reside in Washington State with Sean until July 2002. (RP II 171-172) (RP II 241 ln14-18) Likewise, the trial court correctly states in the decision that the date Melissa arrived in Washington State as July 2002. (RP II 171-172) (RP II 241 ln14-18) However the trial court disregarded the evidence as was given in sworn testimony by both parties that July 2002 was when the parties actually began to cohabitate and declared that March 2002 to be the date the meretricious relationship (RP 3/1/11 PG 12-13) commenced and unjustly and unfairly defined appellants separate property as community property and ordered an equal division of both the appellants home and retirement account. Appellant obtained both properties prior to either of a marriage or the beginning of a cohabitation relationship between the parties. Sean began his job and retirement account in March of 2002 when he began his new job, and with credit granted for 3 years of active Military service, appellants retirement account actually started in March of 1999. Sean applied for his home Loan in April 2002, closed financing with his own money and moved into his home as a single person in June of 2002, (RP II 177) and it

was not until July 2002 that Melissa moved the 3000 miles up from Louisiana and moved in, bringing the pairs child LM his son along with GW and AB. . (RP II 171-172) (RP II 241 ln14-18) (RP II 177) These dates are also undisputed as evidenced by both parties testimony at trial. It is also undisputed that the parties were lawfully married in October 2002. Appellant prays for justice and relief from the Trial Courts abuse of its discretion which defines separate property of appellant as community and thereby awarding Melissa \$51,638.00.

Because the of the short duration of the cohabitation, and with insufficient evidence supporting the trial courts decision, appellant request remand of the trial court's decision to declare property purchased by appellant after his arrival in Washington State be remanded and declared separate property of appellant and not subject to division as all improvements were made with appellants own finances from injury settlement funds for various dates prior to marriage and back through 1977. (*MARRIAGE OF MIRACLE, 101 Wn.2d 137, 675 P.2d 1229*)

The parties both testified and the court accepted as undisputed facts in its decision on dissolution that there was no cohabitation in this case prior to July 2002. (RP III 241 ln14-18) Melissa Testified that Sean had his own apartment just prior to relocation.

Despite this undisputed testimony accepted by the trial court that no cohabitation resumed prior to July 2002, the date of March of 2002 would be the trial courts finding as to when the relationship began meretricious nature

sufficient to attach appellants separate property acquired after his arrival to the state of Washington. . ((RP II 171-172) (RP II 241 ln14-18)

In March, April, May and June of 2002 Sean, a single man, resided in Silverdale, Washington. (RP II 173)

In March, April, May and June of 2002, Melissa, a single woman, resided in Lafayette, La. (RP II 173) (RP I 43 ln 2) Melissa testifies she left Louisiana July 4th 2002.

In the absence of cohabitation in a stable relationship where both parties share the same home, without comingling of assets, without joint accounts or joint ownership of property, the trial court incorrectly defines the relationship as meretricious commencing March 2002. (RP 3/1/11 PG 12-13)

Did the trial court abuse its discretion when it relied on its interpretation of the Connell V Francisco 127 Wash 2d. in this case? In re Marriage of Blickenstaff, 71 Wn. App. 489, 493, A court abuses its discretion if its decision is "based on an incorrect standard or the facts do not meet the requirements of the correct standard."

Appellant is unable to find any case law that defines a meretricious or committed intimate relationship which includes unmarried folks living separately, in this case

3000 miles apart. The trial court even states in its decision that Melissa did not arrive in Spokane until July of 2002, a fact which is undisputed by the parties.

Why Is this period from March 2002 to October 2002 important to the appellant in this case.?

Appellant contends that the trial court erroneously defines this relationship as eligible for the defining term meretricious or committed intimate, so that it could capture appellant's separate property for the dividing block, and is an unjust abuse of its judicial discretion and should be remanded.

The trial court then ordered Sean to make an equalization payment to Melissa on the home he purchased in June 2002 prior to either her moving up in July or the marriage in October three months later. (RP 3/1/2011 pg 28)

The trial court disregards undisputed testimony and ignores evidence obtained at trial to unjustly benefit one party over the next and delivered an unbalanced and unfair decision unjustly enriching one party at the expense of the other, while granting a maintenance order absence of proof of need, and allowing the parent off the hook without any child support requirement and setting maintenance without considering the needs of the child of which "Sean was the custodial parent" (RP 3/1/11 PG 12-13) RCW 26.09.090(1)(a)

The Appellant request remand and relief on the trial courts decision because the home purchased is separate in nature and not subject to the trial courts. (RP 3/1/2011 pg 28)

While it can be debated that the property increased in value, Melissa's value in her trust accounts also increased in value is also separate property but should also be considered when making a fair division of assets. It's not fair and appears unjust on the surface to take half of appellants retirement account to disperse to Melissa who has a valued trust worth as she testified, as shared with her sisters and worth one million. Her share would be worth \$333,000.00 substantially more than appellants employer provided retirement accounts, FERS, and Retirement thrift Savings account.

Appellant's retirement account consist of three parts, FERS, Social Security, and Thrift Savings Plan and FERS is considered to have started in 1999 because of prior military credit, not the date of hire, but the trial court did not consider this fact in the quadro order attaching a share to Melissa at 50%. (RP 3/1/2011 pg 23)

The appellant contends the trial court also abused in discretion by ignoring the evidence at trial that Melissa was not seeking employment, was voluntarily unemployed, because she did not really need to work. She did not even present an education plan to add to her college degree (RP II 173). She already possessed and was being paid by multiple trust for the past 30 years. (RP II 181-184) She also testified at trial to the value of one trust to be one million dollars(RP II 181-

184) and appellant contends the trial court failed to value or consider Melissa's assets prior distributing Appellants separate property, awarding payment to Melissa from an equity lien or payment on the value of the home equity which he purchased with his separate funds in June of 2002, and when it ordered the appellants division of his retirement accounts which he had acquired with his employment in March 2002 and was granted "buy in" credit to March 1999, which the trial court failed to figure into its distribution formula.

Substantial evidence at trial setting Melissa's trust values at 1 million and shared with her 2 sisters, (RP 3/1/11 PG 36 ln 20-) TRIAL COURTS REASONING NOT SETTING VALUES TO TRUST both apparent by the homes it purchased for Melissa and as testified by Melissa, no value on her trust account even though the evidence at the trial indicated the trust was worth a million (RP II 181-184)dollars, (RP 3/1/11 24) the trial court failed to fairly weigh the financial positions of both parties prior to dispersing appellants separate property acquired prior to the relationship. (RP II 181-194) While Melissa's trust may not have been community property it still should have been valued by the trial court as the evidence was undisputed to its value. However, trail court did consider the trust and Melissa's testimony as to its value which she stated to be one million to include several houses and thousands of shares of stock in Chevron and others...(RP 3/1/2011 pg 28) (RP 3/1/11 PG 12-13) after consideration was given instead the value of 0.00 and went against the uncontested evidence gathered at trial prior to taking all of appellants and only appellants separate property for division. Melissa testified at trial that over the years, 30 years she

had trust income, her wealthy step father had purchased two houses for her, given many gifts of cash, taken her and her sisters on world cruises on multiple occasions and covered LM's private school tuition until separation. Melissa also testified that upon, separation from Sean, her stepfather Mr Robertson paid her attorney fees, provided her with a credit card in his name to use as she sees fit and that she had her new boyfriend Mr Divis moved in to appellants home on Skipworth for several months (Gal report) (CP 1-6) and he also now resides with her in Edwall, at another home provided by Mr. Robertson. Melissa did not disclose all the income of all residences(RP II 190) of her home and the trial court did not account for her lack of disclosure per RCW 26-09-090, RCW 26-19-071(RP II 193). Melissa , intentionally purchased a home in Edwall, WA, and geographically isolated herself, has not sought employment and is voluntarily unemployed, she does not need to seek employment, like many folks do, and this was testified to at trial in this case.

The Appellant also contends the trial courts order to pay a two year maintenance of 1250 plus 454 for health insurance continuation for Melissa per month total 1704, is harsh and is set unfairly, considering appellant has sole custody and has all the responsibility to complete the job of raising LM who is now in college, and the award of maintenance is set unjustly beyond the financial capacity considering he was given full and sole custody of the child now in college and the Court ordered that Melissa only pay 50.00 per month in transfer payment credit reduction for Melissa which amounts to absolutely no help in getting the son through college. (RP 3/1/2011 pg 28)

Child support order given to Melissa deviated from the Washington State child support schedule. The trial court then, after being asked by Melissa's attorney about the issue of health insurance, who pays for it... added on top of maintenance the cost of health insurance, piled on top without even knowing what a premium was and this added 454 to the 1200.00. The trial court had actually overlooked and amount for health insurance, upon being reminded on March 1, 2011 oral ruling, by Melissa's attorney the judge threw that on top (RP 3/1/2011 p 28). Appellant argues that the trial court completely wipes out appellants resources while Melissa did not present a need for maintenance, has a new live in whose income was not disclosed or considered per RCW 26-19-071, wealth from her trust, a free home, no rent, royalties, a college degree, but has voluntarily remained unemployed with no job search, and is in good health and is set for her retirement. Appellant on the other hand has the pairs child to get through college, is a disabled veteran, has a limited amount of work life left;

Appellant contends the trial court unfairly calculated maintenance, insurance, and only a 50.00 transfer for child support credit, and did not fairly take into account Melissa's ability to pay, education, work history, the fact that she is now obviously voluntarily unemployed and should have imputed income. The trial court also disregarded the imputed income of the child support worksheet, placing an unfair financial burden on Appellant who is also the sole provider for the child for whom he has full custody with nothing left over after living expenses and bills, and based on earnings and bills, the maintenance awarded to Melissa amounts to Sean having to borrow to keep up, with all

resources devoted to keeping up with paying Melissa, with nothing left over for Sean or LM.

Appellant has registered his motion for modification of maintenance and child support based on changes of circumstances and because the child has secondary education expenses. This motion was timely filed in Spokane county family court and is pending while these matters proceed on appeal.

When assessing the income and resources of each household for the purpose of calculating child support, the court must impute income to a parent when that parent is voluntarily unemployed. RCW 26.19.071(6); In re Marriage of Pollard, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000). "The court shall determine whether the parent is . . . voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors." RCW 26.19.071(6); Pollard, 99 Wn. App. at 52-53. "Voluntary unemployment" is "unemployment . . . brought about by one's own free choice and is intentional rather than accidental." In re Marriage of Blickenstaff, 71 Wn. App. 489, 493, A court abuses its discretion if its decision is "based on an incorrect standard or the facts do not meet the requirements of the correct standard." Fiorito, 112 Wn. App. at 664.

Melissa testified at trial that she worked until 2008 but that testimony is not completely accurate. Melissa was fired for good cause in November of 2009 from a full time position shortly before separation and then worked taking the census through termination of that temporary job which she continued after separation in 2010. (CP 131-161) This information that Melissa was working full

time until Nov, 2010 was revealed only after March 1, 2011 and was presented under court rules and could have been considered with Appellants request for reconsideration which was filed timely by appellant. The trial courts characterization that Melissa had not worked since 2008 and needed time to earn a bachelors degree is incorrect on the face. An email from Catholic charities Melissa's employer was only obtained after the ruling in this case but presented on reconsideration which indicated Melissa falsely testified at trial as to her actual employment history. (CP 131-161) (RP II 205)

Melissa testified in Court that she already has a bachelor degree, (RP II 172 ln 22-), (RP II 173) had owned her own business, has bookkeeping experience and could work if she wanted to. (RP II 202-203) Melissa testifies that she has made little effort to seek outside employment. (RP II pg 249) Melissa testifies that she is working, fixing up houses which her wealthy trust purchased, is free from rents, has additional income from her current meretricious relationship with Mr Divis. (RP II 204-ln 8) Melissa testifies that father is paying for home repairs at the home purchased outright no mortgage, an hour and half outside of Spokane, in Edwall, WA, after Separation in which she lives rent free with Mr. Divis.

The trial court found no that no justification or evidence was presented to justify Melissa not working, but still chose not to impute any income as developed by the child support worksheet from what little income was disclosed. (RP II 204 -205) Melissa provides no proof to court to support her subjective medical complaints and lack of any efforts to seek employment other than fixing up

another residence owned by her trust interest. Melissa testified that she was working fixing up her home in Edwall, doing home repairs, and was not actively seeking employment.

The facts are as Melissa testified; she is working on fixing up the home her wealthy family trust purchased and which she now resides in. Melissa does not need additional education, (RP II 171 22-), in order to work and had been working through separation. She testified that she has bachelors, work experience, and has owned a small business. Melissa is willfully not working.

Instead of working or seeking employment, (RP II 205)LACKS JOB SEARCH, Melissa lives the life of fancy, spends time at the lake, camping, vacationing, and water skiing. (RP II 205) It's rather apparent from her testimony and the evidence presented that she has not entirely needed to work since she testified for nearly 30 years being a recipient of inherited trust fund revenue of substantial proportion including recurrent oil royalties and lease revenue, gifts, and other less apparent income such as benefits derived from her wealthy fathers credit card use. (RP II 181-184) It's not just one trust that Melisa inherited and stands to inherit but at least three were mentioned at trial. A court abuses its discretion if its decision is "based on an incorrect standard or the facts do not meet the requirements of the correct standard." Fiorito, 112 Wn. App. at 664 Melissa testified at trial that her house was purchased cash by her trust fund, stepfather, and that she has no rent, because he is extremely wealthy and can handle the outlay financially without any difficulty whatsoever, and apparently has chosen to do so voluntarily and has done so for a number of years, and the

home in Edwall is actually the 2nd home he purchased for Melissa to reside in. (RP II 181-184) The decision to become geographically isolated was made voluntarily and intentionally. Requiring appellant to expend all his resources to support his ex wife at the child's expense is unfair. Appellant contends that Melissa's decision to isolate herself by purchasing the home in Edwall, WA where she now lives was made with the specific intent so that she could better isolate and care for her son Brandon Breaux, a 36 year old, drug addict and four time convicted felon who was released into her custody since separation of the parties, and Brandon Breaux is on parole transfer currently residing with his mother in Edwall. Melissa also testified that there is no rent or mortgage on the home in Edwall where she now lives. The family trust purchased the house for Melissa to live in concurrent to Brandon Breaux's scheduled release from prison and to the proceedings which commenced in this case once appellant made his position clear not to allow Brandon Breaux into his home again because of his history and the danger he presented. Not taking this into account in this case is unfair to appellant. Figuring Melissa expenses in computing her need for maintenance of children that do not belong to appellant is also unfair. The only child that appellant has a financial responsibility for in this case is LM. LM now lives with the father for reasons pointed out in the gal report. (CP 1-6)

The trial court so concluded that Melissa presented no evidence to support her testimony and found that there was no medical evidence presented that she could not work. (RP II 181-184) Melissa's lack of earnings is voluntary because she does not need to work having trust income, (RP II 181-184) support

from her very wealthy generous father, trust income from both grandparents, undisclosed income, income disclosed as credit card debt for a card she has sole use of and makes token intermittent payments on a high limit credit card in the wealthy parents name and account, and the evidence to the facts in this case that numerous houses were purchased by the wealthy father trust executor for Melissa to live in and this pattern continues. (RP II 222) (RP II 203) Melissa gives vague testimony on job search. (RP II 204) Melissa provides no medical justification to support her subjective complaints of an injury sustained while water skiing with Mr Divis in June 2010.

The standard here should be one that reasonable minds would conclude.

Appellant has sole responsibility of the pair's child, LM who is now in college with substantial expenses beyond appellant's ability to pay due to the amount of ordered maintenance and duration. Appellant does not have any inheritance, trust funds, and is not free of mortgages and does not have a wealthy multi-millionaire father paying all attorney fees and providing other assets as described at trial as Melissa enjoys. (RP II 181-184) (RP II 222) Again the standard only needs to be what would reasonable minds think is fair and balanced. Appellant has not jumped into another relationship sharing expenses of his and LM's household, while at trial petitioner failed to disclose the income of Mr Divis who has resided with her in both the appellant's home on Skipworth, and the home in Edwall. (RP II 190) Of the numerous paying trust Melissa is beneficiary, the latest one presently controlled by her step father has provided the current home she now lives in and owns through the trust, so its not just one house she owns but several,

and at least two are collecting rental payments. Melissa's lack of earnings history both currently and over the years has been and is voluntary, Melissa has a college degree, has been a business owner, does not have any medical excuses not to work and could work if she so chose to but has opted to live in a geographically isolated location with her 36 year old son Brandon Breaux, her new significant other and her grandchild. Melissa also did not disclose the income of the man she lives with.

The trial court was aware that Melissa did not disclose the income of all adults living with her, both in Appellants home when Mr Divis had moved in with Melissa about 3 weeks after parties separated in this case. Mr Divas has income that is not disclosed, (RP II 190) he is now living with Melissa and is her new relationship, a meretricious relationship, and his income should be calculated but given the short nature of the marriage at only 7.5 years, the need to calculate Mr Divas income could be unnecessary on remand if Melissa's fourth marriage were deemed short in nature and if the review court agrees that Melissa is voluntarily unemployed and did not present an obvious need for maintenance that only appellant can meet.

The trial court heard testimony on Melissa's resources and the fact that she has job skills, work history, and that Melissa already had a bachelors college degree yet trial judge ruled that Melissa had a need for maintenance to enable her to complete her education obtain a bachelor's degree so that she can find employment. (RP 171 22-) (RP 3/1/11 PG 31-32) Melissa is not looking for work and intentionally took herself out of the workforce when she arranged the

purchase of the home and moved to Edwall.

Melissa's inheritance monies, gifts, apparent benefits of free housing, her current cohabiting relationship, evidence which suggest voluntary unemployment and other factors should be taken into consideration prior to setting maintenance obligations, and that Melissa has not proven a financial need or inability to pay her own way and an amount for reasonable imputed income, to impute income to her side on maintenance orders and to utilize the Washington State child support schedule adopted by the legislature.

The maintenance award makes no concessions that appellant is responsible for the sole care and provisions of the parties son. Prior to dissolution the appellant was ordered to pay 1000.00 per month in child support which he did, and this ruling is obviously taking available funds from prior court orders of child support and now giving it to Melissa for maintenance. (CP 59-67)

Evidence supports finding that Melissa is not working voluntarily at this time, has made no significant attempts at finding work and the trial court disregarded this evidence when setting the length and amount of maintenance and her portion or share of child support when not imputing any wages to her.

Appellant also ask on review, is the trial court's decision fair or reasonable when it ordered the quadro to divide appellants retirement fers with figuring the credit for prior military service, and the TSP started with his federal employment prior to marriage be apportioned to Melissa as community property given her testimony that she is heir apparent to over 330,000?

The trial court's ruling (RP 3/1/2011) says Melissa needed time to complete her Bachelor's degree, but Melissa testified at trial and in fact already has a college degree, a long work history, evidence was provided the judge on reconsideration that Melissa falsely testified at trial as to when she stopped working, she has trust income, unreported income, and income provided to her as she needs from access to cash funds via her wealthy fathers giving her his credit card to use, and other gifts and cash. Melissa has been provided two homes purchased for her for cash through her trust including the home she now resides in in Edwall, WA. Therefore, please remand for the trial court to figure the post-secondary ed child support other than 50.00 in transfer payment as so ordered by the trial court so that the custodial father has a bit of assistance with the child's need for post-secondary education expenses, living expenses. Please remand to revisit the length and level of maintenance considering Melissa as she failed to show a true need for support and is in fact voluntarily unemployed, without medical issue as she fails to provide objective medical evidence to support her story and has not put forth any evidence to a diligent job search for employment commensurate with her aptitudes, skills, and abilities and is currently not seeking work.

The status of property as community or separate is not controlling. Rather, the trial court must ensure that the final division of property is "fair, just and equitable under all the circumstances. *Latham v. Hennessey*, [87 Wn.2d 550, 554, 554 P.2d 1057 (1976)].

That award is based not on some rigid formula, but fairness. "The only limitation on the maintenance award is that the amount and duration, in light of all the relevant factors, be just." In re Marriage of Spreen, 107 Wn. App. 341, 347-48, 28 P.3d 769 (2001); see also In re Marriage of Terry, 79 Wn. App. 866, 869, 905 P.2d 935 (1995). "What is a reasonable length of time for a divorced spouse to become employable and provide for his or her own support, so that maintenance can be terminated, depends on the particular facts and circumstances of each case." Spreen, 107 Wn. App. at 348. Melissa testifies one way when claiming one thing and just the opposite when claiming something else. Melissa testifies how hard she worked on home construction projects in my home and her current residence in Edwall, but also that she is unable to perform any work do to unproven medical. Melissa testifies that she was a faithful companion and had no relationships with other men, yet it was only a one night stand. (RP II 180 ln 15) Melissa lies under oath about relationships with other men (RP II 219 ln 10) Melissa testifies to clear up previous testimony about having sex with other men. Melissa testified how she loved and wanted LM to reside with her and needed a protection order from appellant, but then kicked LM out of the home, called the police on LM once the gal report is released (CP 1-6) and kicked him out of his home.

At no point in this relationship would appellant characterize it as meretricious, because he lived under a constant threat from Melissa's unfaithful tendencies to cheat if she became angry and upset. Divorce was another threat always looming in this relationship. She threatened it all the time. Appellant

suffered emotional and psychological duress from Melissa on a daily basis. She had kept many of her other last names throughout the marriage, (RP I 99) Melissa testifies that Orchard Bank credit card is in her maiden name Williams.

Melissa's constant use of conflict throughout her child raising years resulted in over 50-- 911 police calls, or unannounced police raids at all hours to her home, mostly when appellant was nowhere near the residence and staying at his separate residence. Since 1995 appellant had lived at three residences separate from Melissa because of the unstable environment enabled by Melissa's what can only be described as negligence in parenting. (RP 3/1/11 PG 12-13)

To be more precise, the problem was not the children, it was not Brandon, or TB, or GW, or AB, it was not husband number one, two, three, or four, it was Melissa the primary parent in the home. She refused all help from those willing to try, or able to give it and it was Melissa's sole responsibility to meet the needs of her children, and in failing her children, it was not a stable home environment. Appellant believes the trial court rightfully understood this key factor but still erred in the decision rendered anyway.

Appellant counted the 911 calls to his homes, and to his surprise, there were none unless Melissa was there. The relationship was a nightmare, and Melissa's refusal to provide a safe and caring danger free home to her children and spouses is apparent given that her children all wound up in prison, on drugs, are not to be trusted, and now her grandchild AB has spent last summer, (after separation) in drug rehab, and was a recent client of the juvenile court system, again because of Melissa's negligence. Melissa provided no stability to her

children in spite of her wealth, and claims to the contrary. Melissa also leaves cigarettes around for her children, and about all but LM now battles this addiction.

Appellant only recognized there would be a problem with this relationship only after his son was born, once the two older children returned to Melissa's home from reform school. Sean could have broke off all ties with Melissa just like she testified, she demanded of GW's father Ron Gardner the deal was no child support no visitation. (A bit about Ron Gardner, of Taos, New Mexico, a man who is well known in the Taos, NM community, known by Governors, recognized by President Nixon, and had previously attended West Point Academy), (that's all I know about Ron Gardner, husband number two, other than what Melissa says about his violent behaviors.) Which I no longer believe to be true. She also accuses me..I point by point deny her allegations... but knew that if I were to leave the scene, abandon LM, my only son, that it would not be a good idea in the long run and opted to do the best he could under the circumstances, from my separate residence.

The extent and depth of the issues only fully revealed themselves as time passed. The more Sean learned the more he realized he could not abandon his son to Melissa. Finances and disabilities prevented taking this matter to Court in a custody hearing. Appellant can only plea that charm this woman possesses, be set aside, and just look at the results of her life. From a wealthy home, inherited hundreds of thousands of dollars, with millions yet to come by way of her promised inheritance of her wealthy father in addition to her irrevocable trust, yet

all of her children except ours, mine, LM, is lost to drugs and the legal system, addictions of one form or another, and going down the wrong road and worse, as Melissa claims all her men are, somehow she is attracted to violent men. It's a lie, as far as I am concerned Melissa is 100% lying about me and has from the beginning. I have never harmed her never threatened her, but have witnessed the abuse 1st hand. As it is with many high conflict personalities that change partners frequently, Melissa can be and is charming and convincing. Once you step back from the charm and convincing personality on the stand, look at her showing up to court on Crutches, with no objective medical really, four children kicked out of school for drugs, three sent to reform school as minors, those are the facts, Adalya's mother deceased, as hard as they are. By the way, Melissa called me at my apartment when the police came to inform her. Melissa knows full well that her strategy to find a meretricious relationship is false and much of her testimony is completely untrue. We stopped living together for good sound reason. (RP II 301)

Appellant had good cause to be concerned for his son being left in Melissa's care and even though Sean could not cohabit with Melissa he hoped that Melissa could change. After obtaining a good job in Washington state, Melissa agreed to moving into his home in Spokane and bring LM, and her son GW, and AB. Sean did not agree for Brandon Breaux to live with us on Skipworth. Neither did he agree to allow his Brandon Breaux's girlfriend in my home. Melissa lied about both individuals drug addictions and endangered our children. Both were heroin addicts. Melissa violated her promise to Sean upon

marriage not to allow Brandon Breaux to disrupt our home and endanger the children again. (RP II 304)

LM is a gifted child, now in college, yet Melissa yanked his college funding because the child, having received a well-rounded Gonzaga prep character building curriculum, explained to the Gal just a tidbit of what his mother did, in the home, behind closed doors, that allowed his brothers and sisters to ruin their lives, and be placed in prison repeatedly, or worse. Melissa's permissive to the point of being criminally negligent and her continuous tolerating and otherwise allowing drugs in the home is the reason her life has been a nightmare in slow motion. (CP 1-6)

The facts of this case do not fit what a fair and reasonable person would conclude needs to be done. The trial court handed out its decision like a verdict to punish appellant and the pairs son LM who Melissa gave up custody without a fight just after the gal report was released. (CP 1-6). The trial court judge between sessions off the record early in the case during pretrial hearings, in front of all present (was not recorded but it was said)...spoke to Melissa from the bench and said " I get it that sometimes a person has to leave and end a relationship" something very similar to that effect..... At the time appellant had no idea how prejudicial that statement off the record was. Something somehow had influenced the judge and he had made up his mind about something prior to hearing the facts in the case. Melissa has made and continues to make frequent courthouse visits because of Brandon Breaux, and GW, and has now

started her court house rounds with AB in Juvenile court, and initially comes across as a dedicated devoted, caring mother, eluding sympathy from anyone who cares to give it including members of the court, probation and parole, ex judges, attorneys, and usually at the defamation of ex husbands, who she claims are abusive, violent and threatening. She can be very convincing and charming. However, let's not forget, all three of her children have had problems with drugs and arrest, imprisonment, before Sean came on the scene, and it does not take a Harvard PhD psychologist to see something is wrong with Melissa's claims that seem to explain it all away that somehow her abusive husbands caused it all.

Appellant is not sure that under the circumstances he can get a fair shake if granted a remand with the same judge. But hopes he can. Appellant only ask for a fair and impartial ruling the next time around even if it's with the same Court.

Based on the foregoing points and authorities, the appellant Sean McCarthy, respectfully request that the subject decisions and judgment of the superior court of Spokane County, State of Washington, be remanded with instruction to reframe the character of appellants separate property as such and to consider tracing of funds spent by appellant and only appellants separate funds on his property and that no funds were spent by Melissa on any improvements to the property for which reimbursement theories need to be applied for Melissa's benefit and the principles espoused under MARRIAGE OF MIRACLE, 101 Wn.2d 137, 675 P.2d 1229.

Melissa, her children by other marriages, her grown son and his girlfriend, and her new significant other, have received sufficient benefit of use

of appellants separate property as residence and fairly balances any consideration for the alternate theory of increase in value of appellants separate property. Melissa made no substantial contributions to increase the value of appellants separate property. Melissa spent no personal money on the property, only appellants separate funds were used to make improvements. By Separate funds we are referring to injury settlement proceeds from injury sustained in 1994

CONCLUSION

It is clear that numerous significant errors were made by the trial court. This Court should reverse the division of property and liabilities, and particularly the ruling of a meretricious relationship beginning March 1, 2002 sufficient to create an equity relationship, which therein granted equity to Melissa in appellants separate property acquired prior to her moving up to Washington State in July 2002. Please review and remand the ruling finding the house is a community asset and also appellant's retirement account division as well as FERS account did not consider it was started prior to marriage with an effective date of March 1999 because of prior military service.

Appellant was only married to Melissa for seven and a half years and as her fourth husband in a community no fault state, seven and a half years could be considered a short term marriage if so directed on remand without causing any harm to anyone, while the current decision of record greatly harms the appellant and his son which leaves nothing and creates a financial ruin while Melissa gets none of the community debt and half of Sean's separate equity estate of the home values.

The remand should include directions and guidelines to the trial court to assist it in its redetermination.

Appellant request remand to reframe the character of his separate property being the residence purchased by appellant in June of 2002, as well as his retirement account which effectively began in March of 1999 because appellant was allowed credit for prior military service and as such should not be classified community property subject to division by the trial court.

Appellant request that all of Melissa's separate property be valued as was testified to at trial to be worth 1 million shared with her 2 sisters, including all trust prior to dividing appellants separate retirement account and to utilize a fairness doctrine in the division order.

On remand the appellant request the trial court reframe the 36, 638.00 distributions from his retirement account as separate property finding it much smaller than Melissa's separate trust account and to utilize a fairness doctrine and order that amount be returned.

On remand the appellant ask that the nature of Melissa's lack of employment be declared voluntary.

Appellant request that the needs for child support be figured prior to setting any maintenance order in this case per RCW 26.09.090(1)(a)

Appellant request on remand that his cougar be properly identified as separate and that he should be allowed to keep his Cougar which even Melissa testified was his separate property acquired prior to March 1, 2002...(RP III 383).

Appellant request remand to revisit the amount and length of maintenance because the amount currently set exhaust the available resources of the custodial parent and is not in the best interest of the child now in college. RCW 26.09.090(1)(a)

Appellant request remand of trial court classifying George Robertson's credit card, Capitol One with a Balance of 10,000 to be community when appellant was unaware that Melissa had the card because that was apparently an arrangement between father and daughter. If Melissa and her father made an arrangement for her to have a credit card in his name that should be his debt not Sean's and not figured in the debt distribution which may effect calculation of equity payments to Melissa.

Appellant request on remand that LM's personal toys not be overpriced and placed on Appellants side of the equity balance and used to increase the amount to Melissa in equity payment. A PlayStation console and a few games does not belong to the father, was purchased for the child with community funds prior to separation and there was no evidence presented at court as to its value which the trial court put at 2000.00 effectively increasing the equity payment to Melissa.

On remand appellant request the trial court be directed to abide by the Washington State Child support schedule and to figure assistance to the custodial father for post-secondary education needs of the child.

Appellant request remand for the trial court to redo the division of property and request a more fair credit for the thousands of items in Melissa's

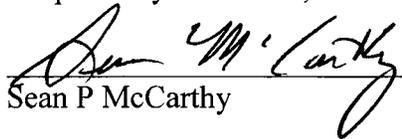
sole custody that were community and that she was court ordered not to remove from the home but for which she did anyway without itemizing and cataloguing while appellant had been evicted and court ordered to stay away and could not account for the values, nor did he have an itemized list, nor could he remember everything taken.

Appellant request credit or reimbursement for his legal fees for having to defend himself against this meretricious claim and or for successfully prevailing in this case.

Appellant request on remand that imputed income be levied per voluntary unemployment and need for maintenance be reviewed as per the testimony at trial and find that Melissa did not present a need at trial for maintenance that can only be met by appellant.

Appellant request protection from an order awarding attorney fees against him by Melissa for having to defend this action as a meretricious relationship claim and or successfully prevailing in this case, and because her fees are paid through her family trust and assets or future inheritance which she testified to be worth millions.

Respectfully submitted, this 12th day of December, 2011.


Sean P McCarthy

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DEC 12 2011

BY: *JL-1114a*

DEC 12 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

Court of Appeals. Div III of the state of Washington

In re: the Marriage of

Melissa McCarthy,

Respondent,

and

Sean McCarthy,

Appellant.

NO. 30029-3-III

**Return of Service
(Optional Use)
(RTS)**

I Declare:

1. I am over the age of 18 years, and I am a party to this action.
2. I served Kenneth Kato, petitioners legal counsel, with the following documents:
 - summons, a copy of which is attached, and petition in this action
 - Notice Re: Dependent of a Person in Military Service
 - parenting plan or residential schedule
 - child support order
 - child support worksheets
 - sealed financial source documents cover sheet and financial documents
 - financial declaration
 - notice of and motion for temporary order
 - motion for and ex parte order
 - adequate cause notice of hearing
 - declarations of Respondents
 - motion for and order to show cause re: _____
 - other: appellants opening brief,

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: Dec 12, 2011 Time: 11:30 a.m.

Address: 1020 N Washington St.
Spokane, WA 99201

4. Service was made pursuant to Civil Rule 4(d):

- by delivery to the person named in paragraph 2 above.
 by delivery to _____ [Name], a person of suitable age and discretion residing at the respondent's usual abode.
 by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)
 (check only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on _____ [Date]. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Attach return receipt below.) The copies were mailed on _____ [Date].

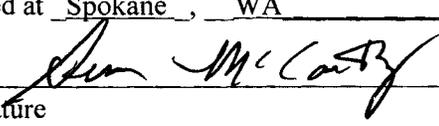
5. Service of Notice on Dependent of a Person in Military Service.

- The Notice to Dependent of Person in Military Service was served on mailed by first class mail on _____ [Date].
 Other:

6. Other:

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Spokane, WA on November 21, 2011


Signature

Sean McCarthy, Respondent Pro Se
Print or Type Name

Fees:

Service _____
Mileage _____
Total _____

(Attach Return Receipt here, if service was by mail.)