

FILED

MAY 31 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 308758-III

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

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In re the Marriage of:

AARON MATTHEW SILK, Appellant

and

TERESA ANN BROADSWORD, Respondent

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APPEAL FROM THE SUPERIOR COURT

OF LINCOLN COUNTY

HONORABLE JUDGE STROHMAIER

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REPLY BRIEF

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Robert Cossey  
Attorney for Appellant  
Robert Cossey & Associates, P.S.  
902 N. Monroe  
Spokane, WA 99201  
(509) 327-5563

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## I ARGUMENT

Tier II retirement benefits originally could not be distributed or considered as assets as part of a divorce or dissolution proceeding. In re Marriage of Anderson, 134 Wn.App. 111, 115, 138 P.3d 1118 (2006). However, Congress later amended 45 U.S.C. 231m of the Railroad Retirement Act to specifically allow the characterization of Tier II retirement benefits as community property “for the purposes of ... distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree.” See 45 U.S.C. 231m(b)(2).

A significant issue before this court is whether a “committed intimate relationship” or “meretricious relationship” as defined by the State of Washington constitutes a relationship allowing division of Tier II retirement benefits under 45 U.S.C. 231m. Although the court may divide retirement accounts pursuant to a “committed intimate relationship” the division of Tier II RRA benefits are specifically defined by federal law. Nowhere within 45 U.S.C. 231m does it state that a court decree dividing assets pursuant to a finding of a “committed intimate relationship” or its equivalent supports the distribution of Tier II RRA benefits. 45 U.S.C.

231m clearly allows distribution of Tier II RRA benefits only by a court order of divorce, annulment or legal separation.

The trial court should have only been allowed to consider that portion of the Tier II RRA benefit which fell within the dates of marriage, not the preceding time period deemed a “committed intimate relationship”. As stated in Hisquierdo prior to Congress’ amendment of 45 U.S.C. 231m, “[i]t is not the province of state courts to strike a balance different from the one Congress has struck.” In re Marriage of Larango, 93 Wn.2d 460, 462 610 P.2d 907 (1980) (citing Hisquierdo v. Hisquierdo, 439 U.S. 572, 59 L.Ed.2d 1, 99 S.Ct. 802 (1979)). Although this was stated in reference to the pre-amended 45 U.S.C. 231m the basic tenet remains the same. Congress did not specifically allow the characterization of Tier II RRA benefits as community property in relationships not specifically characterized as marriage. Therefore, the portion of Mr. Silk’s Tier II RRA benefit which was acquired prior to marriage should not have divisible by the trial court or considered as part of any property distribution.

The trial court did improperly consider the time the parties spent in a “committed intimate relationship” in making its award of spousal maintenance. The trial court Memorandum Opinion specifically

references that part of the decision is that the parties “were together for approximately 14 years.” (CP 23). Given that the child is 12 years old, (CP 53), a large portion of the impact the trial court referenced relating to Ms. Broadsword being a primary caregiver for the child in considering spousal maintenance occurred prior to the marriage. (CP 23). The trial court made no separation between the shorter term marriage and the additional time deemed a “committed intimate relationship” in determining a spousal maintenance amount. (CP 23).

Ms. Broadsword states in her Response Brief that the court may consider dissipation of assets. However, the trial court did not address this issue in its Memorandum Opinion and it is therefore not a basis to support the award of spousal maintenance.

## II

### REQUEST FOR ATTORNEY’S FEES

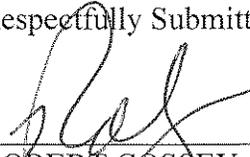
Ms. Broadsword has provided no supporting information for her request for attorney fees. The fact that the original award of \$5,000 to Ms. Broadsword (CP 24) may not have been paid should not be considered as that matter is before this court on appeal. Mr. Silk does not have the ability to pay for Ms. Broadsword’s appeal and there is no argument by her that his appeal is frivolous or made in bad faith. It is respectfully

requesting that, due to the substantial assets she received in this dissolution, she be required to contribute to his attorney fees. There is no basis to award attorney fees to Ms. Broadsword.

**III  
CONCLUSION**

It is respectfully requested that this court reverse the challenged decisions of the trial court and remand for further consideration.

Respectfully Submitted,



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ROBERT COSSEY

WSBA # 16481

Attorney for Appellant

Declaration of Service

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington, that on this date declarant personally filed the original and one copy of the document entitled: REPLY BRIEF OF AARON SILK at:

Court of Appeals of the State of Washington, Division III  
Clerk of the Court  
500 N. Cedar Street  
Spokane, WA 99201

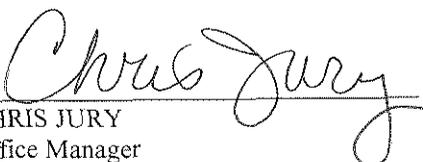
AND

that on this date declarant delivered a copy via messenger delivery a true and correct copy of: REPLY BRIEF OF APPELLANT AARON SILK directed by first class mail to Respondent's counsel and the appellant, namely:

Julie Harrington  
Attorney at Law  
2824 E 29<sup>th</sup> #1B  
Spokane WA 99223

Aaron Silk  
9735 Meadow Way  
Haydne ID 83835

DATED this 31 day of May, 2013

  
CHRIS JURY  
Office Manager

Robert R. Cossey, Attorney at Law, P.S.  
902 N. Monroe  
Spokane, WA 99201  
(509) 327-5563