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APR 01 2016

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

No. 332659-III

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IN THE COURT OF APPEALS, DIVISION III,  
OF THE STATE OF WASHINGTON

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In re the Marriage of  
GARY WEIDINGER,  
Petitioner/Respondent,  
and  
KAREN IRONS-WEIDINGER,  
Respondent/Appellant.

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APPEAL FROM THE SUPERIOR COURT OF WALLA WALLA  
COUNTY, THE HONORABLE JOHN W. LOHRMANN, JUDGE

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BRIEF OF APPELLANT

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MICHAEL S. MITCHELL  
WSBA 8678  
CHRISTOPHER M. CONSTANTINE  
WSBA 11650  
Attorneys for Appellant

129 West Main  
Walla Walla, Washington 99362-2817  
(509) 529-4110 Fax (509) 529-6108

P. O. Box 7125  
Tacoma, WA 98417-2522  
(253) 752-7850

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### **III. ASSIGNMENTS OF ERROR**

1. The trial court erred in Finding of Fact 2.21.1 by characterizing the SunTrust SEP IRA in the amount of \$132,028.54 as Respondent's separate property.
2. The trial court erred in Finding of Fact 2.21.2 by finding Appellant's claim that the parties had an outstanding loan to her sister in the amount of \$40,000 was unsupported by the evidence.
3. The trial court erred in Finding of Fact 2.15 by capping Respondents' obligation to pay Appellant's attorney's fees at \$7,500.00.
4. The trial court erred in Conclusion of Law 3.4 by concluding the distribution of properties and liabilities set forth in the Decree of Dissolution are fair and equitable.
5. The trial court erred in Conclusion of Law 3.7 by concluding Respondent should pay Appellant only \$7,500 in attorney's fees.
6. The trial court erred in Paragraph 1.2 E of the Decree by awarding Appellant only \$7,500 in attorney fees.
7. The trial court erred in Paragraph 3.2 of the Decree by awarding to Respondent the Sun Trust SEP IRA in the amount of \$132,028.54 as his separate property.
8. The trial court erred in Paragraphs 3.4, 3.5 of the Decree by failing to list the amount of the debt owed to Appellant's sister on line 22 of Exhibit 1.
9. The trial court erred in Paragraph 3.13 of the Decree by limiting the amount of attorney's fees to be paid by Respondent to Appellant to \$7,500.

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

1. The trial court erred in finding the Sun Trust SEP IRA to be Respondent's separate property without requiring tracing to establish the separate property character of that asset.

2. The trial court erred in finding the Sun Trust SEP IRA to be Respondent's separate property without requiring Respondent to meet his burden of establishing the separate character of that asset by clear, cogent and convincing evidence.

3. The trial court overlooked substantial evidence establishing the debt owed to Appellant's sister.

4. The trial court erred in limiting the amount of attorney's fees awarded to Appellant to \$7,500.

#### **V. STATEMENT OF THE CASE**

##### **A. FACTS**

Appellant Karen Irons married Respondent Gary Weidinger in Maryland on April 4, 1998.<sup>1</sup> Appellant was 52 years old as of the time of trial.<sup>2</sup> Appellant was born in Jamaica and came to the United States when

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<sup>1</sup> CP 581; App. 1.

<sup>2</sup> RP Vol. 3, p. 136.

she was 16.<sup>3</sup> In 1995, Appellant went to work for National Energy & Gas Transmission in Bethesda, Maryland.<sup>4</sup>

Appellant has two children from a prior marriage.<sup>5</sup> Respondent also has children from a former marriage.<sup>6</sup> None of the parties' children were dependents as of the date of trial.<sup>7</sup>

Respondent is a graduate of Montana State University with a Bachelor of Science degree in mechanical engineering.<sup>8</sup> Respondent wanted to work in the power industry, so he went to work for Bechtel.<sup>9</sup> Over his career, Respondent has held several management positions with power companies.<sup>10</sup> During his career, Respondent took courses in finance, economics and management.<sup>11</sup>

Respondent and Appellant met in 1995.<sup>12</sup> Appellant and Respondent met while they were both working at National Energy & Gas

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<sup>3</sup> RP Vol. III, p. 137.

<sup>4</sup> EX 129.

<sup>5</sup> RP Vol. I p. 16.

<sup>6</sup> RP Vol. I p. 8.

<sup>7</sup> CP 583; App. 1.

<sup>8</sup> RP Vol. I, p. 23.

<sup>9</sup> RP Vol. I, p. 23.

<sup>10</sup> EX 1.

<sup>11</sup> RP Vol. I, p. 25-26.

<sup>12</sup> RP Vol. I, p. 8.

Transmission (NEGT) in Maryland.<sup>13</sup> Appellant worked for NEGТ for 10 years.<sup>14</sup>

Respondent was married at the time he met Appellant.<sup>15</sup>

Respondent received a dissolution of his former marriage on April 3, 1998.<sup>16</sup> In the decree of dissolution of that marriage, Respondent was awarded his IDS IRA account.<sup>17</sup>

The parties moved to Walla Walla in 2000.<sup>18</sup> The parties purchased their home in Walla Walla in December, 2004.<sup>19</sup> The parties also purchased two parcels of farmland at that time.<sup>20</sup> The parcel with the house is 23.76 acres in size. The other parcels are 43.48 acres and 43.03 acres, respectively. The parties had sold their Maryland house and received more than half a million dollars on that sale.<sup>21</sup>

Respondent left NEGТ in 2002.<sup>22</sup> Respondent received a severance package of \$400,000 upon his departure from NEGТ.<sup>23</sup>

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<sup>13</sup> RP Vol. III, p. 110.

<sup>14</sup> *Ibid.*

<sup>15</sup> RP Vol. I p. 8.

<sup>16</sup> RP Vol. I, p. 9.

<sup>17</sup> RP Vol. I, p. 12; EX 20.

<sup>18</sup> RP Vol. III, p. 113.

<sup>19</sup> EX 122 (Walla Walla County Assessor Property Summary)

<sup>20</sup> *Ibid.*

<sup>21</sup> RP Vol. I p. 36.

<sup>22</sup> RP Vol. II, p. 150.

<sup>23</sup> *Ibid.*

In October, 2006, Respondent was hired as a project manager by Portland General Electric (PGE) at its Coyote Springs generating plant in Boardman, Oregon<sup>24</sup> In 2007, Respondent was promoted to plant manager of that facility.<sup>25</sup> Respondent was employed in that capacity as of the time of trial.<sup>26</sup> Respondent is considered upper management at PGE.<sup>27</sup>

Respondent's compensation has risen during his employment at PGE.<sup>28</sup> As of October 31, 2014, Respondent's year-to-date compensation was \$211, 427.24, including an annual bonus of \$36,917.20.<sup>29</sup> At trial, the court found Respondent's net income to be over \$15,000 per month.<sup>30</sup>

After moving to Walla Walla, Appellant enrolled at Walla Walla Community College, taking courses in viticulture and enology.<sup>31</sup> Appellant graduated in 2007.<sup>32</sup> Appellant worked in the local wine industry for two years.<sup>33</sup> Appellant found it difficult to find work in the wine industry.<sup>34</sup> Appellant has knowledge of wine making, but lacks

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<sup>24</sup> RP Vol. II, p. 134.

<sup>25</sup> EX 11.

<sup>26</sup> RP Vol. II, p. 134.

<sup>27</sup> RP Vol. II, p. 53.

<sup>28</sup> RP Vol. II p. 111-12; EX 11.

<sup>29</sup> RP Vol. II p. 135-39; EX 135.

<sup>30</sup> CP 582; App. 1.

<sup>31</sup> RP Vol. III, p. 113.

<sup>32</sup> RP Vol. III, p. 114.

<sup>33</sup> RP Vol. III, p. 114-15.

<sup>34</sup> RP Vol. III, p. 118.

practical experience in that field.<sup>35</sup> Appellant has only found work in the wine tasting room.<sup>36</sup> Appellant works at most 20 hours per week.<sup>37</sup>

Appellant also sought work outside the local wine industry. Appellant applied for work with numerous government agencies and private businesses.<sup>38</sup> Appellant has been looking for work since the death of her mother in April, 2013.<sup>39</sup> Appellant has been looking for a full time job, but has been unable to find one.<sup>40</sup>

## **B. PROCEDURAL HISTORY**

On June 15, 2013, Respondent filed a petition for dissolution of marriage in the Walla Walla Superior Court.<sup>41</sup> On July 19, 2013, the trial court entered an agreed temporary order in which it ordered Appellant, Respondent and Appellant's daughter were authorized to reside in the family home.<sup>42</sup>

Trial was held on November 3, 4, 5, 2014.<sup>43</sup> During trial, Respondent testified the Sun Trust SEP IRA account was his separate

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<sup>35</sup> RP Vol. III, p. 172.

<sup>36</sup> *Ibid.*

<sup>37</sup> RP Vol. III, p. 109.

<sup>38</sup> RP Vol. III, p. 118-122.

<sup>39</sup> RP Vol. III, p. 147, 150.

<sup>40</sup> RP Vol. III, p. 133.

<sup>41</sup> CP 1-6.

<sup>42</sup> CP 75-78.

<sup>43</sup> RP Vol. II, p. 1.

property.<sup>44</sup> Respondent claimed that the funds in that account derived from the IDS IRA that Respondent opened as a SEP in 1987.<sup>45</sup> Respondent claimed that after he closed his business in 1989, he never again contributed to the SEP.<sup>46</sup> Respondent testified the SEP account was rolled over into a Fidelity account.<sup>47</sup> Respondent testified that Fidelity account was rolled into the Sun Trust Account.<sup>48</sup> Respondent testified there were no community contributions made into the Sun Trust account.<sup>49</sup>

Respondent admitted in trial he has never heard of the concept of tracing.<sup>50</sup> Respondent also admitted in trial he has no statements to reflect whether there were any additions to or disbursements from the IDS IRA.<sup>51</sup> Respondent also admitted in trial he has no documentation to show where the IDS IRA account went.<sup>52</sup> Respondent also admitted in trial there is nothing in Exhibit 17 to show that the IDS IRA account was the source of the funds in the Fidelity account described in that exhibit.<sup>53</sup> Respondent also admitted in trial he has no documentation to show a rollover of the

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<sup>44</sup> RP Vol II, p. 12.

<sup>45</sup> *Ibid.*

<sup>46</sup> RP Vol II, p. 13, 15.

<sup>47</sup> RP Vol II, p. 39; EX 17.

<sup>48</sup> RP Vol II, p. 40.

<sup>49</sup> *Ibid.*

<sup>50</sup> RP Vol. II, p. 120.

<sup>51</sup> RP Vol II, p. 123.

<sup>52</sup> *Ibid.*

<sup>53</sup> RP Vol II, p. 124.

IDS IRA account into the Sun Trust account.<sup>54</sup> Appellant also admitted he has no documentation to establish tracing of the IDS IRA account from 1998 to the date of trial.<sup>55</sup> There is no mention of the IDS IRA in Respondent's tax returns.<sup>56</sup>

Appellant's CPA, Thomas Sawatzki, testified at trial.<sup>57</sup> Mr. Sawatzki holds accreditations in business valuation and is certified in financial forensics.<sup>58</sup> Mr. Sawatzki has testified previously as to tracing in other marriage dissolution cases.<sup>59</sup> Mr. Sawatzki was unable to tract the IDS IRA into the Sun Trust SEP account because he was not provided with any documents to perform a tracing analysis.<sup>60</sup>

Also at trial, the trial court was presented with oral testimony and documentary evidence of a \$40,000 loan owing by the parties' marital community to Appellant's sister. Exhibit 114 provided written documentation of the loan in question. Respondent's Exhibit 13 proposed treating "*Carol's Loan to Karen*" as a community debt to be shared equally by the parties. Respondent testified he adjusted the amount of that

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<sup>54</sup> RP Vol II, p. 125.

<sup>55</sup> RP Vol II, p. 126.

<sup>56</sup> RP Vol. III, p. 27.

<sup>57</sup> RP Vol. III, p. 45.

<sup>58</sup> RP Vol. III, p. 46; EX 139.

<sup>59</sup> RP Vol. III, p. 89.

<sup>60</sup> RP Vol III, p. 91-92.

debt from the \$40,000 amount used by Appellant's accountant to \$32,000.<sup>61</sup> Appellant's Exhibit 102 listed the debt as community property at \$40,000. Appellant's forensic accountant calculated that amount from the documents in Exhibit 114.<sup>62</sup> Respondent treated that debt as a community debt for purposes of the property distribution.<sup>63</sup>

On March 4, 2015, the trial court entered Findings of Fact and Conclusions of Law<sup>64</sup> and a Decree of Dissolution.<sup>65</sup> In Finding 2.21.1, the trial court found the Sun Trust SEP IRA in the amount of \$132,028.54 to be Respondent's separate property.<sup>66</sup> In Finding 2.21.2, the trial court found Appellant's claim that the parties had an outstanding loan to Appellant's sister in the amount of \$40,000 was unsupported by the evidence.<sup>67</sup> In Conclusion 3.4, the trial court concluded the distribution of property and liabilities to be fair and equitable.<sup>68</sup> In Conclusion 3.7<sup>69</sup>, the trial court awarded appellant \$7,500 in attorney fees, out of Appellant's request for \$30,263.50 in attorney fees as of November 3, 2014.<sup>70</sup>

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<sup>61</sup> RP Vol. II, p. 80-81, p.83-84.

<sup>62</sup> RP Vol. III p. 63.

<sup>63</sup> *Ibid.*

<sup>64</sup> CP 580-93; App. 1.

<sup>65</sup> CP 594-104; App. 2.

<sup>66</sup> CP 585; App. 1.

<sup>67</sup> *Ibid.*

<sup>68</sup> CP 586; App. 1.

<sup>69</sup> *Ibid.*

<sup>70</sup> EX 143

On April 3, 2015, Respondent filed a Notice of Appeal.<sup>71</sup> On April 16, 2015, Appellant filed a Notice of Cross-Appeal.<sup>72</sup> On January 13, 2016, the Court of Appeal granted Respondent's motion to terminate review.

## **VI. ARGUMENT**

### **A. STANDARD OF REVIEW**

On review, the trial court's findings of fact are reviewed for substantial evidence. *Inland Foundry Co., Inc., v. Department of Labor & Industries*, 106 Wn. App. 333, 340, 24 P. 3d 424 (2001). Where a challenged finding is required to be proven by clear, cogent and convincing evidence, the reviewing court incorporates that standard of proof in conducting a substantial evidence review. *In re Melter*, 167 Wn. App. 285, 301, 273 P. 3d 991 (2012). Clear, cogent and convincing evidence requires proof that makes the fact in question highly probable. *Ibid.*

The standard of review of a trial court's characterization of property as separate of community was restated in *Schwarz v. Schwarz*, 2016 WL 146979 at 9:

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<sup>71</sup> CP 607-42.

<sup>72</sup> CP 679-707.

A trial court's characterization of property as separate or community presents a mixed question of law and fact. *In re Marriage of Kile and Kendall*, 186 Wash.App. 864, 876, 347 P.3d 894 (2015) (citing *In re Marriage of Martin*, 32 Wash.App. 92, 94, 645 P.2d 1148 (1982)). “‘The time of acquisition, the method of acquisition, and the intent of the donor, for example, are questions for the trier of fact.’ ” *Id.* (quoting *Martin*, 32 Wash.App. at 94, 645 P.2d 1148). Accordingly, whether or not a rebuttable presumption of community or separate character is overcome is a question of fact. *See id.* at 881, 347 P.3d 894 (reviewing whether substantial evidence supports overcoming the presumption); *In re Marriage of Mix*, 14 Cal.3d 604, 612, 536 P.2d 479, 122 Cal. Rptr. 79 (1975). We review the factual findings supporting the trial court's characterization for substantial evidence. *Kile*, 186 Wash.App. at 876, 347 P.3d 894 (citing *In re Marriage of Mueller*, 140 Wash.App. 498, 504, 167 P.3d 568 (2007)). The ultimate characterization of the property as community or separate is a question of law that we review de novo. *Id.*

The foregoing authorities guide the Court's review in this case.

**B. THE TRIAL COURT ERRED IN FINDING THE SUN TRUST SEP IRA TO BE RESPONDENT'S SEPARATE PROPERTY.**

Error is assigned to Finding of Fact 2.21.1:

The court finds that the Sun Trust SEP IRA (“25 on the Spreadsheet/Exhibit 1) is Petitioner's separate property. While there is no direct accounting evidence that the Sun Trust account is the same as what was

awarded to Mr. Weidinger I his previous divorce, the court finds Mr. Weidinger's testimony credible that it is the same account rolled over into a new one, and the circumstantial evidence also provides an adequate basis to support its tracing as separate property. The circumstantial evidence is that Mr. Weidinger was awarded substantial assets in his previous divorce just before his marriage to Mrs. Weidinger the following day.<sup>73</sup>

Error is also assigned to Findings of Fact Nos. 2.8, 2.9<sup>74</sup>, Conclusion of Law 3.4<sup>75</sup> and Paragraphs 3.2, 3.3 of the Decree of Dissolution.<sup>76</sup>

The trial court's finding that the Sun Trust SEP IRA was Respondent's separate property is not a finding. Rather is a conclusion of law and must be reviewed as such. *Marriage of Schwarz, supra*; *Marriage of Skarbeck*, 100 Wn. App. 444, 447, 997 P. 2d 447 (2000); *Marriage of Martin*, 32 Wn. App. 92, 94, 645 P. 2d 1148 (1982).

The court must have in mind the correct character and status of the property as community or separate before any theory of division is ordered. *Schwarz*, 2016 WL 146979 at 9; *Blood v. Blood*, 69 Wn. 2d 680, 682, 419 P. 2d 1006 (1966). Remand is required when it appears the trial

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<sup>73</sup> CP 584; App. 1.

<sup>74</sup> CP 581; App. 1.

<sup>75</sup> CP 585; App. 1

<sup>76</sup> CP 595; App. 2.

court's division of the property was dictated by a mischaracterization of the property. *Schwarz*, 2016 WL 146979 at 10; *Marriage of Skarbeck*, 100 Wn. App. 450; *Marriage of Shannon*, 55 Wn. App. 137, 142, 777 P. 2d 8 (1989).

Property in possession of a married person is presumed to be community property until the contrary is shown. *State ex rel. Marshall v. Superior Court*, 119 Wash. 631, 637, 206 P. 362 (1922); *Marriage of Schwarz*, 2016 WL 14679 at 9. That presumption is rebuttable, and the strength of that presumption increases with the length of the parties' marriage. *Schwarz*, 2016 WL 14679 at 9; 19 K. W. Webber, *Washington Practice, Family and Community Property Law* § 10.4 at 137 (1997). Here, the parties were married from 1998 to 2013.<sup>77</sup> Thus the presumption the Sun Trust SEP IRA was community property is strong.

The trial court found circumstantial evidence the Sun Trust SEP IRA was Respondent's separate property in the property awarded to Respondent in his previous marriage dissolution.<sup>78</sup> Specifically, on April 3, 1998, in Loudon County Virginia Circuit Court Chancery Cause No.

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<sup>77</sup> CP \_\_\_\_.  
<sup>78</sup> CP 584; App. 1.

17175, Respondent was awarded the IDS IRA No. 136225067001.<sup>79</sup> No other documentation was introduced to establish whether funds in that account are any part of the Sun Trust SEP IRA identified on line 25 of the proposed distribution of the parties' property.<sup>80</sup> Respondents' counsel admitted on closing argument that Respondents had not and could not trace the IDS IRA to the Sun Trust SEP IRA. "...*There is nothing, no records, that could be recovered. They were lost or thrown out by an agreement 15 years ago when they moved to this area. So there is not [sic] tracing possible...*"<sup>81</sup>

The comments of Respondent's counsel constitute a judicial admission. *Mukilteo Retirement Apartments, LLC v. v. Mukilteo Investors, LP*, 176 Wn. App. 244, 256 n. 8, 310 P.3d 814, *review denied*, 179 Wn. 2d 1025 (2014); *Black v. Suydam*, 81 Wash. 279, 286-87, 142 P. 700 (1916).

Respondent's inability to trace the IDS IRA to the Sun Trust SEP IRA or to provide documentary proof to support his self-serving testimony regarding the Sun Trust SEP IRA is fatal to his attempt to overcome the presumption of community property attaching to that asset. In *Schwarz*, this Court recognized that since *Berol v. Berol*, 37 Wn. 2d 380, 382, 223

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<sup>79</sup> EX 20, EX 138 at 4.

<sup>80</sup> EX 12, 102

<sup>81</sup> VRP Vol. IV, p. 4.

P. 2d 1055 (1950), overcoming the community property presumption requires more than a mere self-serving declaration of a spouse that he or she acquired an asset with separate funds and separate funds were available. 2106 WL 146979 at 17. Instead in *Schwarz*, this Court found it reasonable “to require the party’s testimony to be supported by, e. g., documentary evidence, and admission by their part-opponent, or the testimony of another witness.” *Ibid.* Thus, under *Berol* and *Schwarz*, documentary evidence is a *sine qua non* for a party asserting the separate property character of an asset to overcome the community property presumption.

Respondent is not required to provide an exhaustive accounting in order to satisfy his burden of tracing. *Schwarz*, 2016 WL 146979 at 18; *Marriage of Skarbeck*, 100 Wn. App. 449-50. Neither *Schwarz* nor *Skarbeck* allow a party to satisfy his burden of proving the separate property character of an asset with no documentation. In Finding 2.21.1, however, the trial court allowed Respondent to satisfy his burden of proving the separate property character of the Sun Trust SEP IRA with only Respondent’s self-serving testimony. “While there is no direct accounting evidence that the Sun Trust account is the same as what was awarded to Mr. Weidinger in his previous divorce, the court finds Mr.

*Weidinger's testimony credible that it is the same account rolled into a new one.*<sup>82</sup>

The only “*circumstantial evidence*” identified by the trial court was the award of substantial assets to Respondent in his prior divorce.<sup>83</sup> But that begs the question. Are the substantial assets awarded to Respondent in his prior divorce the same assets which comprise the Sun Trust SEP IRA? Finding 2.21.1 identifies no documentary or circumstantial evidence they are.

In light of the foregoing, Finding 2.21.1 fails to satisfy either *Berol* or *Schwarz*. It further follows Respondent failed to meet his burden of tracing the separate property character of the Sun Trust SEP IRA with clear, cogent and convincing evidence. Finding 2.21.1 is therefore not supported by substantial evidence, and must be reversed. *Miles v. Miles*, 128 Wn. App. 64, 114 P. 3d 671 (2005); *McGovern v. Department of Social & Health Services*, 94 Wn. 2d 448, 617 P. 2d 434 (1980). Alternatively, Finding 2.21.1 is erroneous as a conclusion of law under *Schwarz*, *Skarbeck* and *Berol*, *supra*.

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<sup>82</sup> CP 584; App. 1.

<sup>83</sup> *Ibid*.

The trial court's error in mischaracterizing the Sun Trust SEP IRA as Respondent's separate property deprived the community of one-half of the value of that asset, which the trial court valued at \$132,028.54.<sup>84</sup> Appellant thus suffered a loss of approximately \$66,000, representing her share of the community value of that asset.

The trial court's mischaracterization of the Sun Trust SEP IRA was designed to provide a separate property asset to offset the award to Appellant of the community property Pacific Life Variable Annuity IRA, valued at \$157,713.54. Those two assets appear on lines 24 and 25 of the spreadsheet attached as Exhibit 1 to the Findings of Fact and Conclusions of Law.<sup>85</sup>

Redistributing the Sun Trust SEP IRA as a community asset would add \$66,014.27 to the community share of each party, yielding the following change in the trial court's property division:

	Appellant Karen Irons (Weidinger)	Respondent Gary Weidinger
Line 71 Subtotals	\$455,003.78	\$646,559.20
Line 73 Equalization Amt.	\$191,555.42	(191,555.42)
Line 75 Adjusted Totals	\$646,559.20	\$455,003.78
Line 77 Percentage	.5869	.4130

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<sup>84</sup> CP 587; App. 1.

<sup>85</sup> CP 587; App. 1.

The trial court allocated the parties' community property on a 65.4/34.6 percentage split.<sup>86</sup> Employing that percentage, Appellant's share of the Sun Trust SEP IRA should have been \$86,346.66. Respondent's share should have been \$45,681.87.

In light of the foregoing, it is not clear that had the trial court properly characterized the Sun Trust SEP IRA as community property, it would have divided the property in the same way. Therefore, under *Schwarz* and *Shannon*, remand to the trial court for further consideration is required in this case.

**C. THE TRIAL COURT ERRED IN FINDING APPELLANT'S CLAIM OF A LOAN TO HER SISTER UNSUPPORTED BY THE EVIDENCE.**

Error is assigned to Finding of Fact 2.21.2:

The court finds that the Respondent's claim that the parties had an outstanding loan to Respondent's sister in the amount of \$40,000 is unsupported by the evidence; while there are checks that add up to that amount (Exhibit 114), none are marked as "loans" and the Petitioner had no knowledge of them, nor of any terms of repayment. Accordingly, the court does not find that such debt exists and it has not been allocated in the spreadsheet.<sup>87</sup>

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<sup>86</sup> CP 588; App. 1

<sup>87</sup> CP 584; App. 1.

Error is also assigned to Finding of Fact 2.10,<sup>88</sup> Conclusion of Law 3.4,<sup>89</sup> and Paragraphs 3.4, 3.5, 3.6 of the Decree of Dissolution.<sup>90</sup>

Contrary to Finding 2.21.2, Appellant's claim for the outstanding loan to Appellant's sister is supported by the evidence. Exhibit 114 provides written documentation of the loan in question. Respondent's Exhibit 13 proposed treating "*Carol's Loan to Karen*" as a community debt to be shared equally by the parties. Respondent testified he adjusted the amount of that debt from the \$40,000 amount used by Appellant's accountant to \$32,000.<sup>91</sup> Appellant's Exhibit 102 listed the debt as community property at \$40,000. Appellant's forensic accountant calculated that amount from the documents in Exhibit 114.<sup>92</sup> Respondent treated that debt as a community debt for purposes of the property distribution.<sup>93</sup> Thus, the trial court's Finding 2.21.2 that Appellant's outstanding loan in the amount of \$40,000 to her sister is unsupported by the evidence is itself not supported by substantial evidence and must be reversed. *Miles v. Miles*, 128 Wn. App. 71.

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<sup>88</sup> CP 582; App. 1.

<sup>89</sup> CP 585; App. 1.

<sup>90</sup> CP 595; App. 2.

<sup>91</sup> RP Vol. II, p. 80-81, p.83-84.

<sup>92</sup> RP Vol. III p. 63.

<sup>93</sup> *Ibid.*

**D. THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES IN THE AMOUNT OF \$7,500.**

Error is assigned to Finding of Fact No. 2.15:

The Respondent has the need for the payment of fees and costs and the other spouse has the ability to pay these fees and costs. The Respondent has incurred reasonable attorney fees and costs in the amount of \$16,747.67 which Petitioner may pay from Petitioner's paid time or such other sources as Petitioner may choose, however, Petitioner's obligation is capped at \$7,500.00.

The court finds that the Petitioner has an asset identified in his wage stubs which is in the nature of "vacation pay out" totaling \$19231.21 (not disclosed at trial. See pay stub attached to Exception filed February 20, 2015. The court determines that it is accrued and could be cashed. While it is not part of the property division, the asset awarded to Petitioner with the instruction to pay \$7,500/00 to Respondent toward her attorney fees.<sup>94</sup>

Error is also assigned to Conclusion of Law 3.7.<sup>95</sup> Error is also assigned to Paragraph 3.13 of the Decree of Dissolution.<sup>96</sup>

Appellant submitted documentation establishing she had incurred \$30,263.50 in attorney fees as of November 3, 2014.<sup>97</sup> By that date,

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<sup>94</sup> CP 583; App. 1.

<sup>95</sup> CP 585; App. 1.

<sup>96</sup> CP 596-97; App. 2.

<sup>97</sup> EX 143

Appellant had paid \$17,745.88 in fees.<sup>98</sup> There remained \$12,877.62 in unpaid fees. The trial court's award of \$7,500 represents only 24.5 percent of the total fees incurred to that point. In addition, Appellant had incurred \$4,230.05 in costs, including \$3,257.00 to the forensic accountant.<sup>99</sup>

RCW 26.09.140 provides as follows:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

The trial court's award of attorney fees is reviewed for an abuse of discretion. *Buchanan v. Buchanan*, 150 Wn. App. 730, 737, 207 P. 3d 478

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<sup>98</sup> *Ibid.*

<sup>99</sup> *Id.*

(2009). The trial court must balance the needs of the spouse requesting them and the ability of the other spouse to pay. *Ibid.* In this case, the trial court's award of \$7,500 in attorney fees to Appellant represents only one quarter of the attorney fees she is obligated to pay.

Appellant's most recent employment as of the date of trial was as a greeter in the tasting room of a local winery.<sup>100</sup> Appellant works twenty hours per week, at most.<sup>101</sup> Appellant took courses in enology and viticulture from a local community college, graduating in 2007.<sup>102</sup> Appellant worked in a local winery until 2010, but left to take care of her mother, whose health was rapidly deteriorating.<sup>103</sup> Appellant's mother died in April, 2013.<sup>104</sup>

Appellant worked as a home health aide nearly full time at the end of her mother's life.<sup>105</sup> The trial court found in Finding of Fact 2.12.4 Appellant is currently employed part-time and she makes less than \$2,000 per month.<sup>106</sup>

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<sup>100</sup> RP Vol. III p. 109.

<sup>101</sup> *Ibid.*

<sup>102</sup> RP Vol. III, p. 113-14.

<sup>103</sup> RP Vol. III, p. 115-16.

<sup>104</sup> RP Vol. III p. 147.

<sup>105</sup> RP Vol. III p. 158.

<sup>106</sup> CP 583; App. I.

Appellant was 52 years old at the time of trial.<sup>107</sup> Appellant was born in Jamaica, and migrated to the United States when she was 16 years old.<sup>108</sup> Appellant suffers chronic pain from fibromyalgia and has a high platelet count which poses a risk for heart attack and stroke.<sup>109</sup> Appellant also has nodules on her thyroid gland.<sup>110</sup> Appellant sees a doctor periodically.<sup>111</sup> Appellant's doctor told her that she should work part-time.<sup>112</sup>

In Conclusion of Law No. 3.8, the trial court ordered Respondent to pay Appellant the sum of \$95, 777.71, together with an additional amount of \$150,000 in lieu of maintenance.<sup>113</sup> The trial court ordered judgment in that amount with interest at 5 percent.<sup>114</sup> The court further ordered that interest only payments be made quarterly until the parties' house and land are sold or refinanced, and if not sold or refinanced by December 31, 2017, Respondent shall be required to immediately sell the house at a price to be established by the Court.<sup>115</sup> As a result, Appellant's

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<sup>107</sup> RP Vol. III, p. 136.

<sup>108</sup> RP Vol. III, p. 137.

<sup>109</sup> RP Vol. III, p. 141.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Id.*

<sup>112</sup> RP Vol. III, p. 142; p. 143-44; EX 141

<sup>113</sup> CP 585; App. I.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Id.*

access to all or part of nearly \$250,000 awarded to her by the trial court has been denied until the end of 2017, or later.

The foregoing demonstrates Appellant has immediate and urgent need for a full award of attorney fees. The trial court's award of \$7,500 in attorney fees to Appellant demonstrates little, if any, concern for Appellant's need for such fees.

In Finding of Fact 2.12, the trial court found Respondent's net income as of trial over \$15,000 per month.<sup>116</sup> The trial court's award of \$7,500 in attorney fees thus represents one-half of one month's of Respondent's net income.

The trial court's award of attorney fees leaves Appellant to shoulder the onerous burden of thousands of dollars of attorney fees for an indefinite period of time. The trial court's award of attorney fees in the amount of \$7,500 represents an abuse of discretion under the facts of this case.

**F. APPELLANT REQUESTS ATTORNEY FEES ON APPEAL.**

RAP 18.1 (a) provides as follows:

If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court

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<sup>116</sup> CP 582; App. 1.

of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

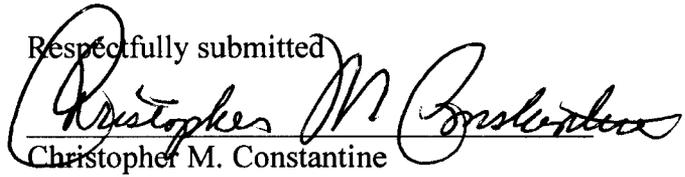
RCW 26.09.140 provides, in pertinent part, “[u]pon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.”

In exercising its discretion, the appellate court considers the issues' arguable merit on appeal and the parties' financial resources, balancing the financial need of the requesting party against the other party's ability to pay. *In re Marriage of Kim*, 179 Wn. App. 232, 256, 317 P. 3d 555, review denied, 180 Wash.2d 1012, 325 P.3d 914 (2014). Here, the foregoing argument establishes the merit of the issues brought by Appellant before this Court. Further, as indicated above, the record here establishes Appellant's need for an award of attorney fees and Respondents' ability to pay the same.

## **VII. CONCLUSION**

In light of the foregoing, Appellant requests the Court to reverse Findings of Fact 2.15, 2.21.1, 2.21.2, Conclusions of Law 3.4, 3.7, and Paragraphs 3.2, 3.3, 3.4, 3.5, 3.6, 3.13 of the Decree of Dissolution. Appellant also request an award of attorney fees and costs on appeal.

Respectfully submitted

A handwritten signature in cursive script, reading "Christopher M. Constantine". The signature is written in black ink and is positioned above a horizontal line.

Christopher M. Constantine

WSBA # 11650

Of attorneys for Appellant

## **VIII. APPENDICES**

1. Findings of Fact and Conclusions of Law
2. Decree of Dissolution

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2015 MAR -4 A 11:55

WALLA WALLA COUNTY  
WASHINGTON  
BY \_\_\_\_\_

**Superior Court of Washington  
County of Walla Walla**

In re the Marriage of:

**GARY WEIDINGER,**

Petitioner,

And

**KAREN IRONS-WEIDINGER,**

Respondent.

No. 13-3-00162-9

**Findings of Fact and  
Conclusions of Law  
(Marriage)  
(FNFL)**

**I. Basis for Findings**

The findings are based on trial. The following people attended:

- Petitioner;
- Petitioner's Lawyer;
- Respondent;
- Respondent's Lawyer; and
- Thomas Sawatzki.

**II. Findings of Fact**

Upon the basis of the court records, the court  *Finds*:

**2.1 Residency of Petitioner**

The Petitioner is a resident of the State of Washington.

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**2.2 Notice to the Respondent**

The Respondent appeared, responded or joined in the petition.

**2.3 Basis of Personal Jurisdiction Over the Respondent**

The facts below establish personal jurisdiction over the Respondent.

The Respondent is currently residing in Washington; and  
The parties lived in Washington during their marriage and the Petitioner continues  
to reside in this state.

**2.4 Date and Place of Marriage**

The parties were married on April 4, 1998 in Maryland.

**2.5 Status of the Parties**

Petitioner filed the Petition for Dissolution of Marriage on June 5, 2013; however, by  
agreement and stipulated order, they continued to reside in the same household and share  
expenses up to the time of trial.

**2.6 Status of Marriage**

The marriage is irretrievably broken and at least 90 days have elapsed since the date the  
petition was filed and since the date the summons was served or the respondent joined.

**2.7 Separation Contract or Prenuptial Agreement**

There is no written separation contract or prenuptial agreement.

**2.8 Community Property**

The parties have real or personal community property as set forth in Exhibit 1.  
This exhibit is attached or filed and incorporated by reference as part of these findings.

**2.9 Separate Property**

The Petitioner has real or personal separate property as set forth in Exhibit 1.  
This exhibit is attached or filed and incorporated by reference as part of these findings.

The Respondent has real or personal separate property as set forth in Exhibit 1.  
This exhibit is attached or filed and incorporated by reference as part of these findings.

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**2.10 Community Liabilities**

The parties have incurred community liabilities as set forth in Exhibit 1.  
This exhibit is attached or filed and incorporated by reference as part of these findings.

**2.11 Separate Liabilities**

The Petitioner has no known separate liabilities.  
The Respondent has no known separate liabilities.

**2.12 Maintenance**

2.12.1 In awarding maintenance, the court has reviewed the factors set forth in RCW 26.09.190 including the financial resources of the parties given their life situations. There is a great age disparity between the parties. Petitioner is 66 years of age. Respondent is 52 years of age. Petitioner has had substantial income, at least through the date of trial. His paystub shows net income of over \$10,000 per month but he also received a total of approximately \$90,000 in stock options, paid time off, and annual bonus. The bonus has historically been given. These equate to approximately \$7,500 additional income to the Petitioner per month. Accordingly, his net income totaled over \$15,000 per month. While the Petitioner may elect to remain in retirement, the Court finds that his skills and income potential remains at a high level justifying an award of maintenance or an additional award of community property in lieu of maintenance.

2.12.2 The parties had a standard of living which was fairly comfortable. They did some traveling. They lived in a magnificent house and were able to sustain their style of living with Petitioner's income.

2.12.3 The marriage is 16 ½ years in length and even though it is not a long-term marriage, the court determines that it justifies an award of maintenance for four years while Respondent gains skills necessary to find better employment.

2.12.4 The Respondent is currently employed part-time. She makes less than \$2,000 per month. There is a financial need for maintenance or an award in lieu of maintenance and the Petitioner has an ability to pay same.

2.12.5 While Respondent has a need for some maintenance, the court finds that Petitioner's ability to pay is at least temporarily limited as he is no longer employed; therefore, some adjustment in the distribution described in the court's oral decision is in order. In lieu of maintenance, the Respondent shall be awarded an additional distribution of community assets in the amount of \$150,000 under the circumstances of this case considering all relevant factors per *Marriage of Larson*, 178 Wn. App. 133 (2013) and other case law. Said amount should be paid in the same manner as the balance of equalization awarded in Paragraph 3.8 below.

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**2.13 Continuing Restraining Order**

Does not apply.

**2.14 Protection Order**

Does not apply.

**2.15 Fees and Costs**

The Respondent has the need for the payment of fees and costs and the other spouse has the ability to pay these fees and costs. The Respondent has incurred reasonable attorney fees and costs in the amount of \$16,747.67 which Petitioner may pay to Respondent from Petitioner's paid time off or such other sources as Petitioner may choose, however, Petitioner's obligation is capped at ~~one half (1/2) of the paid time off balance reported at trial (see Exhibit 108/Petitioner's wage stub reflecting paid time off totaling \$20,018.75).~~

*\$7500.00*

The court finds that the Petitioner has an asset as identified in his wage stubs which is in the nature of ~~"paid time off" (\$20,018.75; see Exhibit 108)~~. The court determines that it is accrued and could be cashed. While it is not a part of the property division, the asset is awarded to Petitioner with the instruction to pay ~~one half (1/2)~~ *\$7500.00* to Respondent toward her attorney fees.

*(Handwritten initials)*

**2.16 Pregnancy**

Wife is not pregnant.

*"vacation pay out" totaling \$19,231.21 (Not disclosed at trial. See pay stub attached to Exceptions filed February 20, 2015.)*

**2.17 Dependent Children**

The parties have no dependent children of this marriage.

**2.18 Jurisdiction Over the Children**

Does not apply because there are no dependent children.

**2.19 Parenting Plan**

Does not apply.

**2.20 Child Support**

Does not apply.

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**2.21 Other**

2.21.1 The court finds that the SunTrust SEP IRA (#25 on the Spreadsheet/Exhibit 1) is Petitioner's separate property. While there is no direct accounting evidence that the SunTrust account is the same as what was awarded to Mr. Weidinger in his previous divorce, the court finds Mr. Weidinger's testimony credible that it is the same account rolled over into a new one, and the circumstantial evidence also provides an adequate basis to support its tracing as separate property. The circumstantial evidence is that Mr. Weidinger was awarded substantial assets in his previous divorce just before his marriage to Mrs. Weidinger the following day.

2.21.2 The court finds that the Respondent's claim that the parties had an outstanding loan to Respondent's sister in the amount of \$40,000 is unsupported by the evidence; while there are checks that add up to that amount (Exhibit 114), none are marked as "loans" and the Petitioner had no knowledge of them, nor of any terms of repayment. Accordingly, the court does not find that such debt exists and it has not been allocated in the spreadsheet.

2.21.3 The court finds that the real properties are currently listed for sale and that the parties intended to sell the properties and therefore the court has deducted costs of sale from the real property awarded the Petitioner (house and land identified in items 42 and 47 of the spreadsheet as Exhibit 1). Sale costs shall be equivalent to 5% of the value of the property as set forth by realtor David Hull. The court further reduces the amount of the house by \$20,000.00 in miscellaneous expenses and the land by \$5,000.00 in miscellaneous expenses. The net value (prior to deduction for any mortgage/encumbrance on either parcel) is \$977,500.00 for the house and \$335,100.00 for the land and water rights. There is no deduction ordered for risk allocation as requested by the Petitioner.

**III. Conclusions of Law**

The court makes the following conclusions of law from the foregoing findings of fact:

**3.1 Jurisdiction**

The court has jurisdiction to enter a decree in this matter.

**3.2 Granting a Decree**

The parties should be granted a decree.

**3.3 Pregnancy**

Does not apply.

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**3.4 Disposition**

The court should determine the marital status of the parties, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

**3.5 Continuing Restraining Order**

Does not apply.

**3.6 Protection Order**

Does not apply.

**3.7 Attorney Fees and Costs**

Attorney fees, other professional fees and costs should be paid. Respondent shall reimburse to Petitioner one-half (1/2) of Thomas Sawatzki's fees. (Sawatzki's fees total \$12,046. Fees of \$3,097 remains outstanding. Respondent has paid \$8,949. Petitioner should pay the remaining amount to Sawatzki of \$3,097 and reimburse Respondent the sum of \$2,926 which will result in each party being responsible for one-half of Sawatzki's fees.)

Petitioner should pay <sup>\$ 7500 =</sup> ~~one-half (1/2)~~ <sup>vacation pay out or</sup> of his "paid time off" account toward Respondent's attorney's fees. dl

**3.8 Other**

In order to equalize the distribution of the community assets between the parties, the Petitioner shall pay to Respondent the sum of \$95,777.71, together with an additional amount of \$150,000 awarded in lieu of maintenance. Judgment shall be entered against Petitioner in favor of Respondent in that amount with interest on this judgment accruing at a rate of 5% per annum commencing January 1, 2015. Petitioner shall be required to make interest-only payments until the house and land are sold or until the house and land are refinanced. If the house and land are not sold or the said property refinanced by December 31, 2017, the Petitioner shall be required to immediately sell the home at a price to be established by the court in order that Respondent shall receive her equalization payment plus interest. The court reserves jurisdiction to order sale and set a sale price for the sale of said property should this become necessary. Interest payments required to be made hereunder shall be paid by Petitioner to Respondent no less often than quarterly commencing ~~March~~ <sup>April</sup> 1, 2015.

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**3.9 Personal Property Not Otherwise Scheduled**

The personal property of the parties should be divided in accord with Exhibit 137. To the extent there are undistributed items after property is divided pursuant to Exhibit 137, the undistributed items shall be divided between the parties utilizing an alternate method of selection. The parties will flip a coin and whoever wins the coin flip will have first choice. The other party will then have the next two choices. The first party will then have the next two choices and the parties will proceed in that fashion (two choices at a time) until there is no undistributed property remaining.

**3.10 Motions for Reconsideration**

All Motions for Reconsideration have been reviewed and are granted and/or denied in accordance with the above. To the extent such issues are not addressed, they ~~should be~~ denied. (dl) arc

Dated: MAR - 4 2015

  
\_\_\_\_\_  
Judge/Commissioner

Presented by:  
  
  
\_\_\_\_\_  
MICHAEL S. MITCHELL, WSBA #8678  
Attorney for Respondent

Approved for entry:  
Notice of presentation waived:  
  
\_\_\_\_\_  
IRVING M. ROSENBERG, WSBA #21754  
Attorney for Petitioner

# EXHIBIT 1

	A	B	C	D	E	F	G	H
1	Weidinger Dissolution							
2	Listing of Assets and Liabilities							
3	Date of Separation of March 31, 2013				Alternative 2			
4								
5					Community		Separate	
6		Account #	Date	Value	Karen	Gary	Karen	Gary
7	<b>Bank and investment accounts</b>							
8	Banner Bank checking	2205247025	06/14/13	\$ 5,806.01		\$ 5,806.01		
9	Banner Bank savings	2226239324	06/17/13					
10	Banner Bank	126691410	06/30/13	\$ 6,430.86	\$ 3,215.43	\$ 3,215.43		
11	American West Bank	8000605088	06/30/13	\$ 1,074.82	\$ 537.41	\$ 537.41		
12	Pacific Service	167861	06/30/13	\$ 873.46	\$ 873.46			
13	US Bank	153565107718	06/17/13	\$ 475.00		\$ 475.00		
14	US Bank	253557280224	06/17/13	\$ 25.00		\$ 25.00		
15	GESA Credit Union	539462						
16	Merrill Lynch	6GV-10114	09/30/14	\$ 256.19	\$ 256.19			
17	Portland Gen Shares at \$34.78 on 10/21/14	Sold	08/27/14	\$ -	\$ -			
18								
19	Pacific Service Credit Union credit card	861-82	08/31/14	\$ (14,088.46)	\$ -	\$ (14,088.46)		
20	American Express Costco - Gary	8-31008	09/26/14	\$ (8,224.09)	\$ -	\$ (8,224.09)		
21	American Express Costco - Karen	7-71001	06/25/13	\$ (789.91)	\$ (789.91)			
22	Amount owed to Karen's sister		09/30/14	\$ -	\$ -			
23								
24	Pacific Life Variable Annuity IRA - Karen	VR05032916	10/27/14	\$ 157,713.54	\$ 157,713.54			
25	SunTrust SEP IRA	073-245593	09/30/14	\$ 132,028.54	\$ -			\$ 132,028.54
26	Premiere Select - National Finc Svcs IRA - Gary	073-245593	12/31/12	N/A		Same as above account		
27	Portland General Electric Stock Options	Next two years		\$ 13,250.12		\$ 13,250.12		
28	Trust account balance	Ledger Stmt	10/29/14	\$ 6,353.22	\$ 6,353.22			
29	Portland General Electric 401(k)		10/25/14	\$ 197,205.90	\$ 197,205.90			
30	Less loan against 401(k)	Paid in full	2014	\$ -	\$ -			
31	PGE Defined Benefit Retirement Plan		03/31/13	QDRD	xx	xx		
32	PGE Management Deferred Compensation Plan		12/31/13	\$ 5,084.71	\$ -	\$ 5,084.71		
33	Paid Time Off			xxx				
34	Health Care Spending Account							
35								
36	Life Insurance - Spouse (PGE)	Term		\$ -	\$ -	\$ -		
37	Life Insurance - Child (PGE)	Term		\$ -	\$ -	\$ -		
38	Life Insurance - Gary (PGE)	Term		\$ -	\$ -	\$ -		
39								
40								
41	<b>Real Estate</b>							
42	59 Cross Creek Road - Includes 23.76 acres	Agent estimate		\$ 977,500.00	\$ -	\$ 977,500.00		
43	Debt on home - US Bank		09/30/14	\$ (541,257.15)	\$ -	\$ (541,257.15)		
44	Debt on home - Chase Home Equity	0042600028751	09/30/14	\$ (242,526.62)	\$ -	\$ (242,526.62)		
45								
46								
47	Land and water rights- (43.48 plus 43.02 acres)	Listing net	\$4k/acre	\$ 335,100.00	\$ -	\$ 335,100.00		
48				\$ -	\$ -	\$ -		
49								
50								
51	<b>Business</b>							
52	Cross Creek Cellars, LLC - winery			\$ -	\$ -	\$ -		
53								
54	Cross Creek Farms							
55	Biyle Patronage dividends receivable	219288	12/31/09	\$ 988.39	\$ -	\$ 988.39		
56	Columbia REA Patronage dividends	10997	12/15/13	\$ 2,452.18	\$ -	\$ 2,452.18		
57								
58	<b>Personal Property</b>							
59	2009 GMC Envoy	Kelly Blue Book	06/30/13	\$ 10,307.00	\$ -	\$ 10,307.00		
60	2005 Honda Odyssey	Kelly Blue Book	06/30/13	\$ 8,800.00	\$ 4,400.00	\$ 4,400.00		
61	2013 Ford Escape	Kelly Blue Book	06/30/13	\$ 30,642.00	\$ 30,642.00	\$ -		
62	Debt on Ford Escape - Pacific Service CU	Statement	08/31/14	\$ (21,417.73)	\$ (21,417.73)	\$ -		
63								
64	Ford tractor and implements - 40 hp	Gary estimate	06/30/13	\$ 15,000.00	\$ -	\$ 15,000.00		
65	Wells Cargo trailer	Gary estimate	06/30/13	\$ 2,500.00	\$ -	\$ 2,500.00		

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66	Household goods and furnishings	Karen estimate	05/30/13	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00		
67	Leather sofa and chairs	Gary estimate	06/30/13	\$ 1,000.00				\$ 1,000.00
68	NordicTrak Pro	Gary estimate	06/30/13	\$ 300.00				\$ 300.00
69	Personal clothing	Gary estimate	06/30/13	\$ 5,000.00	\$ -	\$ -	\$ -	\$ 5,000.00
70								
71	Subtotals			\$ 1,107,862.98	\$ 388,989.51	\$ 580,544.93	\$ -	\$ 138,328.54
72								
73	Equalization amount			\$ -	\$ 245,086.02	\$ (245,086.02)		
74								
75	Adjusted Totals			\$ 1,107,862.98	\$ 634,075.53	\$ 335,458.92		
76								
77	Percentage			100.00%	65.40%	34.60%		

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MATHY MARTIN  
COUNTY CLERK

2015 MAR -4 A 11: 55

WALLA WALLA COUNTY  
WASHINGTON  
BY \_\_\_\_\_

15 9 00207 1

JUDGMENT # \_\_\_\_\_  
Superior Court of Washington  
County of Walla Walla

In re the Marriage of:

**GARY WEIDINGER,**

Petitioner,

and

**KAREN IRONS-WEIDINGER,**

Respondent.

No. 13-3-00162-9

Decree of Dissolution (DCD)

**I. Judgment Summaries**

**1.1 Real Property Judgment Summary:**

Real Property Judgment Summary is set forth below:

Name of Grantor: Karen Irons-Weidinger

Name of Grantee: Gary Weidinger

Commonly known as: 59 Cross Creek Road, Walla Walla, WA 99362

Assessor's property tax parcel number: 35-06-03-51-0031

Name of Grantor: Karen Irons-Weidinger

Name of Grantee: Gary Weidinger

Commonly known as: Beet Road, Walla Walla, WA 99362

Assessor's property tax parcel number: 35-06-10-51-0017 and 35-06-10-51-0018

83  
Decree (DCD)  
WPF DR 04.0400 Mandatory (12/2012)  
RCW 26.09.030; .040; .070 (3) - Page 1

**MICHAEL S. MITCHELL**  
Attorney at Law  
129 West Main  
Walla Walla, Washington 99362-2817  
TELEPHONE: (509) 529-4110 • FAX: (509) 529-6108

1  
2 **1.2 Money Judgment Summary:**

3 Judgment Summary is set forth below.

4 A. Judgment creditor	Karen Irons-Weidinger
5 B. Judgment debtor	Gary Weidinger
6 C. Principal judgment amount	\$245,777.71
7 D. Interest to date of judgment	<del>\$7500.00</del>
8 E. Attorney fees	<del>\$10,000.00</del>
9 F. Costs	
10 G. Other recovery amount (reimburse portion of Sawatzki's fees)	\$2,926.00
11 H. Principal judgment shall bear interest at 5% per annum	5%
12 I. Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum	12%
13 J. Attorney for judgment creditor	Michael S. Mitchell
14 K. Attorney for judgment debtor	Irving M. Rosenberg
15 L. Other:	

16  
17 **End of Summaries**

18 **II. Basis**

19 Findings of Fact and Conclusions of Law have been entered in this case.

20 **III. Decree**

21 *It is decreed that:*

22 **3.1 Status of the Marriage**

23 The marriage of the parties is dissolved.

24 **3.2 Property to be Awarded the Petitioner**

25 The Petitioner is awarded as his separate property the property set forth in Exhibit 1 which is incorporated by reference as part of this Decree.

26 **3.3 Property to be Awarded to the Respondent**

27 The Respondent is awarded as her separate property the property set forth in Exhibit 1 which is incorporated by reference as part of this Decree.

28 **3.4 Liabilities to be Paid by the Petitioner**

The Petitioner shall pay the community or separate liabilities set forth in Exhibit 1 which is incorporated by reference as part of this Decree.

Unless otherwise provided herein, the Petitioner shall pay all liabilities incurred by the Petitioner since the date of separation.

*Decree (DCD)*  
WPF DR 04.0400 Mandatory (12/2012)  
RCW 26.09.030; .040; .070 (3) - Page 2

MICHAEL S. MITCHELL  
Attorney at Law  
128 West Main  
Walla Walla, Washington 99362-2817  
TELEPHONE: (509) 529-4110 • FAX: (509) 529-6106

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**3.5 Liabilities to be Paid by the Respondent**

The Respondent shall pay the community or separate liabilities set forth in Exhibit 1 which is incorporated by reference as part of this Decree.

Unless otherwise provided herein, the Respondent shall pay all liabilities incurred by the Respondent since the date of separation.

**3.6 Hold Harmless Provision**

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

**3.7 Maintenance**

Petitioner shall pay Respondent maintenance of \$5,000 for the month of January 2015, which amount has been received.

**3.8 Restraining Order**

No temporary personal restraining orders have been entered under this cause number.

**3.9 Protection Order**

Does not apply.

**3.10 Jurisdiction Over the Children**

Does not apply because there are no dependent children.

**3.11 Parenting Plan**

Does not apply.

**3.12 Child Support**

Does not apply.

**3.13 Attorney Fees, Other Professional Fees and Costs**

Attorney fees, other professional fees and costs shall be paid as follows:

Petitioner shall pay Respondent's attorney fees in the amount of <sup>\$ 7500.00</sup> ~~\$10,000.38~~ and Respondent shall be awarded judgment against Petitioner in that amount.

(2)

1  
2 Each party shall pay one-half of Tom Sawatzki's outstanding professional fees. Sawatzki's  
3 total fees are \$12,046. Fees of \$3,097 remain outstanding. Respondent has paid a total of  
4 \$8,949. Respondent shall be given judgment against Petitioner in the amount of \$2,926 (that  
5 amount above her one-half which she has already paid). Petitioner shall pay the remaining  
6 \$3,097 owed to Tom Sawatzki.

7  
8 **3.14 Name Changes**

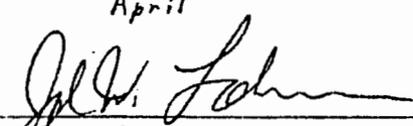
9 The Respondent's name shall be changed to Karen Irons.

10  
11 **3.15 Other**

12 The personal property of the parties shall be divided in accord with Exhibit 137  
13 (attached). To the extent there are undistributed items after property is divided pursuant to  
14 Exhibit 137, the undistributed items shall be divided between the parties utilizing an  
15 alternate method of selection. The parties will flip a coin and whoever wins the coin flip  
16 will have first choice. The other party will then have the next two choices. The first party  
17 will then have the next two choices, and the parties will proceed in that fashion (two  
18 choices at a time) until there is no undistributed property remaining.

19 In order to equalize the distribution of assets between the parties, and as an additional  
20 award in lieu of maintenance, the Petitioner shall pay to the Respondent the sum of  
21 \$245,777.71. Judgment shall be entered against Petitioner in favor of Respondent in that  
22 amount with interest on this judgment accruing at a rate of 5% per annum commencing  
23 January 1, 2015. Petitioner shall be required to make interest-only payments until the  
24 house and land are sold or until the house and land are refinanced. If the house and land  
25 are not sold or the said property refinanced by December 31, 2017, the Petitioner shall be  
26 required to immediately sell the home at a price to be established by the court in order  
27 that Respondent shall receive her equalization payment plus interest. The court reserves  
28 jurisdiction to order sale and set a sale price for the sale of said property should this  
become necessary. Interest payments required to be made hereunder shall be paid by  
Petitioner to Respondent no less than quarterly commencing ~~March~~ <sup>April</sup> 1, 2015.

22 Dated: MAR - 4 2015

  
23 Judge/Commissioner

24 Presented by:

A signature below is actual notice of this order

Approved for entry:

Notice for presentation waived:

25  
26  
27   
MICHAEL S. MITCHELL, WSBA #8678  
Attorney for Respondent

IRVING M. ROSENBERG, WSBA #21754  
Attorney for Petitioner

MICHAEL S. MITCHELL

Attorney at Law

129 West Main

Walla Walla, Washington 99362-2817

TELEPHONE: (509) 529-4110 • FAX: (509) 529-6108

Decree (DCD)  
WPF DR 04.0400 Mandatory (12/2012)  
RCW 26.09.030; .040; .070 (3) - Page 4

# EXHIBIT 1

	A	B	C	D	E	F	G	H
1	Weidinger Dissolution							
2	Listing of Assets and Liabilities							
3	Date of Separation of March 31, 2013				Alternative 2			
4								
5					Community		Separate	
6		Account #	Date	Value	Karen	Gary	Karen	Gary
7	<b>Bank and Investment accounts</b>							
8	Banner Bank checking	2205247025	06/14/13	\$ 5,806.01		\$ 5,806.01		
9	Banner Bank savings	2226239324	06/17/13					
10	Banner Bank	126691410	06/30/13	\$ 6,430.86	\$ 3,215.43	\$ 3,215.43		
11	American West Bank	8000605088	06/30/13	\$ 1,074.82	\$ 537.41	\$ 537.41		
12	Pacific Service	167861	06/30/13	\$ 873.46	\$ 873.46			
13	US Bank	153565107718	06/17/13	\$ 475.00		\$ 475.00		
14	US Bank	253557280224	06/17/13	\$ 25.00		\$ 25.00		
15	GESA Credit Union	539462						
16	Merrill Lynch	6GV-10114	09/30/14	\$ 256.19	\$ 256.19			
17	Portland Gen Shares at \$34.78 on 10/21/14	Sold	08/27/14	\$ -	\$ -	\$ -		
18								
19	Pacific Service Credit Union credit card	861-82	08/31/14	\$ (14,088.46)		\$ (14,088.46)		
20	American Express Costco - Gary	8-31008	09/26/14	\$ (8,224.09)		\$ (8,224.09)		
21	American Express Costco - Karen	7-71001	06/25/13	\$ (789.91)	\$ (789.91)			
22	Amount owed to Karen's sister		09/30/14	\$ -	\$ -	\$ -		
23								
24	Pacific Life Variable Annuity IRA - Karen	VR05032916	10/27/14	\$ 157,713.54	\$ 157,713.54			
25	SunTrust SEP IRA	073-245593	09/30/14	\$ 132,028.54	\$ -	\$ -		\$ 132,028.54
26	Premiere Select - National Finc Svcs IRA - Gary	073-245593	12/31/12	N/A			Same as above account	
27	Portland General Electric Stock Options	Next two years		\$ 13,250.12		\$ 13,250.12		
28	Trust account balance	Ledger Stmt	10/29/14	\$ 6,353.22	\$ 6,353.22			
29	Portland General Electric 401(k)		10/25/14	\$ 197,205.90	\$ 197,205.90			
30	Less loan against 401(k)	Paid in full	2014	\$ -	\$ -	\$ -		
31	PGE Defined Benefit Retirement Plan		03/31/13	QDRO	xx	xx		
32	PGE Management Deferred Compensation Plan		12/31/13	\$ 5,084.71	\$ -	\$ 5,084.71		
33	Paid Time Off			xxx				
34	Health Care Spending Account							
35								
36	Life Insurance - Spouse (PGE)	Term		\$ -	\$ -	\$ -		
37	Life Insurance - Child (PGE)	Term		\$ -	\$ -	\$ -		
38	Life Insurance - Gary (PGE)	Term		\$ -	\$ -	\$ -		
39								
40								
41	<b>Real Estate</b>							
42	59 Cross Creek Road - Includes 23.76 acres	Agent estimate		\$ 977,500.00	\$ -	\$ 977,500.00		
43	Debt on home - US Bank		09/30/14	\$ (541,257.15)	\$ -	\$ (541,257.15)		
44	Debt on home - Chase Home Equity	0042600028751	09/30/14	\$ (242,526.62)	\$ -	\$ (242,526.62)		
45								
46								
47	Land and water rights- (43.48 plus 43.02 acres)	Listing net	\$4k/acre	\$ 335,100.00	\$ -	\$ 335,100.00		
48				\$ -	\$ -	\$ -		
49								
50								
51	<b>Business</b>							
52	Cross Creek Cellars, LLC - winery			\$ -	\$ -	\$ -		
53								
54	Cross Creek Farms							
55	Byle Patronage dividends receivable	219288	12/31/09	\$ 988.39	\$ -	\$ 988.39		
56	Columbia REA Patronage dividends	10997	12/15/13	\$ 2,452.18	\$ -	\$ 2,452.18		
57								
58	<b>Personal Property</b>							
59	2009 GMC Envoy	Kelly Blue Book	06/30/13	\$ 10,307.00	\$ -	\$ 10,307.00		
60	2005 Honda Odyssey	Kelly Blue Book	06/30/13	\$ 8,800.00	\$ 4,400.00	\$ 4,400.00		
61	2013 Ford Escape	Kelly Blue Book	06/30/13	\$ 30,642.00	\$ 30,642.00	\$ -		
62	Debt on Ford Escape - Pacific Service CU	Statement	08/31/14	\$ (21,417.73)	\$ (21,417.73)	\$ -		
63								
64	Ford tractor and implements - 40 hp	Gary estimate	06/30/13	\$ 15,000.00	\$ -	\$ 15,000.00		
65	Wells Cargo trailer	Gary estimate	06/30/13	\$ 2,500.00	\$ -	\$ 2,500.00		

	A	B	C	D	E	F	G	H
66	Household goods and furnishings	Karen estimate	06/30/13	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00		
67	Leather sofa and chairs	Gary estimate	06/30/13	\$ 1,000.00				\$ 1,000.00
68	NordicTrak Pro	Gary estimate	06/30/13	\$ 300.00				\$ 300.00
69	Personal clothing	Gary estimate	06/30/13	\$ 5,000.00	\$ -	\$ -	\$ -	\$ 5,000.00
70								
71	Subtotals			\$ 1,107,862.98	\$ 388,989.51	\$ 580,544.93	\$ -	\$ 138,328.54
72								
73	Equalization amount			\$ -	\$ 245,086.02	\$ (245,086.02)		
74								
75	Adjusted Totals			\$ 1,107,862.98	\$ 634,075.53	\$ 335,458.92		
76								
77	Percentage			100.00%	65.40%	34.60%		

+138,328.54

A 634,075.53    470,707.46    (22)

57%    43%