

**FILED**

MAY 14 2018

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

**COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON**

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**IN RE:**

**PHILLIP JONES**  
**Respondent**

**V.**

**SHARON JONES**  
**Appellant**

**NO. 353095-III**

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**RESPONDENT'S APPELLATE BRIEF**

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## **ISSUES PRESENTED**

- I. What is the standard of review for an order denying a maintenance modification petition and did substantial evidence support the trial court's decision?
- II. Did the Appellant Sharon Jones show the requisite substantial change of circumstance required to have her modification action considered and granted?
- III. Even assuming arguendo that a substantial change of circumstances existed, did substantial evidence exist to support the trial court's decision to deny the requested maintenance modification?

## **STATEMENT OF THE CASE**

Dr. Phillip Jones has historically worked as a cardiologist while his former wife Sharon Jones has historically not been employed. This arrangement long-precedes the dissolution in this matter. CP 50-57. An agreed decree of dissolution was entered on July 21, 2010. CP 8-12.

This decree of dissolution was entered on July 21, 2010 and provided the former wife with 5 years of maintenance at \$4,600.00 per month while child support of \$1,400.00 was paid, and \$5,750.00 per month thereafter (once child support terminated). The totality of maintenance

RESPONDENT'S APPELLATE BRIEF - 4

was in excess of \$345,000.00. CP 50-57

In addition to an award of maintenance, there was a substantial disproportionate share of property awarded in the wife's favor. CP 50-57, CP 1-7, CP 8-12. Significantly, Dr. Jones was awarded the real property located at 9318 South Spotted Road in Cheney and at Eagle Ridge, Alaska. CP 8-12. There was no value ascribed to either the Spotted Road home or the Eagle Ridge, Alaska properties. CP 1-7. The reason that no value was ascribed is that both properties were seriously upside down. CP 50-57.

As to the Spotted Road home, after the parties separated, Sharon Jones remained in the home. The home then burned down. CP 50-57, CP 8-12, decree at page 3, section 3.4. The effect of this fire was devastating financially as the insurance was insufficient to rebuild the home in a financially viable manner. In sum, a re-built home would be worth less than the mortgages on it. CP 50-57. Dr. Jones was thus awarded a burned-out lot with substantial mortgages still attached, leaving him with a deficiency of hundreds of thousands of dollars. CP 50-57. The findings of fact, page 3, section 3.10 reflects that there were still mortgages on the destroyed home. CP 1-7.

Dr. Jones tried to negotiate a resolution with the bank but was completely unsuccessful. Ultimately, he had no option but to allow a

foreclosure on the burned-out lot with the end result being that he made mortgage payments and received literally zero in value. CP 50-57. Further, on the subject of this fire, there was an insurance contents payment of approximately \$525,000.00. Dr. Jones received just \$75,000.00 and Sharon Jones received the rest. CP 50-57. See also the decree of dissolution which specifies this at sections 3.2 and 3.3. CP 8-12.

As to the Eagle Ridge, Alaska lot, Dr. Jones was able to sell it but still took a \$150,000.00 capital loss. He also had to make the mortgage payment until sold. CP 50-57. The only thing he received out of this was the ability to write the capital loss off against taxes over time. CP 50-57.

The total value awarded to Phillip Jones in the decree was \$1,018,900.00 while the total amount awarded to Sharon Jones was \$1,533,000.00. CP 50-57, CP 1-7, CP 8-12. This is a very substantial difference, approximately \$860,000.00, when the disparate property division was combined with the maintenance award.

Additionally, both of the parties' children went to college and Phillip Jones exclusively paid their tuition and college-related expenses (books, housing, meals, fees). Dr. Jones' estimate based on his records was that \$214,000.00 tuition was paid by him for their college education, with substantial additional assistance for other housing, food, and personal

expenses over the 6years of their college education. CP 50-57. At the time of the maintenance modification hearing in this matter, Dr. Jones was still paying for tuition, housing, food, and expenses for their boys as they were not done with their college education. CP 50-57. Alex was due to graduate in June 2017 and Brandon was due to graduate in June of 2018.CP 50-57.

Because of the tremendous costs associated with the burned-out home, the mortgages, the court-ordered maintenance, and the college tuition, Dr. Jones could not meet his monthly expenses. CP 50-57. In order to make ends meet, Dr. Jones was forced to liquidate assets he was awarded and in addition, he was required to seek more profitable work out of the Spokane area. CP 50-57.

Dr. Jones was awarded approximately \$450,000.00 of gold, gold coins, and a non-gold coin collection in the decree. CP 8-12, page 2, section 3.2 At the time of the support modification hearing in this action, he had about \$40,000.00 worth of gold left while Ms. Jones has never used her \$450,000.00 share of this gold. CP 50-57 Dr. Jones also sold the Porsche, the tractor, and one trailer. CP 50-57. The Volvo that he was awarded went to their son Alex. CP 50-57.

Additionally, post-decree Dr. Jones discovered that Ms. Jones had

incurred significant debt on the Wells Fargo credit card that was not disclosed in discovery nor in the decree. Wells Fargo sought collection from him and the only source for payment on this debt was his Fidelity account. CP 50-57. He negotiated down the debt with Wells Fargo to \$11,478.08 (thereby saving \$6,471.89. from the original debt of \$17,658.58) and then took \$20,000.00 from the Fidelity account to pay this debt. CP 50-57. Dr. Jones had to take \$20,000.00 as there was a tax withholding of \$8,000.00 from the withdrawal of retirement funds. Also, because this \$6,471.89 reduction was “forgiven” by Wells Fargo, that also resulted in a tax obligation to Dr. Jones. CP 50-57.

The second thing Dr. Jones did was to relocate his practice. Spokane is controlled by a few HMOs and salaries are very limited for physicians compared to other areas that have more competition. CP 50-57. Being in private practice in Spokane was not feasible as there are very few private practices left in Spokane and for cardiology, there were none. CP 50-57. Dr. Jones left Spokane and accepted a cardiology position in Florida. CP 50-57.

At the time of the hearing, Dr. Jones made full disclosure of his financial assets and liabilities. CP 167-167, CP 58-63, CP 50-57. Dr. Jones disclosed his bank accounts, real properties, vehicles, and retirement

interests. At the time of the hearing in this matter, the total value of Dr. Jones' estate was \$905,627.00. CP 50-57. This value is less than he was awarded in the decree despite working exceedingly hard as a cardiologist for over 6 years after the divorce. CP 50-57. Dr. Jones worked many 80 hour+ weeks throughout 2016 due to a physician shortage in the area, and was able to receive a production bonus based on RVU units produced beyond the threshold. CP 50-57.

Despite Dr. Jones' earnings as a cardiologist, at the time of hearing he owned only a 2005 Mercedes C-Class worth \$7,500.00, a 2006 Chevrolet Silverado 1500 pickup truck worth \$15,000.00 and a 1998 Harris boat worth \$3,000.00. He testified that despite my income, he continued to drive 10+ year old cars as he was trying to earnestly save for retirement/re-build, given that he was nearing 65 years old. CP 50-57.

At section IV of her June 2015 financial declaration, Ms. Jones' assets were \$1,112,790.00. CP 20-24. This was before the rapid growth of the stock market, which formed the basis for the majority of her estate value and which would have increased by hundreds of thousands of dollars given the all-time highs of the current stock market. CP 50-57. Ms. Jones failed to provide the court or Dr. Jones (in discovery), updated values. In addition to this estate, Dr. Jones learned from discovery that Ms. Jones still had all of her gold, which would be valued at approximately \$500,000.00.00. CP 50-57. Despite 6 years of Dr. Jones' work as a cardiologist, his net worth had decreased and Ms. Jones' net estate was still

worth substantially more than his. CP 50-57.

As a basis for a change of circumstances, Ms. Jones submitted in her petition for modification of maintenance that she is medically unable to work. CP 13-16. However, this was not a change in circumstances as this was her situation in 2010 when the parties divorced and Ms. Jones had not been employed since 1989. CP 50-57.

In her petition to modify maintenance, Ms. Jones stated basis is that she has “been found to be disabled by Social Security and only receive a small amount a month.” CP 13-16. At the time of the divorce, Sharon Jones was 56 years old, and she was 63 at the time of the maintenance modification hearing. CP 50-57. On July 27, 2010, 6 days after the decree was entered, Ms. Jones applied for social Security Disability. CP 50-57. The information provided to Social Security Administration showed that the alleged onset date of her disability was June 1, 1996, and accordingly, she has been found to be disabled from June 1, 1996, long before their divorce. CP 50-57. Ms. Jones was collecting \$924.00 per month in disability, a fact not disclosed to Dr. Jones until after the maintenance order expired. CP 50-57. Ms. Jones’ maintenance was based on her having no income. CP 50-57.

At the time of the maintenance hearing, Ms. Jones failed to provide any information as to ongoing medical problems. Her last medical record was from 2015. She has provided no current bank account statements and completely failed to provide any bank account statements for one account.

She did not provide any current debt statements. CP 50-57. Ms. Jones' answers to interrogatories were provided to the judicial officer, Commissioner Anderson, for review prior to hearing. CP 50-57.

For the hearing, Dr. Jones raised his concerns over Ms. Jones' statement of need as contained in her financial declaration. CP 50-57, CP 20-24. In her financial declaration, Ms. Jones claimed to spend \$1,500 on one person for food, supplies and supplements for one month and made gas cost claims that extrapolate to 185.87 gallons of gas a month, even though she had no job to travel to. CP 50-57, CP 20-24. Ms. Jones provided no information as to why her claimed medical insurance was so high, with correlating high uninsured medical expenses, since she is on medicare. CP 50-57, CP 20-24. Dr. Jones raised issue with a request for maintenance to pay for claimed (but unverified) charitable donations, \$150 for "education expense" that did not appear to exist, and a request to pay Ms. Jones' IRS debt because she did not claim some of the maintenance that he paid on her taxes. CP 50-57, CP 20-24.

At the time of hearing, Ms. Jones' mother had passed away. Ms. Jones would receive some inheritance, but the amount had not been disclosed. CP 50-57.

On April 17, 2017, the Honorable Rachelle E. Anderson made her

ruling denying Ms. Jones' request for a maintenance modification and the order was entered. CP 219-220. This appeal was then filed on May 16, 2017. CP 222-224.

## ARGUMENT

I. THE STANDARD OF REVIEW FOR AN ORDER ON A MAINTENANCE MODIFICATION PETITION IS ONE OF SUBSTANTIAL EVIDENCE.

An appellate court reviews a modification order to determine whether substantial evidence supports the trial court's findings and whether the court made a legal error that may be corrected on appeal. Marriage of Hulscher, 143 Wn.App. 708, 713 (2008). Substantial evidence supports a factual determination if the record contains sufficient evidence to persuade a fair-minded, rational person of the truth of that determination. Id. at 714; Bering v. SHARE, 106 Wn.2d 212, 220 (1986).

II. SHARON JONES FAILED TO SHOW THE REQUISITE SUBSTANTIAL CHANGE OF CIRCUMSTANCE REQUIRED TO HAVE HER MODIFICATION ACTION CONSIDERED AND GRANTED.

“It is well settled in this jurisdiction, as in others, that a decree granting alimony or support can be modified only upon a showing of a substantial and material change in the condition and circumstances of the parties, occurring since the entry of the decree, relative to the factors of (1) the necessities of the divorced wife and children, and (2) the practical and realistic ability of the ex-husband to meet the obligations so imposed.” Lambert v. Lambert, 66 Wn.2d 503, 508 (1965). “The burden of demonstrating the required change of circumstances, rests upon the parties petitioning for the modification.” Id. “And, determination of the question whether, under the evidence presented, there has been a substantial and material change in circumstances which will authorize and justify a modification in the alimony and support payments is addressed to, and rests within, the sound judgment and discretion of the trial judge, whose decision thereupon will not be reversed on appeal absent error or abuse of discretion.” Id. See also Marriage of Spreen, 107 Wn.App. 341, 346 (2001), holding that a court will not reverse a finding about a change in

circumstances absent an abuse of discretion (citing Lambert).

In her “reply” declaration, Sharon Jones claims that maintenance should be extended because she suffers from a bipolar condition which renders her unable to work. CP 179-201 However, in addition to the above-cited case law, RCW 26.09.170(1) only allows the court to modify a maintenance award when the moving party shows a substantial change in circumstances that the parties did not contemplate at the time of the dissolution decree. In re Marriage of Spreen, 107 Wn. App. 341, 346 (2001). Accord (citing Spreen), Marriage of Drlik, 121 Wn. App. 269, 275 (Division III, 2004).

Here, Ms. Jones has not worked since 1989, long prior to the divorce being entered. The Social Security Administration found her to be disabled due to her mental health condition as of June 1, 1996, four years prior to the divorce. Her claimed health issues are not a change in circumstance whatsoever.

In her “reply” declaration, Ms. Jones claims as her substantial change that it was expected that she would return to nursing after the divorce and that her inability to do so constitutes the requisite substantial change in circumstances. Her argument completely fails. First, neither the decree nor the findings make any mention of “return to work” issues.

CP 1-7, CP 8-12.

Second, Ms. Jones made no claim of such in section 1.4 of her petition, “Reasons For Modification”. CP 13-16. Instead, she claimed that she is disabled, that she supported Dr. Jones for 30 years, and that she cannot maintain her standard of living without the assistance of Dr. Jones. CP 13-16. All of these stated basis for modification fail to meet the substantial change of circumstance requirement.

Sharon Jones’ belated claim contained in her “reply” declaration that it was expected that she would return to work are shown to be disingenuous by her own actions/established facts of this case. Six days after the divorce decree was entered, Sharon Jones secretly applied for Social Security Disability, claiming that she was too disabled due to her mental health to work. This is the polar opposite of her new claim that she intended to return to work. Her request for disability was granted and she secretly collected the payments, making no mention of such so that Dr. Jones could not seek modification of his maintenance amount. She also collected an unknown amount of back pay.

Ironically, the only change of circumstance was that Ms. Jones’ financial position had *secretly* improved. Even though her maintenance was based on not having any income, Ms. Jones filed for disability six days

after the divorce was final. Not only did she receive ongoing disability payments, she also received completely undisclosed back pay dating back to years before the divorce was final. The requisite substantial change of circumstances is a worsened position, not an improved one. Marriage of Spreen, 107 Wn.App. 341, 346 (2001)

In addition to these facts, substantial evidence indicated that Ms. Jones' wealth has increased since the dissolution was entered. Her divorce award was \$1,533,000.00. At the time of hearing, pursuant to section IV of her June 2015 financial declaration, Ms. Jones' assets were \$1,112,790.00 *before* the rapid growth of the stock market, which formed the basis for the majority of her estate value and which would have increased by hundreds of thousands of dollars given the all-time highs of the current stock market. Ms. Jones failed to provide the court or Dr. Jones (in discovery), updated values. In addition to this estate, Ms. Jones still had all of her gold, which would be valued at approximately \$500,000.00.00. Even without an increase in the stock market, her wealth increased. In all reality, her increase was quite substantial. CP 50-57, CP 20-24.

Compared to Ms. Jones' increase in value, at the time of the hearing in this matter, the total value of Dr. Jones' estate was \$905,627.00, less than

he was awarded in the decree despite working as a cardiologist for over 6 years after the divorce. CP 50-57. The trial court, on these facts, was certainly within its discretion to find that the requisite change of circumstances had not been shown. Given the above, Commissioner Anderson did not abuse her discretion in her determinations.

III. EVEN ASSUMING ARGUENDO THAT A CHANGE OF CIRCUMSTANCES DID OCCUR, THERE WAS SUBSTANTIAL EVIDENCE SUPPORTING THE TRIAL COURT'S DETERMINATION.

Because she cannot show the required substantial change of circumstances, Ms. Jones does not even progress to a need/ability to pay analysis. However, even if she did, maintenance would still be appropriately denied as substantial evidence supports the trial court's determination that Ms. Jones did not have the requisite need.

It has long been held in this state that maintenance is not a matter of right, and it is not the policy of law to give a spouse a perpetual lien on the other spouse's future income. Morgan v. Morgan, 59 Wn.2d 639, 642 (1962). See also Berg v. Berg, 72 Wn.2d 532, 534 (1967).

In this case, Ms. Jones possessed substantial wealth, with a net estate of at least \$1,612,790.00 (including investment accounts and gold). Her wealth increased from the date of dissolution. She was already awarded a disproportionate share of property in the divorce, receiving over \$500,000.00 more in assets than Dr. Jones in the divorce decree. On top of this, Sharon Jones received over \$345,000.00 in maintenance from Dr. Jones for a total divorce disparity in their divorce settlement of well over \$800,000.00. In addition to this, she secretly received \$924.00 per month in disability, an amount which she never disclosed prior to filing her petition for modification of maintenance (which was based on her having no income). She also received retroactive back pay to the onset date of her disability, June 1, 1996.

During this same period of time, Dr. Jones' net estate has decreased. In addition to paying maintenance and paying the substantial fire-related mortgage debt from the divorce, Dr. Jones also paid the college tuition for both of the parties' children. He was almost 65 years old at the time of the support modification hearing but relocated his practice and was still working 80+ hour weeks to try and rebuild his retirement accounts. Despite these very substantial efforts, his net worth at hearing still remained over \$600,000.00 less than Ms. Jones' net worth. CP 50-57, CP 58-63, CP

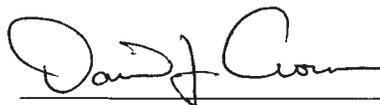
167-167.

Any of these factors would meet the substantial evidence criteria. All of these factors overwhelmingly meet this criteria. Commissioner Anderson's determination certainly falls within what a fair-minded reasonable person would do under these facts and circumstances.

#### CONCLUSION

The trial court made a very appropriate determination in this matter in denying Ms. Jones' request for a spousal maintenance modification. There was no abuse of discretion in her analysis of the requisite change of circumstances. In any event, very substantial evidence supported her decision that a modification was not appropriate under the facts of this case

Respectfully submitted,



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David J. Crouse, WSBA #22978  
Attorney for Phillip Jones

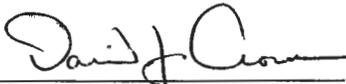
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion to be competent to serve papers.

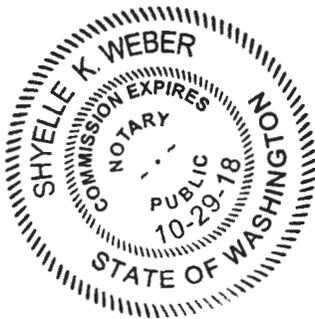
That on the 14<sup>th</sup> day of May, 2018, he served a copy of the Respondent's appellate brief to the persons hereinafter named at the places of address stated below which is the last known address.

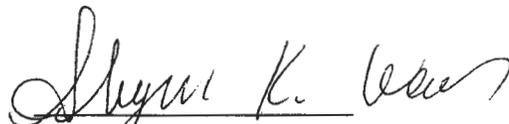
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DAVID J. CROUSE

SUBSCRIBED AND SWORN to before me this 14<sup>th</sup> day of May, 2018.



  
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NOTARY PUBLIC in and for the State of  
Washington, residing in Spokane.  
My Commission Expires: 10-29-18