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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

COA No. 357481

ROGER L. ALDRICH

Appellant

vs.

MARY BETH ALDRICH

Respondent

APPELLANT'S BRIEF

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A. ASSIGNMENTS OF ERROR

1. The Court Commissioner of the Superior Court of Spokane County, (hereinafter "Commissioner"), erred when entering her 12/01/17¹ ruling, (CP 609-610; CP 612-615), denying Mr. Aldrich's request to terminate any future payments of spousal maintenance ordered in the 06/04/10 decree of dissolution, (CP 20-30); and/or suspending any further payments of spousal maintenance and failing to order full repayment for overpaid spousal maintenance and requiring life insurance coverage to secure any obligation for spousal maintenance. (CP 35-36).

2. The Commissioner also erred when, on 12/01/17, she entered Paragraph "III. Findings" which erroneously provides, "Mr. Aldrich earns a net income of \$5,748 a month" and "has an excess of \$1,318 a month." (CP 609; 612).

3. The Commissioner also erred when, on 12/01/17, she entered Paragraph "III. Findings", which erroneously provides "Ms. Aldrich has a net income of \$4,734 a month." (CP 609; 612).

4. The Commissioner likewise erred when, on 12/01/17, she entered Paragraph "III. Findings" which erroneously states Ms. Aldrich has "monthly expenses of \$6,512" and "Ms. Aldrich's need is an additional \$1,700 a month." (CP 609; 612).

¹ The Commissioner's order of 12/01/17 (CP 609-610) incorporates her letter ruling of 10/02/17 (CP 580-581).

5. The Commissioner further erred when, on 12/01/17, she entered Paragraph "III. Findings" where she considered "the same factors considered by Judge O'Connor at the time of trial." (CP 609; 612).

6. The Commissioner in turn erred when, on 12/01/17, she entered Paragraph "III. Findings" which erroneously states, "Based on the consideration of the factors that play into maintenance, namely RCW 26.09.060 (and the same factors considered by Judge O'Connor at the time of trial) Ms. Aldrich has a need and Mr. Aldrich has the ability to pay continuing maintenance in the amount of \$1,300 a month under the same terms previously ordered, for the lifetime of Ms. Aldrich or until she remarries." (CP 609; 612).

7. The Commissioner also erred when, on 10/02/17, in her incorporated letter ruling she stated, "between January 2016 and June 2016 Mr. Aldrich's income totaled \$20,500." (CP 580; 614).

8. The Commissioner likewise erred when, on 10/02/17, in her incorporated letter ruling she states Ms. Aldrich, through counsel "also presented evidence from an expert indicating that with his vast experience and specialized knowledge, Mr. Aldrich should be able to earn the same substantial income he has historically." (CP 581; 615).

9. The Commissioner further erred when, on 10/02/17 in her incorporated letter ruling, she found that "[b]ased on the financial information available to the court, it appears that Mr. Aldrich makes

\$7,682 in gross monthly income” and has a “net income of \$5,748” and, after expenses, “an excess of \$1,318 each month.” (CP 581; 615).

10. The Commissioner further erred when, on 10/02/17, in her incorporated letter ruling she found that Ms. Aldrich has “monthly expenses of \$6,512” and “has a need for an additional \$1,700 each month.” (CP 581; 615).

11. The Commissioner in turn erred when, on 10/02/17, in her incorporated letter ruling she stated, “based on consideration of the factors that play into maintenance, namely RCW 26.09.060, (and the same factors considered by Judge O’Connor at the time of trial), it appears that Ms. Aldrich has the need and Mr. Aldrich has the ability to pay continuing maintenance in the amount of \$1,300 each month, under the same terms as previously ordered, for the lifetime of Ms. Aldrich or until she remarries.” (CP 581; 615).

12. The Commissioner also erred when, on 10/02/17, in her incorporated letter ruling she states, “This maintenance amount shall continue to be covered by an appropriate life insurance policy on Mr. Aldrich with Ms. Aldrich listed as the beneficiary.” (CP 581; 615).

13. The Commissioner also erred when, on 10/02/17, in her incorporated letter ruling she states, as concerns any overpayments by Mr. Aldrich, “...the over-payments shall be credited to Mr. Aldrich and reduce his monthly payments to no less than \$1,000 until such time as the full amount has been credited back to him.” (CP 581; 615).

14. The Commissioner again erred when, in her order of 12/01/17, (609-610; CP 612-613), and on 10/02/17, in the incorporated ruling, (CP 580-581; 614-615), the Commissioner failed to terminate Mr. Aldrich's spousal maintenance obligation and obligation to provide insurance and/or grant Mr. Aldrich a judgment plus interest for all overpaid maintenance as requested in the petition.

15. The Commissioner equally erred when, on 12/01/17, she ordered that "Maintenance shall be reduced to \$1,300 a month.... Any amounts paid over and above that already shall be credited to Mr. Aldrich and reduce his monthly payments to no less than \$1,000 until such time as the full amount has been credited back to him." (CP 610; 613).

16. The Commissioner also erred when, on 12/01/17 she ordered "[a]ll other provisions to the maintenance order in the 2010 Decree shall remain the same." (CP 610; 613).

17. The Commissioner again erred when, on 12/01/17, she ordered that "[t]he maintenance shall continue to be covered by an appropriate life insurance policy on Mr. Aldrich, with Ms. Aldrich listed as a beneficiary." (CP 610; 613).

B. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether the Commissioner manifestly abused her discretion when refusing to terminate spousal maintenance and insurance under the decree of dissolution issued 06/04/10, (CP 20-30) (See, Assignments of Error Nos. 1-17)

2. Whether the Commissioner erred in her decision when she apparently considered "evidence" she previously struck from consideration. (See Assignments of Error Nos. 1, 5, 8, 11).

3. Whether the Commissioner erred when she based her decision in part on RCW 26.09.060. (See Assignments of Error Nos. 1 - 17).

4. Whether the Commissioner erred when she based her decision in part on the same factors considered by Judge O'Connor at the time of trial. (See, Assignments of Error Nos. 1, 5, 6, 11).

5. Whether the Commissioner erred when she considered Mr. Aldrich's portion of a previous property distribution at the time of the dissolution regarding his Air Force Retirement, Social Security, and Civil Service Annuity in the calculation of Mr. Aldrich's available income for purposes of spousal maintenance and insurance. (See Assignments of Error Nos. 1, 2, 7, 9,11).

6. Whether the Commissioner erred when she failed to award Mr. Aldrich a judgment with interest for all overpayments made to Ms. Aldrich including spousal maintenance and insurance payments. (See Assignments of Error Nos. 1, 13, 14, 15).

7. Whether the Commissioner erred when she ordered "all other provisions of the maintenance order in the 2010 decree to remain the same and continue to be covered by an appropriate life insurance policy on Mr. Aldrich with Ms. Aldrich as the beneficiary. (See Assignments of Error Nos 1, 11, 12, 14, 16, 17).

C. STATEMENT OF THE CASE

1. Procedural History. In accordance with the provisions of RCW 26.09.170(1), Mr. Aldrich, on 09/01/15, filed his petition for modification of maintenance, and other specified relief, (CP 31-36), concerning a decree of dissolution entered 06/04/10. (CP 20-30). He specifically asked to terminate any further payments and/or to suspend any further payments as well as other relief. (CP 35).

Thereafter, a hearing was held on 05/09/16. (CP 215; CP 247-272). At the conclusion of the hearing, Mr. Aldrich's petition was denied outright. (CP 247-272). To this same affect, on 06/21/16, Findings of Fact, Conclusions of Law and an Order were entered. (CP 216-246).

Thereafter, on 07/01/16, Mr. Aldrich filed a Notice of Appeal to the Court of Appeals, Division III, (273-304), and on 06/28/17 this Court issued its mandate, (CP 306-315), remanding this matter back to the Commissioner.

Subsequently, on 09/11/17, the matter was re-argued, (CP 580; 614), and on 10/02/17 a letter ruling was issued, (CP 580-581; 614-615), followed by a 12/01/17 Final Order on Remand Re: Petitioner's Petition For Modification of Spousal Maintenance. (CP 609-610; 612-613).

Thereafter, on 12/12/17, Mr. Aldrich filed his second Notice of Appeal to Division Three. (CP 611-615). It has been two years and seven months since the original petition was filed seeking relief.

2. Factual Background. Mr. and Ms. Aldrich were married on 04/11/81. (CP 9). They separated on 3/10/08. (CP 9). The marriage was dissolved on 06/04/10. (CP 20 – 30).

According to the decree, Mr. Aldrich is to pay a base of \$2,500 per month as lifetime spousal maintenance. (CP 22; 29-30). As the decree states, the \$2,500 monthly maintenance was half of his then current gross monthly salary. (CP 29). The decree also indicates so long as Mr. Aldrich remained employed either directly or as an independent contractor in addition to the \$2,500 monthly spousal support for any month in which he earned in excess of his \$5,000 gross salary, he was to pay 35 percent of his gross monthly income in excess of \$5,000. (CP 29). Additionally, the decree also provided if Mr. Aldrich acquired an ownership interest in a business he would pay 35 percent of any increase in gross monthly income flowing from any ownership interest. (CP 29). Mr. Aldrich has not acquired any interest in any business nor does he foresee any such development. (CP 41). These facts are beyond dispute.

As also set forth in the decree, Mr. Aldrich was to secure the maintenance with an insurance policy based on Ms. Aldrich's average life expectancy. (CP 22; CP 29). These facts are also beyond dispute.

As also set forth in the decree, Mr. Aldrich was awarded 33.33 percent of the Civil Service gross retirement annuity and Ms. Aldrich was awarded 66.67 percent of the gross annuity. (CP 4-7; CP 21; 23; 25; 26). These facts are beyond dispute.

Similarly, as set forth in the decree, Mr. Aldrich was awarded 66.67 percent of the gross military retirement and Ms. Aldrich was awarded 33.33 percent of the gross military retirement. (CP 1-3; CP 21; 23; 25; 26). These facts are also beyond dispute.

Similarly, as also set forth in the decree, neither the property distribution of Mr. Aldrich's Civil Service gross annuity, nor the division of Mr. Aldrich's gross military retirement nor either party's Social Security was considered as any part of an award of spousal maintenance. (CP 22; 23; 29; 30). These facts are beyond dispute.

Notwithstanding the above, Mr. Aldrich is no longer able to earn the income he once earned, (*i.e.*, \$5,000 gross per month), and a substantial change in circumstances has occurred since the decree. (CP 33-36; CP 40-44; CP 45-52; CP 53-59; CP 66-72; CP 74-88; CP 89-95; CP 118-129; CP 163-178; CP 188-199). In fact, this is now a verity on appeal. For as the unchallenged portions of the Commissioner's ruling and letter ruling below stated:

. . . Upon arguing this matter again on September 11, 2017, counsel for Mr. Aldrich pointed out that since the decree was entered on June 04, 2010, his job has changed rather significantly. In February 2015, his employer, Center For Personal Protection and Safety (CPPS), notified him of a decrease to his salary from \$140,000 to \$105,000 necessitated due to less demand for their services. In May 2015, CPPS informed Mr. Aldrich that his position with the company had been eliminated and instead offered him a new position at again a reduced salary-\$70,000 annually.

Eventually even this position was eliminated on August 01, 2015. Based on that information, Mr. Aldrich filed his Petition For Modification on September 1, 2015 (CP 614) . . .

. . . While Mr. Aldrich does indeed have a specialized skill set and vast experience with security expertise, his work history was specialized in a way that does not cross over into the private sector as readily as was perceived seven years ago when this matter was in front of a judge. Since that time, there have been changes to this industry, and CPPS specifically, in which Mr. Aldrich's circumstances have changed. . . . Since the Court of Appeals decision, no new evidence was presented by Ms. Aldrich; merely the same argument as before. As such, this court must find that there has been a substantial change in Mr. Aldrich's circumstances since the June 04, 2010 Decree. (CP 615).

Presently, Mr. Aldrich is 70 years old. (CP 38; CP 164). When the decree was entered, he was 62, (CP 20; CP 38), and employed by the Center For Personal Protection and Safety (hereafter referred to as CPPS). (CP 41; CP 48; CP 51; CP 92; CP 95; CP 164). As the Commissioner found in her letter ruling, (CP 581; 615), and in the subsequent order, (CP 609; 612), Mr. Aldrich, as of the time of hearing was earning \$1,666 from wage income from CPPS.

As noted above, Mr. Aldrich was previously awarded as part of the property distribution in the 2010 decree, a portion of his retirement, a portion of his annuity and his Social Security benefits, calculated by the Commissioner at the time of hearing, to be \$2,149.79 from Air Force

Retirement, \$2,198.44 from Federal Civil Service Annuity, and \$1,668 in Social Security. (CP 581; 615). These facts are equally beyond dispute.

For purposes of calculating spousal maintenance, Mr. Aldrich's countable wage income was a mere \$1,666 net per month. In fact, as Mr. Aldrich argued on more than one occasion below, and to this Court in the prior appeal, the Commissioner was precluded from "requiring Mr. Aldrich to pay maintenance out of those assets which he has previously been awarded by the court, even though to date Mr. Aldrich has elected to do so. Such a ruling amounts to the same property being awarded twice and constitutes clear error." (See previous opening brief in 10/11/16 page 25; previous transcript of first hearing at CP 249-250; transcript of remand hearing at CP 589; 598).

And, as previously argued, given Mr. Aldrich's age, gender, background, skills, training, experience, and work history, no employment exists that Mr. Aldrich can seek which will pay him the same \$5,000 gross monthly income he earned with CPPS at the time of the decree. (CP 43; CP 46-52; CP 89-95; CP 166). In fact, as Ms. Johnson's unrebutted vocational evaluation indicates, at best, all things considered, Mr. Aldrich is only capable of employment at \$9.47 to \$15 per hour as a security guard. (CP 46-52; CP 89-95). And, to compound matters further for Mr. Aldrich, since the first hearing on 05/09/16 his health has taken a turn for the worse, (CP 327-329; CP 330-332), further affecting his employability

and ability to remain employed in any degree. These facts are equally beyond dispute.

And, yet, inexplicably, the Commissioner indicated in her letter ruling, Ms. Aldrich “also presented evidence from an expert indicating that with his vast experience and specialized knowledge Mr. Aldrich should be able to earn the same substantial income he has historically”. (CP 581; 615). Yet, at the hearing, the Commissioner actually struck such evidence from consideration due to concerns that “there’s a conflict” and a failure to disclose the expert. (CP 588) As the Commissioner ruled, “I am going to preclude his declaration.” (CP 588). She also noted the declaration was irrelevant. (CP 599). Additional facts are set forth below.

D. STANDARD OF REVIEW

RCW 2.24.050 makes clear a revision of a Commissioner’s decision is unnecessary. The statute provides:

. . . Unless a demand for revision is made within ten days from the entry of the order or judgment of the court Commissioner, the orders and judgments shall be and become the orders and judgments of the superior court and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.(Emphasis added).

See also, *In re Marriage of Robertson*, 113 Wn. App. 711, 713; 54 P. 3d 708 (2002); *State v. Mollich*, 132 Wn.2d 80, 93; 936 P. 2d 408 (1997).

Here, neither party sought revision.

In terms of reviewing an exercise of discretion in the context of a termination or modification of spousal maintenance, the standard is

whether there has been a manifest abuse of discretion. See, *In re Marriage of Drlik*, 121 Wn. App. 269, 274-75; 87 P.3d 1192 (2004); *In re Marriage of Coyle*. 61 Wn. App. 653, 638; 811 P.2d 224, review denied, 117 Wn.2d 1017 (1991). The trial court, or in this case the Commissioner, will be deemed to have abused discretion when the Commissioner acts on untenable grounds or for untenable reasons, or has erroneously interpreted, misapplied, or chosen to ignore the governing law. *Gordon v. Gordon*, 44 Wn.2d 222, 226-27; 266 P.2d 786 (1954). Similarly, a refusal to exercise discretion is equally an abuse of discretion. *Bowcutt v. Delta N. Star Corp.*, 95 Wn. App. 311, 321; 976 P. 2d 643 (1999). In other words, a misapplication, or a failure or refusal to follow the governing law constitutes a manifest abuse of discretion warranting reversal on appeal. *Id*; See also, *In re Marriage of Spreen*, 107 Wn. App. 341, 346; 28 P.3d 769 (2001).

E. LEGAL ARGUMENT

1. **Mr. Aldrich demonstrated, unequivocally for purposes of RCW 26.09.170(1), a “substantial change in circumstances” justifying the relief he requested, and the Commissioner manifestly abused her discretion by denying Mr. Aldrich’s petition to terminate and/or suspend spousal maintenance under the decree. (Issues Nos. 1-11)**

On the record before this Court it is unchallenged that a substantial change in circumstances was demonstrated. (CP 610; 613 and CP 580-581; CP 614-615). Based on the evidence presented, the petition to terminate the spousal maintenance should have been granted

and not simply reduced to \$1,300 each month for life. As the unrefuted evidence demonstrates, Mr. Aldrich only earned \$1,666 in wage income at the time of hearing. Ordering Mr. Aldrich to pay \$1,300 per month (not including insurance to secure the award) on an income of \$1,666 is a clear abuse of discretion as such a ruling is not fair or just. *Spreen*, at 347-348.

To reach this erroneous result, the Commissioner also violated the strictures of *In re Marriage of Mathews*, 70 Wn. App. 116, 125; 853 P. 2d 468, review denied, 122 Wn.2d 1027 (1993), and *In re Marriage of Barnett*, 63 Wn. App. 385, 388; 818 P.2d 1382 (1991), that a court cannot require Mr. Aldrich to pay maintenance out of those assets which he has previously been awarded by the court, even though, to date, Mr. Aldrich has elected to do so. Such a ruling amounts to the same property being awarded twice and constitutes clear error by the Commissioner. *Id.* This was in fact recognized by this Court in footnote one of this Court's earlier opinion on remand. (CP 308; 310; 311).

Compounding matters even further, the Commissioner according to her ruling, looked back in time to June 2010, to "consider the same factors considered by Judge O'Connor at the time of trial", whatever those mysterious factors might be. However the proper analysis is to look at the present circumstances of the parties before the court and to future needs. RCW 26.09.090. See, 20 Kenneth W. Weber, *Washington Practice: Family and Community Property Law* 3519 (2013) ("Events prior to entry

of the decree are generally irrelevant because the question is what has changed since that time.”).

Indeed, when this matter was remanded to the Commissioner by this Court she was specifically directed to consider Mr. Aldrich’s actual income and the fact that Mr. Aldrich was deemed underemployed in 2010 did not control whether he is in similar circumstances today. (CP 314).

Making the Commissioner’s decision even more untenable, the Commissioner failed to even apply any of the maintenance factors set forth at RCW 26.09.090, instead erroneously electing to rely on RCW 26.09.060. (CP 581; 615; CP 609; 612). A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. *Mitchell vs. Washington State Inst. of Public Policy*, 153 Wn. App. 803, 821-822; 225 P. 3d 280 (2009).

Had the Commissioner applied the correct statutory factors, it would have been clear Mr. Aldrich’s maintenance and insurance obligations must terminate. As this Court signaled by remanding this matter, a court should not place a permanent obligation of spousal maintenance on the obligor. Indeed, as this Court made clear in the ruling remanding this matter:

. . . At the time of the parties’ 2010 dissolution, the court awarded Ms. Aldrich lifetime maintenance. This type of award is disfavored in Washington. *In re: Marriage of Coyle*, 61 Wn. App. 653, 657, 811 P. 2d 244 (1991). In

order to provide relief from unintended hardships caused by lifetime maintenance, our laws allow for modification. See *id.* . . . (CP 311)

See, also, *In re Marriage of Coyle*, at 657; *Untersteiner v. Untersteiner*, 32 Wn. App. 859, 863; 650 P.2d 256 (1982); *Cleaver v. Cleaver*, 10 Wn. App. 14, 20; 516 P.2d 508 (1973).

Yet, here, a permanent obligation was maintained by the Commissioner even in the face of un rebutted substantially changed circumstances. And, by relying on RCW 26.09.060, the Commissioner failed to heed RCW 26.09.090's requirement that among the controlling factors governing spousal maintenance, the court must take into account the ability of the obligor spouse to meet his own financial needs and obligations while meeting those of the obligee spouse seeking maintenance. RCW 26.09.090(f). And, in this regard, the facts demonstrate Ms. Aldrich, (as the obligee), is actually in a much more positive and financially stable position than Mr. Aldrich (the obligor).

After all, it is beyond dispute Ms. Aldrich has little to no debt. (CP 104-107; CP 108-113). It is equally beyond dispute Ms. Aldrich resides in a \$236,000 home which she owns free and clear. (CP 105; 107; 110). It is also beyond dispute Ms. Aldrich also spends \$800 in food and supplies each month solely on herself. (CP 110). Furthermore, it is beyond dispute Ms. Aldrich spends \$4,800 a year in clothes, (CP 111), \$2,400 a

year on hair care, (CP 111), \$2,400 a year on recreational activities, (CP 111), and \$14,400 a year on gifts! (CP 111).

Indeed, Ms. Aldrich's bank statements showed a running balance of \$47,000 from August 2015 to December 2015, (CP 131-139), and \$60,000 to \$67,000 from September 2015 to January 2016. (CP 140-160). It is equally beyond dispute, Ms. Aldrich had no need to cash at least three maintenance checks sent to her by Mr. Aldrich prior to the filing of the petition. (CP 191). It is also beyond dispute Ms. Aldrich's 2015 tax return indicates an adjusted gross income of \$201,039. (CP 202-203).

As the Commissioner found in her ruling, a finding unopposed by either party, and thus a verity, *In re: Marriage of Drlik*, 121 Wn. App. 269, 274, 87 P. 3d 1192 (2004), "since the Court of Appeals decision, no new evidence was presented by Ms. Aldrich." (CP 581; 615).

In sum, this Court should reverse the challenged and erroneous decisions and ruling of the Commissioner below. RAP 12.2. There has been a manifest abuse of discretion. See, *Drlik*, at 274. As stated in *State v. Rohrich*, 149 Wn. 2d 647, 654, 71 P. 3d 638 (2003) an abuse of discretion exists when the trial court's decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. A decision is based on untenable grounds or made for untenable reasons when it rests on facts unsupported in the record or reached by applying the wrong legal standard. A decision is manifestly unreasonable when the correct legal standard is applied to the facts but the court adopts a view no

Aldrich pay \$300 less per month in maintenance for the next 112 months. And the setoff does not even award interest on the debt which is also error. RCW 4.56.110; *Glass, supra*.

The Commissioner's logic in this regard is particularly flawed when one considers Mr. Aldrich is 70 years old and \$33,600 divided by \$1,300 per month would equal 25.85 months with no maintenance payment due. And, again, this does not include interest on the monies owed.

Stated another way, the 10/02/17 letter ruling and the 12/01/17 order results in the following overpayment calculations and facts as concern term insurance:

For a 38-month period (08/01/15 – 11/30/17), Mr. Aldridge overpaid \$1,200 per month, which totals \$33,600 in overpayments for that 38-month period. (If spousal maintenance was terminated as requested, then Mr. Aldrich overpaid \$2,500 multiplied by 38 months, or \$95,000).

The Commissioner further mandated insurance coverage for Ms. Aldrich based on a life expectancy of 82. In June 2010, Ms. Aldrich was age 62. Mr. Aldrich's annual maintenance obligation equaled \$30,000 which totals \$600,000 over the course of 20 years. For the period June 2010 – November 2017, Ms. Aldrich received seven and one-half years of payments/coverage totaling \$225,000 (\$30,000 per year). Therefore, out of the anticipated 20-year cost (\$600,000), Mr. Aldrich has paid \$225,000 to Ms. Aldrich and per the 12/01/17 order he remains obligated for \$375,000 in payments/coverage if not fully terminated as of 09/01/15.

The Court's order for \$1,300 per month in maintenance resulted in an annual cost of \$15,600 versus \$30,000. With 12.5 years remaining on the \$1,300 monthly obligation, the total obligation is \$195,000 less the \$33,600 reimbursement for overpayments from 8/01/15 to 11/30/17.

Thus, as of 12/01/17, pursuant to the Commissioner's erroneous order failing to terminate spousal maintenance, the term life insurance coverage required should be \$161,400 with \$15,600 subtracted from that amount every June 1st beginning in 2018. Yet, Mr. Aldrich, on an income of \$1,666 cannot afford to pay any insurance coverage when, after payment of \$1,300 in monthly maintenance he has \$366 a month left to meet his needs without accessing his property award.

F. CONCLUSION

Based upon the foregoing points and authorities, Roger Aldrich, respectfully requests the challenged portions of the decision and rulings which were erroneously entered by the Commissioner on 10/02/17 and 12/01/17 be reversed and the obligation for further spousal maintenance and payments towards insurance be terminated effective 09/01/2015 with a judgment in Mr. Aldrich's favor with 12 percent interest for all overpayments made by him since 09/01/15. Mr. Aldrich cannot endure a second remand before he is granted appropriate error-free relief he is entitled to receive.

reasonable person would take. Here, application of RCW 26.09.060 is the wrong legal standard. Here, the undisputed facts support termination of spousal maintenance. Here, the decision is not fair by any perspective. *Spreen*, at 347-348; *Mathews*, at 123.

2. The Commissioner's failure to also even consider granting Mr. Aldrich a judgment for overpayments with interest and continuing to require term insurance was also an abuse of discretion. (Issue Nos 12-17)

The Commissioner did order that her decision was retroactive to the date of the filing of the petition, i.e. September 01, 2015. (CP 610; 613; 580; 615) The retroactive starting date of the Commissioner's ruling is another portion of the Commissioner ruling with which no one has taken issue.

However, notwithstanding Mr. Aldrich's position, spousal maintenance and insurance to secure the award should have been terminated, rather than a non-interest bearing set off for past over payments against future maintenance payments, Mr. Aldrich should have been awarded a judgment with pre and post judgment interest as he requested in his petition. (CP 35-36). RCW 4.56.110. *Cf. In re: Marriage of Glass*, 67 Wn. App. 378, 389, 835 P. 3d 1054 (1992). For notwithstanding Mr. Aldrich's position spousal maintenance and insurance should have been terminated, logic would indicate that under the Commissioner's ruling the \$33,600 overpayment of maintenance from 08/01/15 through 11/30/17 would extinguish any future need for maintenance rather than have Mr.

RESPECTFULLY SUBMITTED this 12th day of April 2018.



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Roger L. Aldrich

Declaration of Service

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington, that on this date I personally delivered, the original and one copy of the document entitled: Appellant's Brief for filing to the:

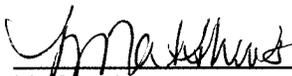
Court of Appeals of the State of Washington, Division III
Clerk of the Court
500 N. Cedar Street
Spokane, WA 99201

AND

that on this date I personally delivered to and mailed by the United States Postal Service a true and correct copy of the document entitled: Appellant's Brief to:

David J. Crouse & Associates
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