

70729-9

70729-9

No. 70729-9-1

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

PERRY JAY JONES, III, *Appellant*,

v.

KAREN M. JONES, *Respondent*.

BRIEF OF APPELLANT

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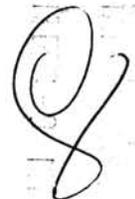


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## **II. ASSIGNMENTS OF ERROR**

### *Assignment of Error*

No. 1: The trial court erred in entering the order of May 1, 2013.

No. 2: The trial court erred in making the order of May 1, 2013 retroactive to April 30, 2013.

No. 3: The trial court erred in entering the contested Findings of Fact, Conclusions of Law and Decree of Dissolution on May 1, 2013 without an evidentiary hearing as requested by Appellant.

No. 4: The trial court erred in denying the Appellant's original Motion to Vacate, etc. on May 1, 2013 after it had been stricken from consideration by Appellant due to procedural issues created by Respondent.

No. 5: The court erred in entering Findings of Fact, Conclusions of Law and Decree of Dissolution on May 1, 2013 that were inconsistent with the arbitration award.

No. 6: The court erred in awarding attorney's fees which were incurred in part during arbitration after the arbitrator had denied fees to the parties incurred in arbitration.

No. 7: The court erred in confirming the arbitration award on May 1, 2013 which on its face did not conform to the parties CR 2A agreement or the JDR rules.

No. 8: The court erred in entering the order of July 9, 2013 by denying the Appellant's two motions for reconsideration.

No. 9: The court erred in entering a judgment for fees which were in part incurred during arbitration.

No. 10: The court erred in denying the Appellant's Amended Motion to Vacate the arbitration award.

*Issues Pertaining to Assignments of Error*

No. 1: Did the court abuse its discretion by denying a motion which had already been stricken?

(Assignments of error 1, 4)

No. 2: Did the court abuse its discretion by entering an order confirming an award which on its face did not resolve the dispute between the parties and which was inconsistent with the parties' CR 2A agreements?

(Assignments of error 1, 3, 5, 7, 8, 10)

No. 3: Did the court abuse its discretion by not having an evidentiary hearing on the contested matters raised by Appellant regarding the Findings of Fact, Conclusions of Law and the Decree of Dissolution?

(Assignments of error 1,3, 5, 7)

No. 4: Did the court abuse its discretion by denying the Appellant's Amended Motion to Vacate, etc.?

(Assignments of error 1, 3, 5, 7,8, 10)

No. 5: Did the court abuse its discretion by denying the Appellant's two motions for reconsideration?

(Assignments of error 8)

No. 6: Did the court abuse its discretion by making the order of May 1, 2013 retroactive to April 30, 2013?

(Assignments of error 2)

No. 7: Did the court abuse its discretion by entering final papers which were not in conformity with the arbitration award?

(Assignments of error 1, 3, 5, 6, 7, 10)

### **III. STATEMENT OF THE CASE**

#### **A. PRE-ARBITRATION BACKGROUND**

This case began as a dissolution of marriage between the respondent (petitioner below), Karen M. Jones, and the appellant (respondent below), Perry J. Jones. For purposes of this brief the parties will be referred to as “Karen” and Perry”.

The parties were married in December, 1974; they have three adult daughters. Perry, who currently is age 66 and in poor health, (CP 663, 832, 865) is a dentist with a practice in Seattle, WA. Karen, who is 60 and in good health (CP 815), was the bookkeeper and manager of Perry’s dental practice until late 2012. (CP 644-645, #5,6; 833 ll. 9-10)

Perry started his dental practice prior to marriage after graduating from the University of Washington Dental School. Prior to marriage, he also had suffered a significant injury in 1973 in an automobile accident in which he lost the fingers on his right hand; he had received a personal injury settlement for that injury in the amount of \$30,000. (CP 559) Perry had used \$20,000 from this award as a down payment for a home the couple purchased for \$92,000. (CP 658-659, 826) He had used the remainder of the award to purchase 20 gold krugerrands (CP 574 ), 100 Austrian coins(CP 571) and 720 ounces of silver coins. (CP 568)

On July 1, 2009, the parties separated for the first time after Dr. Jones had been romantically and consensually involved with a member of his dental staff, Lisa Luera; she became pregnant with his child. After the child (hereinafter called "PJJIV") was born in 2009, Perry discovered Ms. Luera not only had a criminal history involving imprisonment for drug related offenses, but also was prone to violent assaults against not only Perry but others. This included a situation shortly after PJJIV was born where she ran at a police officer with a butcher knife (after her family had called the police due to concerns about the child's care). She then stabbed herself in the chest, requiring hospitalization. (CP 655-657) The child was turned over by the authorities to Perry; he then went through a prolonged legal battle with the mother, eventually gaining custody of his son. He has raised PJJIV as a single parent since then. (CP 514, ll. 1-5)

Perry and Karen separated again in May, 2011 (CP\_\_ ; Karen's Petition, Clerk's subnumber 1) Karen first filed for dissolution in 2010, but that case was dismissed for lack of prosecution. She filed again April 4, 2012. (CP \_\_; Clerk's subnumber 1) Other than entry of an Agreed (mutual) Temporary Restraining Order, little litigation took place.

During the marriage, the parties had accumulated a number of assets, including the family home, which had been sold at separation; the proceeds of sale, (\$219,799.89 in the arbitrator's Award spreadsheet after payment of

agreed-to debt payments), (CP 483, item 3) had been placed in an escrow account under the control of a CPA, David Munko.

Other major assets of the parties included a chateau in France (CP 664; 697-710); an antique Citroen auto located at the chateau (CP 664); a hunting lodge in Montana (CP 664; 685-693); Perry's dental practice and the parties' one-half interest in the dental building (CP 920, ll. 7-10), retirement investment accounts (CP 664), plus a number of valuable collections. These included Native Indian artwork (CP 669, 744); antique furniture (CP 669, 829) located in both the family home and the chateau; gold and silver coins and bars (CP 652-675); oriental rugs (CP 667); Chinese porcelain (CP 670); a large wine collection kept in storage (CP 668; 723-741), and investment gems—most of which had been made by Perry with dental gold in the form of necklaces, rings, etc., some of which were occasionally worn by Karen and some of which had been a gift to Karen from Perry (CP 529- 556 [2005 and 2013 Harrington appraisals intermixed with one another] 666-667; 718; 827-828, 851-858).

In early 2013 the parties agreed to mediation before former Judge Steven Scott, of Judicial Dispute Resolution service (JDR). The primary issues were division of assets and liabilities, maintenance, and the value of Perry's separate award of funds from the loss of his hand. The mediation, which took place over several meetings, was not successful, although the parties did enter into two CR2A agreements. (CP 73, 74, 80)

*Note: the entirety of the record before the arbitrator is set forth in CP 503-1010 and is duplicated at CP 1033-1551 (the record was attached to two different motions). CP 503-1010 are generally cited herein.*

## **B. THE CR2A AGREEMENTS**

**In the first CR2A agreement** (CP 73,74), the parties agreed to the following: **(1)** payment of a number of accumulated debts and a distribution of \$25,000 to each attorney for fees from an escrow account holding the parties' proceeds from the sale of the family home; **(2)** reservation of the character and allocation of these payments at trial or arbitration; **(3)** the option for a joint appraisal of various items of personal property, and **(4)** that the issues of division of assets and liabilities and determination of maintenance would be mediated or, failing that, arbitrated by the mediator pursuant to the "JDR rules of arbitration" (CP 1003), with the arbitrator to determine the manner in which arbitration was to be conducted.

**The second CR2A Agreement** (CP 80) established that **(1)** the final determination would result in an "Overall 50-50 division of assets and Liabilities"; **(2)** that each party was awarded certain assets and **(3)** that certain liabilities would be paid from community funds.

## **C. THE ARBITRATOR'S LETTER**

March 18, 2013, the arbitrator issued an arbitration award and a four-page letter setting forth the reasons for his award . (CP 988-991) The letter's preamble stated

“This letter will explain briefly the reasons for the rulings on the main issues solely for the benefit of the parties. Nothing in this letter, however, should be considered as constituting findings of fact or conclusions of law or in any other way to be part of the Arbitration Award.” (CP 988)

*In violation of this directive, on April 8, 2013 Karen filed the letter (CP 473-488) in superior court and used it as part of her presentation to the court of her proposed Findings and Decree.*

#### **D. THE ARBITRATOR'S AWARD**

In the Award itself, (CP 988-991) the arbitrator **(1)** denied Perry's Motion to Strike (portions of Karen's submission to the arbitrator dealing with the jewelry and business appraisals); **(2)** set forth the division of community assets and liabilities on the Spread Sheet which is Exhibit A to the award, **(3)** without finding need or ability to pay awarded maintenance to Karen in the amount of \$8,000 per month for 60 months, commencing April 1, 2013, to be insured by respondent's life insurance policy. Maintenance was ordered to terminate on Karen's death or remarriage. Respondent was given the right to “move to modify the maintenance obligation if he becomes

unable to work due to total or partial disability” (CP 994) and (4) found no basis on which to award attorney fees and costs to either party. (CP 994)

**E. POST ARBITRATION COURT PROCEEDINGS**

**Trial court proceedings.** The following is a brief chronology of the post arbitration court filings and the one hearing which took place in Superior Court after receipt by the parties of the Arbitration Letter and Award on March 18, 2013.

**April 8, 2013** Karen filed a sealed copy of the Arbitration Letter and Award, a Notice of Presentation of Findings and Decree (set for April 15, 2013) (CP 1-31) and Praecipe to Notice of Presentation. (CP 32-33)

**April 9, 2013** Arbitrator denied motion to recuse/ modify award. (CP 53-54)

**April 12, 2013** The parties agreed to set hearing on Perry`s Motion to Vacate or Modify Arbitration Award for May 3<sup>rd</sup> 2013.(CP 278 )

**April 15, 2013** Perry filed (1) Motion to Vacate Arbitration Award setting hearing with oral argument on May 3, (CP 34-54) (2) his Brief in Support of Motion to Vacate (CP 34-54 ); and (3) all pleadings submitted to the Arbitrator, under seal (CP 509-1010). Karen struck her Presentation of

Decree, etc. set for April 15. (CP )

— **April 23, 2013** Karen filed a Response to Motion to Vacate/Cross Motion to Confirm Arbitration Award (CP 55-123); Declaration of Counsel in Support of Fees (CP 128-135) and Declaration of Karen. (CP 124-127) Karen's Cross Motion also asked the Court to consolidate Perry's Motion to Vacate with Karen's Cross Motion and to rule on both motions on *May 1, 2013*-- two days prior to Perry's scheduled and agreed-to hearing date. (CP 374) She also asked the court to make its Order effective April 30, 2013. (CP 222, #2)

**April 24, 2013** Perry's counsel filed a Declaration with the Court stating that the Arbitration Pleadings filed under seal on April 15, 2013 at Sub# 27 are the same as those submitted to the arbitrator. (CP 136-137)

**April 29, 2013** Perry filed a Response, objecting to Karen's request to consider both Perry's and Karen's motions on May 1, 2013, (CP 138-141) and her further request that the court retroactively (*nunc pro tunc*) date the Order to April 30, 2013, instead of May 1 (date of the hearing) or the prior agreed-to date of May 3, 2013. (CP 138-141)

Perry filed a second Response to Karen's proposed orders

on the Motion to Confirm Arbitration Award. (CP 142-146)

Perry struck his Motion to Vacate, etc., due to the procedural problems created by Karen's noting her Counter Motion to be heard two days prior to Perry's original motion. (CP 271, ll. 7-12)

**April 30, 2013** Karen filed a reply to Perry's objection to her "shortened time" motion (CP 147-159) and a reply to Perry's reply comments on the proposed final orders. (CP 160-166 ) Karen also filed a declaration of counsel to supplement her fee request, including those of her paralegal. (CP 167-172)

**May 1, 2013** The Court entered 3 Orders: Karen's Findings of Fact, (CP 189-194) Decree of Dissolution (CP 173-185) and Order on Cross Motion to Confirm Arbitration Award and Award Legal Fees, (CP 186-188) which included orders

(a) confirming Arbitration Award, (CP 187 #4)

(b) denying Perry's request for oral argument and to vacate the arbitration award, (CP 187 #1, 3)

(c) granting Karen's request for fees incurred after the Arbitration Award was entered, finding they were "considered reasonable" and other relief; (CP 187,#6 )

(d) granting Karen's request to consider Perry's Motion to Vacate noted for May 3rd, 2013, as well as her Motion to Confirm Award and for other relief, all to be dated as if entered on April 30, 2013; (CP 187, #2)

(e) granting Karen's request to strike Perry's submission of all documents submitted to the arbitrator; (CP 187 #5)

(f) granting Karen's request to shift to Perry any additional interest and/or late fees and storage costs as set forth in Karen's declaration of April 22, 2013, and in the Decree of Dissolution. (CP 187 #7)

**May 6, 2013** Karen filed motion on shortened time to correct omission of amount of attorney's fees awarded May 1 from the judgment summary. (CP 210-230)

**May 8, 2013** Perry filed a response to Karen's motion (CP 231-235) and Karen replied. (CP 236-266)

**May 13, 2013** Perry filed a two motions and two memorandums for reconsideration of the May 1 Orders, setting them for oral argument June 7, 2013. (CP 267-304)

**June 7, 2013** Both parties' counsel appeared before the Court. (CP 305 and Transcript of Proceedings). The transcript of that proceeding has been provided.

#### **IV. SUMMARY OF ARGUMENT**

Perry contends that under the facts of this case the arbitrator exceeded his authority pursuant to the CR2A agreements of the parties, the JDR Rules, RCW 7.04A *et sequitor* and RCW 26.09. *et sequitor*. Not only did he attach fault to Perry in creating a “predistribution” of an asset that never existed, but he violated the parties' CR2A agreement specifying that any division of assets and liabilities would result in a “50-50” split.

Further, at the trial court level, the court committed error in approving Karen's proposed Findings and Decree, which were inconsistent with the award of the arbitrator; in striking Perry's filed record of the arbitration submissions; denying his Motion to Vacate and entering the Order on Counter Motion – for a variety of both statutory and procedural reasons set forth below. In addition the decree incorporated exhibits that were not attached or provided in the notice of presentation.

#### **V. ARGUMENT**

##### **A. MEETING THE STANDARDS FOR VACATING AWARDS.**

Perry cites the court to RCW 7.04A.230. The provisions for vacating an arbitrator's award in this case are found in 7.04A.230(b)(i), (b)(ii), (c), and (d) as stated below.

***(b) There was: (i) Evident partiality by an arbitrator appointed as a neutral;***

**(1)** The arbitrator awarded separate property to Karen with no value and thus no cost to her on her side of the ledger; he awarded separate property to Perry – or denied it – under separate standards and then charged the value against him on the award ledger. For example, he totally ignored the substantial number and value of Native American pieces listed by Perry as his since childhood (CP 744), awarding it to him at the combined separate and community value of the collection. On the other hand, he awarded Karen items of furniture, silver and china from her similar list, without crediting her side of the ledger with its \$25,000 value (CP 997; third item from the bottom);

**(2)** He used an inappropriate standard for characterization of monies from Perry's personal injury award as spent on the family home and the gold and silver coins, awarded them to Perry—at full current value on his side of the ledger (CP 997 (Precious metals));

**(3)**The arbitrator created a predistribution of a non-asset on the basis of fault (both actions being contrary to statute and case law as cited herein) and deducted this \$168,000 amount from Perry's share of the funds.

*(c) An arbitrator...otherwise conducted the hearing contrary to RCW 7.04A.150, so as to prejudice substantially the rights of a party to the arbitration hearing.*” RCW 7.04A.150(3) states “The arbitrator shall set a time and a place for a hearing and give notice of the hearing not less than five days before the hearing.” There was no hearing whatsoever.

*(d) An arbitrator exceeded the arbitrator’s powers.* Pursuant to the CR2A of the parties, the arbitrator had the power to divide the assets and liabilities equally. He had no power to create a predistribution of an asset which does not exist and place it on Perry’s side of the ledger (CP 497; line below “subtotal”). Similarly, he had no power to determine separate property and then not charge it against a party, as noted above.

## **B. THE ARBITRATION AGREEMENT AND JDR RULES**

The arbitration agreement signed by the parties is found in the CR2A dated January 11, 2013 (CP; p. 1006), at paragraph 6. It specified that “ the JDR rules of arbitration shall apply, not the rules of evidence in arbitration.”

The JDR Arbitration Rules (CP 1003, preamble) provides that the rules shall be applied “where not in conflict with the requirements of Washington law (see RCW Chapter 7.04A...)” and agreements of the parties “will be enforced as long as not contrary to law.”

In addition, the JDR Rules, at paragraph 6, speaks only of a “hearing” before the arbitrator, as is required by RCW 7.04A.150(3): “The

arbitrator shall set a time and a place for a hearing.” The remainder of section 3 speaks repeatedly of hearings in which the parties attend.

In the Jones matter, no hearing was held. The arbitrator specified that there would be no oral testimony, only declarations of the parties and any witnesses, contrary to the statute and JDR rules. This was clear error.

### **C. THE ARBITRATOR’S LETTER**

**1. “Predistribution of a non-existent “asset”.** Following the initial paragraph of the arbitrator’s letter to the parties of March 18, 2013, noted above at Section 3C, the arbitrator went on to state his approach to determining the value of the real properties, the value of Perry’s dental practice and the building, characterization of assets, value of various assets and collections, including rugs, antique furniture, wine, Native American Indian Art, and jewelry. (CP 998-991)

In addition, the arbitrator stated:

**“I have assigned a \$168,499 predistribution to the respondent for all the expenses incurred by the community as a result of his affair with Lisa Luera. This represents all expenses requested by petitioner except for those incurred after the parties finally separated in November of 2011. Prior to the date of separation the marital community had no obligation to pay any of the incurred expenses and it is fair and just that the respondent bear the cost of his marital misconduct.”** (CP 991)  
*(emphasis added)*

**2. Finding of Fault.** Clearly, the arbitrator applied “fault” to the respondent for “marital misconduct” in awarding Perry a “predistribution” of a \$168,499 non-existent “asset”.

**In making this determination, the arbitrator exceeded his authority on several counts.** There is no way to “un-ring” this bell: it taints the entire award –particularly as demonstrated by the award of virtually all cash assets to Karen, and in the arbitrator’s methods of determination of the character of property and award of property and maintenance. It violates the CR 2A of the parties to divide property and liabilities “50-50”.

**Such a basis for distribution is prohibited by RCW 26.09.080.**

RCW 26.09.080 states as follows:

Disposition of property and liabilities — Factors.

In a proceeding for dissolution of the marriage... the court shall, **without regard to misconduct**, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable ... (Emphasis added.)

A great many Washington cases uphold this statutory requirement in a dissolution under situations far more extreme than this case, including *Urbana v. Urbana*, 147 Wn.App. 1 (2008), wherein the court discussed in

detail “marital misconduct” (the father had been incarcerated for sexually molesting his step daughters) and **overturned the court’s property division for finding marital misconduct.** See also *In re Marriage of Little*, 96 Wash 2d, 183, 192 (1981) (“[T]he most significant [objective of the new act was] the rejection of fault as an element.”), and *Zahm*, 138 Wash. 2d at 218, both cited by the *Urbana* court. See also *Washburn v. Washburn*, 101 Wn.2d 168, (1984) at 181, wherein the court stated “Marriage is not a business arrangement in which the parties keep track of debits and credits, their accounts to be settled upon divorce.”

***Equitable estoppel applies.*** In the Jones case, Karen wrote the checks for the expenses noted by the arbitrator, knowing what they were for, over a period of several years (CP 833) – including 2009, when the parties were separated, and 2011, when they had again separated, and then claimed at the time of arbitration that Perry should be penalized for monies **(1)** he spent years before and **(2)** which were based on pure speculation. There also was no such request in her Petition or other pleadings for repayment. Her own actions and failure to object to these payments call into play equitable estoppel; see *Shows v. Pemberton*, 73 Wn.App. 107 at 110 (1994), which notes “(e)quitable estoppel arises when a person’s

statements or conduct are inconsistent with a claim afterward asserted and another has reasonably relied on the statements or conduct and would be injured by a contradiction or repudiation of them.” Here, Karen’s prior conduct constitutes waiver.

Beyond that, Perry had committed no crime or tort; the courts and the legislature have made that clear over the past 40 years in removing alienation of affection as a cause of action and removing fault from the dissolution statute. Virtually the entire costs of Perry’s litigation and child support were to enable him to defend his rights as a parent and to care for a now four-year-old child. (CP 831, l. 22 – 832, l. 5) A portion of his attorney fees were for defense against Ms. Luera’s false claims against him to the state dental association, which she immediately filed as soon as he went to court to obtain custody of his son. (CP 657)

The situation is little different than in a marriage where one spouse pays child support to a child of a prior marriage/ relationship and/or legal fees for a modification proceeding from another marriage: the current marital community bears that cost.

**3. Fault was not at issue in this case. The parties’ CR2A agreement (CP 80), as noted above, stipulated “The parties agree to**

**an overall 50/50 division of assets and liabilities.”** The agreement involves a clear 50/50 division of existing assets. Nothing pertaining to a fictitious “equitable lien”, consideration of a “predistribution” or offset for expended funds was ever mentioned in connection with the agreement.

The CR2A does not provide for a “just and equitable” division of assets nor does it provide an avenue for the arbitrator to revisit past expenditures for any purpose. On its face, without going into any other facts, paragraph 4 of the award gives Karen separate property at no cost to her. (CP 964) The arbitrator goes on to award property to third parties in the distribution of the porcelain collection at Exhibit B. (CP 970, items 19, 29)

Furthermore, the arbitrator’s “\$168,499” “predistribution” amount appears nowhere in Karen’s submission to the arbitrator: the mystifying, unsworn and unsubstantiated calculation of Karen’s counsel (CP 582-589) totaled *\$178,999,94* and included the purported amount the parties “might” have paid in income tax on the subtotal! (CP 583)

**4. The “predistribution” amount is neither an asset nor a liability: it never existed.** The arbitrator exceeded his authority when he created a “fiction” to justify awarding Mrs. Jones \$168,499 more than Dr.

Jones in what would appear to be a purely punitive distribution. Indeed, the only “predistribution” was the allocation of \$25,000 to each attorney – and that was discussed and agreed to by the parties.

Nor does the case law support such a distribution: See *In Re Marriage of Pea*, 17 Wn. App. 728, at 730, (1977), in which the court stated that crediting Mrs. Pea (as part of the asset award) with \$8,500 in community funds she had taken when she left “**Is clearly erroneous for two reasons: First, the funds were not in existence at the time of trial and there is no evidence to support a conclusion that the monies taken by appellant were used for other than necessary expenses.**” *Pea* stands for the premise that the expenditure of community funds does not have to benefit the community – Mrs. Pea took community funds and was not required to account for them as they were already gone. The same could be said of the purported \$168,499 in legal and other costs in Perry’s case which had already been expended and which Karen knew about.

Also on point in this regard is *In re Marriage of Kaseburg*, 126 Wn.App. 546, (2005: in *Kaseburg* the appellate court stated:

“In evaluating the parties' property in a dissolution proceeding, "the trial court may properly consider a spouse's waste or concealment of assets." *In re Marriage of Wallace*, 111 Wash.App. 697, 708, 45 P.3d 1131 (2002), review denied, 148 Wash.2d 1011, 64 P.3d 650 (2003). But it is well

settled that, "[w]hen exercising this broad discretion, a trial court focuses on the assets then before it--i.e., on the parties' assets at the time of trial. If one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial." *In re Marriage of White*, 105 Wash.App. 545, 549, 20 P.3d 481 (2001) (footnote omitted). *Kaseburg, supra*, 561(emphasis added).

Karen does not claim Perry wasted or concealed an asset, just that he used the funds. The CR 2A eliminated consideration of "equitable" considerations.

**5. The arbitrator exhibited obvious and blatant bias *against Perry and for Karen* throughout his award decision, in complete disregard of the JDR rules, in the following respects:**

(a). In addition to awarding Perry \$168,499 which does not exist, the court awarded Karen the entire \$624,274 in the DDS Profit Sharing retirement fund, **despite the fact her own proposed distribution allocated each party one-half of the fund.** (CP 524, item 16) This constituted an award of virtually all of the cash to Karen, leaving Perry with primarily personal property which he would have to sell on ebay or elsewhere --with the possible exception of the wine collection, the "value" of which the arbitrator awarded to Karen. (*It is only in the Letter that the arbitrator awarded Karen the wine "collection."*)

**(b) The arbitrator dismissed the actual appraisals (CP 695-710 and 820-823) on the French and Montana properties because the parties did not “jointly” appraise them. Considering that the French chateau was appraised at “between €400 and €450” (\$536,000 and \$603,000 U.S. based on an exchange rate of 1.34) (CP 664) and the Montana lodge, was appraised at \$340,000 (CP 689) clearly there was a serious discrepancy in the values of the two properties.** In fact, the arbitrator seems to have completely ignored the last sentence of paragraph three of the CR2 A stating that the parties could “forgo” the appraisals within seven days (CP 74) --which they did, as they never made any attempt to obtain them during that time. Nothing in that CR2A prohibited either party from later obtaining their own appraisals.

The arbitrator then claimed “the evidence of value submitted by the parties is of little help in determining specific values” (thus rejecting the only actual appraisals in evidence, which were offered by Perry and performed by appraisers local to the property) and claimed instead he was “satisfied... that the two properties are of essentially equal value.” (CP 988) Clearly, this was not an equal division as agreed to by the parties.

**(c) After the arbitrator rejected Perry’s property appraisals, he**

**nonetheless accepted Steven Kessler's August 28, 2012 "preliminary evaluation" of the dental practice-- *although Mr. Kessler had never even entered the offices or talked to Perry***—and whose valuation was untimely submitted March 15, 2013 solely by Karen in violation of JDR's own Arbitration Rule 6. (CP 988)

**(d) With regard to the jewelry**, which was valued in February, 2013 by Mr. Nowak item by item-- based on the photos and weights set forth in the 2005 Harrington appraisal and on his own personal knowledge of the gems-- with a value of between \$95,000 and \$125,000, (CP 759-764, 851-859), the arbitrator discarded both Mr. Nowak's valuation and the 2013 Harrington appraisal, submitted by Karen (in which the 2005 and 2013 Harrington appraisals were intermixed with one another) in favor of the 2005 Harrington replacement value appraisal (CP 529-556). This is despite the fact that the arbitrator claimed to have "afforded substantial weight to the criticisms of the Harrington appraisal expressed by Ed Nowak." (CP 990) It should be noted that the arbitrator *ignored* the portion of the 2005 Harrington appraisal which set a value of \$118,000 on the jewelry (CP 529-556), of which those identified by Perry as gifts to his wife totaled only \$17,450. (CP 827, ll. 16-22, referring to gems at CP

536, 540 and 548) However, these were still part of the assets to be awarded, and again, the values the arbitrator found – in contradiction of even the parties’ own estimates—had nothing to do with an equal division of the assets.

**(e) There is no indication of how the arbitrator arrived at a value of \$30,000 for the community share of the jewelry, or what items of jewelry he determined to be Mrs. Jones’ separate property.** It is mathematically impossible to come up with the minimal value of \$30,000 for this jewelry using *any* of the three appraisals. Furthermore, why the character of the jewelry is even relevant is mystifying, given the CR2A agreement and the fact the arbitrator never even identified any of the pieces deemed separate *or* community.

**(f) The arbitrator included in Perry’s award column his separate funds purchases of coins at current value (\$90,000), yet included on Karen’s side of the ledger only the *community* share of the jewelry (at the incredible value of \$30,000), *not* those (unidentified) items the arbitrator found to be Karen’s separate property jewelry.** In doing so he significantly distorted the “50-50” distribution in favor of Karen. This is clearly shown at page 2 of the arbitrator’s worksheet. (CP

498) The palpable unfairness of this is yet another specific example of personal bias on the part of the arbitrator. See the definition of “Fair”: “Having the qualities of impartiality and honesty free from prejudice, favoritism, and self-interest. Just; equitable; even-handed, as between conflicting interests.” *Black’s Law Dictionary*, Fifth Edition, p. 335; West Publishing Co.]

**(g) Similarly, the arbitrator awarded unidentified jewelry as separate property to Mrs. Jones, despite her answers to Interrogatories in which she never specifically identified any items of jewelry as her separate property other than her wedding rings, as was pointed out by Perry in his arbitration pleadings. (CP 718)**

**(h) In awarding the furniture, the arbitrator ignored Mr. Jones’ own request for specific items, allowed Mrs. Jones to “cherry pick” what she wanted – even including a loveseat /couch Mr. Jones owned before marriage (CP 751) and then awarded the remaining furniture to Perry at virtually the full value of the entire collection. The arbitrator’s disregard of the CR2A to divide assets equally is baffling.**

In short, the arbitrator considered Perry’s separate property claims under theories which are contrary to case law, as discussed below, but

awarded separate property to the wife with (a) no identification of the items he determined to be separate and (b) no consideration or statement of its value in the award columns for each party. His disregard of the CR2A 50-50 agreement in dividing assets and liabilities is baffling.

**(i) Misapplication of ER408.** Similarly, the arbitrator excluded as “for settlement purposes only” Karen’s admission of Perry’s separate property contributions in her mediation (CP 796, ll. 2-24)-- despite the fact Karen’s own arbitration brief included use of mediation material of the same sort (CP 636-637) **More importantly, Karen’s mediation statement could in no way be interpreted as an offer:** the statement referred to is simply part of her factual background (CP 796) after noting Perry’s loss of his hand : “*...In settlement of the resulting personal injury claim, Perry received \$25,000. He purchased 1000 oz. of silver and 40 oz. of gold (at a combined total cost of approximately \$10,000) and used the remaining funds to contribute toward the down payment of the parties’ family home on Queen Anne.*” In fact, Karen also later submitted evidence in her own pleadings that the sum Mr. Jones received for his personal injury was actually \$30,000 (CP 558-559)

See ER408, Compromise and Offers to Compromise: the rule

“does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose...”

Karen never denied this \$20,000 toward the down payment on the home was Perry’s separate property.

**6. Arbitrator’s “separate” versus “community” property award was not equally applied to each party.**

a. The arbitrator misstated the law regarding a party’s intent as applied to separate property (CP 1036): it is exactly the opposite of what the arbitrator held in his letter.

In *Estate of Borghi*, 167 Wash.2d 480, at 489, (2009) , cited by both parties, **the Supreme Court definitively held that the burden is on the person claiming a conversion of separate property to community property to prove an “intent” to do so by the owner of the separate property.**

The arbitrator *ignored* the cited burden of proving intent in awarding unspecified items of jewelry as separate property to Karen, and yet he *also improperly placed on Perry* the burden of intent to retain the character of his separate property down payment and purchase of coins. The arbitrator denied any separate property to Perry because, the arbitrator

claimed, Perry did not have “direct evidence” of maintaining separate accounts and he showed “no intent” to keep it separate.(CP 960) There is no such requirement in the case law regarding separate property. See *Skarbek v Skarbek*, 100 Wn App 444, 450 (2000), in which the court noted:

“The parties and the trial court mischaracterize the bank accounts as property acquired during the marriage and put in joint names. The parties are fighting over money, not bank accounts. The transaction here is not the same as buying stocks or bonds or land. They did not “buy” a bank account. He deposited money in an account. The accounts were established during the marriage. But the money in those accounts was acquired before the marriage.”

In *Borghini, supra*, the Washington Supreme Court went far beyond the limitations noted in *Skarbek*:

**More importantly, even when a spouse's name is included on a deed or title at the direction of the separate property owner spouse, this does not evidence an intent to transmute separate property into community property, but merely an intent to put both spouses' names on the deed or title. *Morgan v. Snyder, supra*, at 354-356. There are many reasons it may make good business sense for spouses to create joint title that have nothing to do with any intent to create community property. *Guye*, 63 Wash. at 353, 115 P. 731**

**b. Separate vs. community was not relevant.** Outside of the arbitrator’s failure to place values on, or to identify specific assets such as

jewelry (thus making it impossible to calculate the total value of each party's award to insure compliance with the 50-50 distribution), **the issue of awarding property as separate or community begs the question as to why the arbitrator did this at all: pursuant to the CR2A agreement he was to divide all assets, whether separate or community, equally, not equitably.** Perry does not argue that the source of the asset cannot be considered in awarding it, so long as the division is equal. (See *In Re Marriage of Glorfield*, 27 Wash. App. 358, (1980), as a case which the trial court looked to the "source" of property.) It would have been appropriate as a means of determining who should receive certain properties – *if* the same "rules had been applied to both parties and *if* values for those assets had been correctly and fairly arrived at.

**Instead, the arbitrator apparently chose to apply that equal division only to community property and the concept of separate property only to Karen--in most instances on the flimsiest of claims (i.e. the jewelry, as noted above), and to ignore Perry's well-supported characterization of his separate, pre-marital property.**

This was not only a clear error of law—and violation of the CR2A stipulation--, but under any interpretation of the arbitration rules was not

“fair”.

**7. The arbitrator failed to make statutorily required findings.**

The arbitrator in his award of maintenance failed (1) to find either “need” of Karen or the “ability” of Perry to pay maintenance as required by RCW 26.09.070 or (2) to base his ruling on any of the stated statutory factors.

The document submitted by Karen’s attorney which purports to include Karen’s financial declaration (CP 652-653) is unsigned, undated and incomplete. There was no basis for finding need-- let alone Karen’s intentional addition of that language in the Findings entered by the court.

**8. The arbitrator invented Perry’s income.** On page 4 of his Award letter (CP 493) the arbitrator stated: “It (*the award of maintenance*) is based on that portion of Perry’s income that is the reasonable equivalent of what a dentist would earn for his dental services as a non-owner and is not related to Perry’s ownership interest in the business.” (Emphasis added.) In other words, there was no evidence on which to base the award. He simply created a fiction, ignored the facts and guessed as to what a dentist should make. There was no evidence submitted regarding this concept, **nor would it apply to Perry, who does own his business and**

**must pay all business expenses.** To create this fiction that Perry is not the owner defies logic, as does awarding maintenance for five years based on such a fiction while ignoring the failure of Karen to adequately provide *evidence* of her expenses.

In awarding \$8,000 a month in maintenance, the arbitrator clearly ignored Karen's own claim that Perry's *net* income for 2012 was \$162,000 (CP 637)—which would have meant her \$96,000 per year maintenance was close to 59% of his net income. Beyond that, both Perry's and Mr. Munko's testimony was that, like most dentists in the current economy, his income continues to diminish. (CP 457-459; 830; 844-849, 861-863) In other words, there was no evidence of either need or ability to pay based on real numbers.

**9. The arbitrator ignored consideration of the very real physical, age, and need disparities between the parties required by RCW 26.09.080 and 090.** The arbitrator ignored (1) the sworn statements from both Perry and Dr. Miyano as to Perry's actual physical pain and deterioration of his only hand due to its constant use (CP 865-867) and Perry's belief that he may not be able to practice dentistry in the near future (CP 663; 748, l. 17; 832); (2) the statement from Mr. Munko regarding the

diminishing income from the dental practice and (CP 861-863) and (3) the fact Perry is responsible for the care of his four- year- old son (CP832, I. 4, II. 10-14).

Instead, the arbitrator set maintenance at a level which had no relationship to Perry's actual earnings, his support needs for his son or his age and physical handicaps (CP 830-833); the arbitrator compounded this inequitable determination by awarding Karen virtually all of the liquid assets. This left Perry with income far less than enough to meet his and his son's needs (CP 844-849)[See *Urbana, supra,*] and non-liquid collections of Native American Art, rugs, porcelain and furniture, and few retirement funds—a situation which for him looms in the near future.

Karen, on the other hand, was awarded two thirds of the remaining \$369,606 in home sale proceeds; all of the \$660,538 in the dental retirement fund; her \$34,870 IRA; all of the \$1,002 Schwab brokerage account; the easily saleable \$150,000 “value” of the wine collection (CP 667-669) and the French chateau for which the only appraisal was between \$400,000 and \$450,000 *Euros.* (PC 664, 967-968)

The arbitrator also totally ignored both Perry's age (66) and poor health, including atrial fibrillation and sustained pain in his one remaining

hand in concluding it was “probable that Perry will continue to work for at least (five years)”. (CP 991) There is nothing to support this supposition whatsoever. In fact, the arbitrator’s remedy, that “Perry may move to modify the maintenance obligation if he becomes unable to work due to total or partial disability” imposes a limitation on the statutory basis for modification set forth at RCW 26.09.170. The arbitrator had no authority to set such a limitation. See *In Re Marriage of Short*, 125 Wn.2d 865 (1995) at 876, in which the court ruled the lower court could not change a party’s rights under RCW 26.09.170(1) to modify a maintenance award.

Clearly, there should instead be conditions on the maintenance based on his annual income, as well as his ability to continue to practice, as was, in fact, requested by Perry. (CP 985, #8, ll. 10-22). *This would be particularly appropriate given the agreed-to 50-50 distribution of assets the parties were to receive, in which Perry would have no economic advantage over Karen if he ceased work.*

Furthermore, the arbitrator placed no such burden or assumption of personal labor on Karen, despite the fact she is six years younger than Perry and her work experience included for many years managing his dental practice. Additionally, in setting maintenance, no consideration was given

to Perry's greater costs due to caring for PJJIV and the financial impact payment of maintenance will have on Perry and the child. See Urbana, *supra*.

**10. The arbitrator failed to distribute an asset and distributed another twice.**

The arbitrator failed to distribute an asset: the antique/classical 1962 Citroen automobile located in France, which is not mentioned either in his letter or on his award spreadsheet.

Regarding the furniture: The arbitrator, at paragraph three of the award, (CP 966) awarded specific items of furniture Karen had requested to her, he awarded the remainder to Perry. In paragraph four, with no explanation, he awarded some of the items he had just awarded to Perry to Karen "as her separate property". No such accommodation was accorded to furniture Perry had either requested or stated was his separate property. In fact, a love seat he had stated was his before the marriage, he awarded to Karen.

**11. The arbitrator's disclaimer in his Arbitration Letter stating**  
***"Nothing in this letter, however, should be considered as constituting findings of fact or conclusions of law or in any other way be part of the***

***Arbitration Award***” (CP 959) is nothing more than an attempt to shield the arbitrator’s clear bias and was outside his authority and the scope of **Arbitration Rules of Judicial Dispute Resolution**. (CP 1003) The rules did not provide for two decisions, just one; yet in this case, neither the Letter nor the Award is complete without the other.

The “award letter” itself goes beyond the scope of the JDR rules, which say only: (1) the decision will not be in conflict with Washington State Law; (2) “The goal of these rules is to provide parties to civil disputes with fair, private expeditious and final decisions” and (3) The Arbitration Award: The arbitrator will make every effort to issue a written award within five working days at the conclusion of the hearing.” (CP 1003) ***There is no authority for this “disclaimer” or authority to support a demand to the parties that they not disclose to a court the reasoning behind the arbitrator’s decision.***

**12. The arbitrator made an unauthorized award of property to third parties in requiring that unnamed porcelain vases be given to the Jones’ three daughters, who are not parties to this matter.** (CP 970, item 29) The arbitrator added “A few pieces of Chinese Porcelain (Each girl would like a few)” to the list of furniture excluded from being awarded to

Perry. Under long established case law, third parties cannot be awarded property. See *In Re Marriage of Soriano*, 44 Wn. App. 420 (1986). Beyond that, nowhere does the award state what specific porcelain was actually awarded to the daughters.

The arbitrator was well aware of the above deficiencies in his award, as Perry's Motion to Vacate or Modify (CP 974-1007) set them forth. This motion was denied by the arbitrator. The case then went to the trial court.

#### **D POST ARBITRATION PROCEEDINGS**

**1. Karen filed a Notice of Presentation in Superior Court.** The matter was assigned to Judge Monica Benton. At that point, Perry filed a Motion to Vacate or Modify the Arbitrator's award. The case then went to the trial court.

It should be noted that it was *Karen, not Perry*, who first provided the award letter to the court when she filed the letter and the award under seal on April 3, 2013 (CP 473-488). Once Perry later attached the award under seal, Karen objected to this and thereafter attached the letter with the entire content redacted (CP 87-91)--as if her first filing never occurred.

**2. The Court erred in entering Karen's Findings and Decree.** At the time of entry, on May 1, 2013, of Karen's proposed Orders, Perry

objected to not only the procedural errors but also the many changes made by Karen to the arbitration Award as it was set forth in her Orders. In addition, Perry pointed out that exhibits to the Decree incorporated by reference did not exist. The trial court ignored these objections, after denying Perry's requests for oral hearings, and signed all of Karen's proposed orders without change. This was clear error.

It is important to note that Karen has never argued there was a disagreement over the meaning of the CR2A. Instead, she blindly relied on her version of the case law, in which the decision of the arbitrator is sacrosanct – and yet she is entitled to change the award at will to “clarify” what the arbitrator “intended.”

She has turned a blind eye to the fact that the arbitrator ignored a critical element of that CR2A.

In *Condon v. Condon*, 177 Wn.2d 150 (March, 2013) the Washington State Supreme Court clarified both the issue and the remedy involved in consideration of the actions of the arbitrator in veering from the parties' CR2A in this matter. In *Condon, supra*, at 162-163, the Supreme Court considered the issue of settlements (including CR2A's) entered into by the parties. Noting that contract

law applies,

“Washington follows the objective manifestation theory of contracts, which has us determine the intent of the parties based on the objective manifestations of the agreement, rather than any unexpressed subjective intent of the parties.” Citing *Hearst Commc 'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503 (2005) .

The court went on to state “Courts will not revise a clear and unambiguous agreement or contract for parties or impose obligations that the parties did not assume for themselves.” (emphasis added.) Clearly, there was no mention in the parties’ CR2A of marital misconduct or of distribution of assets which did not exist (all of which were cited by the arbitrator as the basis for his “predistribution award” to respondent) – only a provision that there be an “overall 50-50 division of the assets and liabilities.” An award of separate property to one party, but not the other, not even reflected on the financial award sheet – and of property which did not even exist (fees and costs already spent)—clearly was inappropriate under the *Condon* decision and the CR2A. The dispute arises in this case over Karen’s inclusion of “implied” language which goes far beyond what even the arbitrator awarded..

Furthermore, *Condon*, *supra*, at 161-162, footnote 4, citing *Brinkerhoff v. Campbell*, 99 Wn. App. At 696, makes it clear that when there is a disagreement between the parties – such as in the Jones matter-- the appropriate review standard is de novo review in an evidentiary hearing:

Although the Court of Appeals has used an abuse of discretion standard in the past when reviewing the enforcement of a settlement agreement, its more recent rulings clarify that de novo review is appropriate. ...As discussed in *Brinkerhoff*, summary judgment procedures are used in motions to enforce a settlement agreement. *Brinkerhoff*, 99 Wn.App. at 696. However, a trial court abuses its discretion if the nonmoving party raises a genuine issue of material fact and the trial court fails to hold an evidentiary hearing to resolve the disputed issues of fact. (*String cite eliminated, emphasis added.*)

**Here, the trial court refused to hold such a hearing.**

**3. The trial court is not authorized under RCW 7.04A to add to or subtract from the arbitrator’s award.** See *Westmark Properties v McGuire*, 53 Wn App 400 (1989). See also RCW 7.07A.250(1) requiring the final judgment to comply with the award. In addition, the court may not “imply” language that is not part of the “award” and **which is entirely contrary to the award. In short, it cannot rewrite the award.** An example of this occurring is found in Karen’s Decree, (CP 184, #2) wherein it awards her all furniture and personal property (apparently

including the Citroen) located at the French chateau awarded to her. In fact, there is nothing in either the Arbitrator's Letter or Award which allocates these items to Karen. At page 3, paragraph 2 of the award letter the arbitrator stated "With regard to the furniture...I have awarded petitioner both the heirlooms/gifts and the community property items that she requested in her February 25, 2013 declaration." (CP; p. 1037). The Arbitration Award, at page 1, paragraph 3, (CP 964), states "Petitioner shall receive the community property furniture, silver, china and porcelain items listed on Exhibit B attached hereto. Respondent shall receive the remaining community property furniture, silver, chins and porcelain." There is no further language in the Award regarding furniture. There is no language anywhere to suggest that Perry Jones was not awarded the furniture in the residence in France. See **In re Marriage of Thompson**, 97 Wn App 873 (1999).

**4. The court cannot "imply" or impose obligations on a party not in the award (such as the income tax obligation).** See *Byrne v Ackerlund*, 108 Wn 2d 445 (1987); *In re Marriage of Bobbitt* 135 Wn App 8 (2006).

**5. Numerous other allocations of assets and liabilities in**

**Karen's Findings and Decree are completely inconsistent with the arbitrator's award; they are set forth below.**

**a. Findings of Fact.**

2.12. Maintenance. There is no finding in either the Arbitration Award or the Letter that Perry "had the ability to pay Karen \$8,000 per month in maintenance" In fact, as stated above, the declaration of the parties' own joint C.P.A. stated that Perry's income had been in a decreasing pattern for the past four years and continued to decrease. (CP 861-863) Beyond that, the arbitrator's Letter stated the basis of the award of maintenance was a dentist employed by another dentist should earn. (CP 962) There was no finding of Karen's need, just as there was no evidence to support the maintenance awarded.

2. 15 Fees and Costs. No fees and costs were awarded to either party in the arbitrator's awards; no fees should have been awarded in the decree for fees incurred during and after the arbitration.

**b. Conclusions of Law.**

3.4 The arbitrator's task as to distribution of property and liabilities was not to be either fair or equitable, but to comply with the parties' CR2A agreement to divide the assets and liabilities equally. Nor

was there any mention of either of these goals in the Award or Letter.

**c. Decree of Dissolution**

Judgment Summary. The judgment for maintenance and interest was premature and not supported by the evidence before the arbitrator.

3.2 Exhibit A. The entire list of property awarded was supposed to have been divided equally.

3.3 Exhibit B. The “old small sofa from the landing” was Perry’s sofa before marriage. (CP 746, #4) Also, “a few pieces of Chinese porcelain (each girl would like a few)” is contrary to law, as stated above.

3.15(1). The French home, and 3.15(2) The Montana home. Nothing in the arbitrator’s award mentions the entire contents of the home being awarded to either party; instead, the arbitrator’s Award, Paragraph 3, stated that after specific items were awarded to Karen, Perry was to receive the remaining furniture. Nothing in the award provides for automatic conveyance of title.

3.15(3). There is no language in the award regarding a right to enter the others’ abode or other areas upon 72-hours’ notice for the “unhindered...access” to remove items of property without the other party being present.

3.15(4). There is nothing in the arbitration award regarding bankruptcy, nor was it ever even mentioned in the arbitration proceeding.

3.15(6). Nothing in the arbitration award discusses or deals with the issue of default.

3.15(7). The arbitration award did not require Perry to pay the 2012 income taxes or to file a joint return. The parties have been separated since 2010. There was nothing ordered regarding “adjusting the basis of any asset or debt...for income tax purposes” nor is it clear what that even means.

3.15(8). There was neither testimony of the parties or others, nor any award of such a guarantee by the arbitrator; furthermore, it makes no sense that a party should be responsible for one half of an unknown liability on, for example, the French or Montana homes, which are joint encumbrances; it should depend on specific facts and details of such transactions and liability should be determined by the court at the time such event is discovered.

3.15(10). Nothing in the arbitrator’s award gave Karen a specific 69.82 percent of the remaining funds from the sale of the family home. Each party received a specific sum. Nor was there any determination by

the arbitrator as to a formula about either lower or higher amounts being paid or owed. It appears the reason Karen used a *percentage*, instead of the actual awarded *amounts*, was because by the time of the entry of the decree, Karen and/or her counsel had already taken out certain amounts from that fund for expenses not awarded by the arbitrator.

Exhibit A: Property to Husband.

4. Perry was not awarded 30.18% of the remaining balance in the house sale proceeds: he was awarded \$66,326. Karen's counsel changed this because Karen had depleted the award and the funds were not there to give to Perry. There was nothing in the Award that allowed Perry's share of the house proceeds to be invaded and reduced by payment of community liabilities; there was no assessment against Perry for post arbitration judgments in favor of the wife, interest, late fees, storage costs in the amount of \$7,767.62, nor was there any language requiring him to pay such fees from any source. Karen then took advantage of her added language and has now, in post dissolution proceedings, taken hold of most of the little cash awarded to Perry.

Exhibit A, Liabilities to Husband.

2. There was no requirement in the Award or Letter that Perry be

responsible for any post-arbitration community debts set forth at paragraph 3.15.10.

Exhibit B, Property Awarded to Wife.

2. Karen was not awarded all personal property located at the chateau in France. She was awarded only a list of specific items, which did not include furniture or other personal property at the French home.

4. Karen was not awarded 69.8% of the balance of the house sale, she was awarded \$153,473.89 (CP 967). Nor were other amounts ordered to be paid first from that account.

7. Karen was not awarded the balance of the Profit Sharing Account as of January 18, 2013; she was awarded the account.

8. “All wine owned by the parties wherever stored” was not awarded to Karen; the Award gave her “total Reserve Value pursuant to Winebid.com Appraisal”. The Letter awarded her “the wine” evidently referring to the community wine collection and not any wine in Perry’s possession including that acquired after separation.

*Karen’s Decree, entered by the court, Exhibit B-1, item 13, refers to specific items of personal property set forth “on the following pages B-2 and B-3. No such documents were received by Perry prior to*

presentation, and a certified copy of the Decree (CP 428-441) reveals there are no Exhibits B-2 or B-3 attached thereto.

**6. The court's action in signing the Cross Motion created a procedural morass.** After agreeing to a date of May 3, 2013, for the hearing on Perry's Motion to Vacate to be heard, Karen noted her Cross Motion to be heard on May 1, 2013, but to be effective on April 30, 2013. (CP 374) This is tantamount to asking that the Decree and the Order on Perry's Motion be entered on shortened time, *nunc pro tunc*. In *Pratt v. Pratt*, 99 Wn.2d 905, 909 (1983), the court stated

Clearly a trial court has inherent authority to enter a decree *nunc pro tunc* in a dissolution case...In a dissolution setting however, that discretion may be exercised only where it is necessary to effectuate an important public policy (i.e., avoidance of bigamy or bastardy) or where necessary to correct a clerical or ministerial error.

Clearly the trial court violated not only King County Local Rule 7, and CR7, but the due process rights of Perry and his right to be heard. The retroactivity of an order is limited to exceptional circumstances. Why Karen took this bizarre route and why the trial court allowed her to do so, is beyond comprehension.

**7. The court erred in denying Perry's two Motions of Reconsideration.**

Perry filed two Motions for Reconsideration on May 13, 2013, along with supporting Memorandums for each.

The first motion and memorandum, filed May 13, 2013, (CP 267-274) was to reconsider Perry's (already stricken) Motion to Vacate which the court dismissed on May 1, 2013, retroactively to April 30, 2013. *It is also noted Judge Benton was well aware that Perry's motion to vacate had been stricken April 29, 2013, and that he had filed his Amended Motion to Vacate the day of the June 7 hearing.* (CP 276-287) TR p. 14, ll. 10-16).

Perry's second motion and memorandum was to reconsider the Findings of Fact, Conclusions of Law and Decree entered May 1, 2013. (CP 274-287) On June 7, Karen was given an opportunity to respond (TR p. 8, l.24 – p. 9, l. 25) to these motions, but did not do so.

The issues raised in these motions are treated elsewhere above in this brief.

## **VI. CONCLUSION**

Did the Arbitration Award *on its face* resolve the dispute between the parties? Answer: No – in several critical respects. **(a)** The assets and liabilities were not divided *equally* as required by the parties' CR2A; **(b)** no

statutory finding of need and ability to pay maintenance was found by the arbitrator; **(c)** the arbitrator created assets that did not exist in the award; **(d)** the arbitration award *on its face* did not resolve the distribution of other assets such as the wine and the Citroen automobile; **(e)** the arbitrator made an award of separate property to one party and **(f)** the arbitrator awarded some of the property to third parties. All of this is because the arbitrator used marital misconduct as a means to contrive his distribution.

Perry contends that when this issue reached the trial court, the court ignored not only Perry's well-reasoned and statutory rights to vacate the award, but entered an order which struck without good reason the arbitration pleadings he had filed, back dated the order without any legal authority, and entered pleadings without proper notice that did not conform to the arbitration award. Further, the court awarded attorney fees that were incurred during the arbitration, although the arbitrator had required each party to pay their own fees. In fact, any post-arbitration attorney fees were the result of Karen's own legal misconduct.

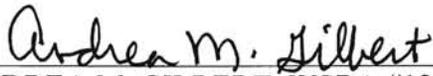
The court is requested, in conformity with the relief provided by statute, to direct the trial court to vacate its Findings of Fact, Conclusions of Law and Decree of Dissolution and the Order on Cross Motion and to Award Fees entered May 1, 2013, and the order denying the two motions for reconsideration and the award of attorneys fees and other relief granted to Karen.

The court is further requested to have another judge hear further proceedings in this matter because of the misconduct of the judge in entering an order denying the Motion to Vacate after it had been stricken and in making the Order on Cross Motion retroactive.

The court is also requested to vacate any post trial orders that enforce any portion of the arbitration award

Because of the intransigence and misconduct of Karen in her presentation of the award to the court and the misrepresentations as to the content of the arbitration award as reflected in her Decree, Perry should be awarded his fees on appeal and in the trial court.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
ANDREA M. GILBERT, WSBA #12650  
Of LAWRIE & GILBERT, P.L.L.C.  
Attorneys for Appellant

# APPENDIX A

The parties agree to the following:

An overall 50/50 division of assets and liabilities

The dental practice is awarded to Dr. Jones at a value of \$426,000 less the debt owed on the dental practice line of credit and credit card

~~The Ballard Dental Arts Building is awarded to Dr. Jones at a net value of \$97,040.45~~

Each party shall be awarded their Schwab IRA

Dr. Jones is awarded:

His disability policies to cancel to maintain as he so chooses;

The stamps and postcards at a total appraised value of \$16,081.50;

The rock and gem collection at a value of \$5,000;

The etchings and engravings at a value of \$2,000;

The guns, outdoor gear and watercraft at a value of \$10,000;

The tie making machine at a value of \$3,000;

The tie making inventory at a value of \$3,000;

The parties shall pay the following debts from community funds:

Munko invoice dated 2/6/13

Kessler outstanding invoice;

American Express outstanding balance;

US Bank Personal LOC;

Nordstrom Credit Card

Alaska Airlines Visa Credit Card

# APPENDIX B



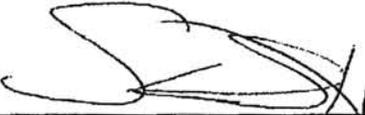
- 1 d. Norm Taylor statue;
- 2 e. Stamp collection;
- 3 f. Collectibles and property (excluding dental practice related equipment and materials) at the dental practice;
- 4 g. The real property in Montana;
- 5 h. The real property in France;
- 6 i. Wine collection;
- 7 j. Porcelain collection.

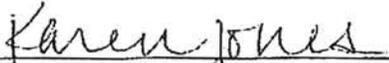
8 The parties can agree to forego any of the above appraisals within seven days.

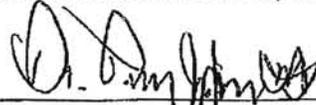
9 5. The appraisals shall be performed by a professional appraiser working in the locale of the property. In the event counsel cannot agree upon a joint appraiser, Judge Scott shall select the appraiser after considering the recommendations presented by each counsel.

10 6. The parties agree that the resolution of the allocation of the parties' remaining assets and liabilities and the determination of spousal maintenance, will be mediated and, if not settled at mediation, arbitrated by Judge Steve Scott, Ret. no later than March 11, 2013. Judge Scott shall determine the manner in which the arbitration shall be conducted. The mediation and arbitration costs and the costs for appraisals shall be paid from the funds on deposit in escrow. JDR rules of arbitration shall apply, not the rules of evidence in arbitration.

11 Signed this 11<sup>th</sup> day of January, 2013.

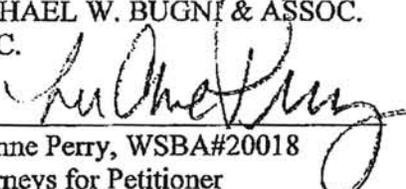
12   
 13 JUDGE STEVE SCOTT, Mediator

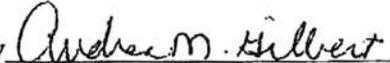
14   
 15 Karen Jones, Petitioner

16   
 17 Dr. Perry Jones III, Respondent

18 MICHAEL W. BUGNI & ASSOC.  
 19 PLLC.

LAWRIE & GILBERT PLLC

20 By   
 21 LuAnne Perry, WSBA#20018  
 22 Attorneys for Petitioner

23 By   
 24 Andrea Gilbert, WSBA#12650  
 25 Attorneys for Respondent

**LAW OFFICES**

**MICHAEL W. BUGNI & ASSOC., PLLC**  
 11300 ROOSEVELT WAY NE, STE. 300  
 SEATTLE, WA 98125  
 (206) 365-5500 • FACSIMILE (206) 363-8067

# APPENDIX C

IN ARBITRATION  
**SEALED**

1  
2 In re the Marriage of:

3 KAREN M. JONES,

Petitioner,

ARBITRATION AWARD

4  
5 and

6 PERRY J. JONES III,

7  
8 Respondent.

9  
10 THIS MATTER is before the Honorable Steve Scott (retired) as arbitrator  
11 pursuant to the parties' January 11, 2013 CR2A Agreement. The arbitrator has  
12 considered the written submissions of the parties and, now, therefore makes the  
13 following Arbitration Award:  
14

- 15
- 16 1. Respondent's Motion to Strike dated March 3, 2013, is denied.
  - 17 2. The parties' community assets and liabilities shall be divided and awarded as  
18 set forth in the Asset & Liability Spreadsheet attached as Exhibit A.
  - 19 3. Petitioner shall receive the community property furniture, silver, china and  
20 porcelain items listed on Exhibit B attached hereto. Respondent shall receive  
21 the remaining community property furniture, silver, china, and porcelain.
  - 22 4. In addition to the community property, petitioner is awarded the items listed in  
23 Exhibit C as her separate property.
  - 24 5. Respondent shall pay petitioner maintenance in the amount of \$8,000 per  
25 month for 60 months, commencing April 1, 2013. Maintenance shall be  
secured by respondent's life insurance policy. Maintenance shall terminate

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on petitioner's death or remarriage. Respondent may move to modify the maintenance obligation if he becomes unable to work due to total or partial disability.

6. The parties shall bear their own attorney fees and costs.

DATED this 18<sup>th</sup> day of March, 2013.



Steve Scott, Arbitrator

**EXHIBIT A**

es

IN RE MARRIAGE OF JONES						
ASSET & LIABILITY WORKSHEET						
DOM: December 20, 1974						
	Description	Gross Value	Debt	Net Value	PERRY	KAREN
<b>Real Property:</b>						
	Sheep Mountain Lodge Montana	X			X	
	St. Cyprien, Dordogne, France	X				X
<b>Cash &amp; Bank Accounts:</b>						
	Home Sale Proceedings (balance remaining)	369606	-149806.11	219799.89	66,326	153,473.89
<b>Securities &amp; Investment Accounts:</b>						
	Charles Schwab Brokerage Account #889-1431 (Perry, K. Jones, III) Karen M. Jones R. Jones - Babcock 06/17/2013	1,002.53		1,002.53		1,002.53
<b>Business &amp; Investment Interests:</b>						
	Dental Practice (Pursuant to Kessler Draft Preliminary Practice Valuation)	426,000.00	-72,000.00	354,000.00	354,000.00	
	Ballard Dental Assoc LLC 50% Member to Bill & Barbara Jones Agreement	1,075,100.00	973,100.00	102,000.00		
<b>Retirement Accounts:</b>						
	DDS Profit Sharing (See Exhibit XX - includes 1000 oz silver bar)	660,538.00		660,538.00		660,538.00
	Charles Schwab Brokerage IRA (Karen M. Jones R. Jones) - 06/17/2013	31,790.14		31,790.14		31,790.14
	Charles Schwab Brokerage IRA Account #889-1431 (Perry, K. Jones, III) - Babcock, 06/17/2013	31,790.14		31,790.14		31,790.14
<b>Life Insurance:</b>						
	Great West Financial ADA Group Term Life Policy #129740529 - no face value - security for obligations to extent owed to Karen				X	
	Disability Policy					
<b>Vehicles:</b>						
	2005 Ford Excursion				X	
	1993 Jaguar				X	
	2009 Toyota					X
<b>Personal Property &amp; Other Assets:</b>						
<b>Furniture and Furnishings</b>						
	Rugs	40,000.00		40,000.00	40,000.00	
	Furniture, silver, china, porcelain	119,764.00		119,764.00	89,764.00	30,000.00
	(less \$25,000 gifts to Karen)					
	The Makin Machine	3,000.00		3,000.00		
	Inventory for The Makin Machine	3,000.00		3,000.00		

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IN RE MARRIAGE OF JONES						
ASSET & LIABILITY WORKSHEET						
DOM: December 20, 1974						
	Description	Gross Value	Debt	Net Value	PERRY	KAREN
<b>Wine</b>						
	Total Reserve Value pursuant to Winebid.com Appraisal	150,000.00		150,000.00		150,000.00
<b>Collectibles</b>						
	Native American Indian Art Collection	64,475.00		64,475.00	64,475.00	
	Collectibles at Dental Office (estimate)	3,000.00		3,000.00	3,000.00	
	Stamp and Postcard - Value pursuant to ASM Appraisal dated 1/13/13	5,000.00		5,000.00	5,000.00	
	Rock/Clam Collection	5,000.00		5,000.00	5,000.00	
	Ballistics and Firearms	5,000.00		5,000.00	5,000.00	
	Game, Outdoor Gear, Watercraft	10,000.00		10,000.00	10,000.00	
<b>Precious Metals</b>						
	Silver Coins (1 bag/740 oz/\$23,532), Austrian Coronas (20 oz/\$33,539) and Krugerrands (20 oz/\$33,539)	90,610.00		90,610.00	90,610.00	
	Miscellaneous coins (Washington Numismatic Gallery Appraisal dtd 2/2/2013)	841		841	841	
	Jewelry	30,000		30,000		30,000
	Alaska Miles (Divide equally)				X	X
<b>SUBTOTAL</b>		<b>3,131,185</b>	<b>-1,179,916</b>	<b>1,951,269</b>	<b>891,385</b>	<b>1,059,884</b>
	Predistribution/Lisa Expenses				168,499	
<b>3121185-1179916</b>						
<b>TOTAL</b>					<b>\$1,059,884</b>	<b>\$1,059,884</b>
<b>Community Liabilities (Deducted from home sale proceeds above)</b>						
	Debt Mutual Savings 10/11/13					
	Student Loan					
	American Express Card 1/1/13					
	Chase Bank Payment Card Balance as of 1/1/13					
	Washington Credit Card Balance as of 1/1/13					
	W.F.P. Medical 701 Balance as of 1/1/13					
	Venza loan (payoff through 2/11/13)	-16,257				
	Student loan in Karen's name (amount owed as of 1/26/13)	-27,737				
	Student loan in Perry's name (amount owed as of 1/26/13)	-5,676				
	Total	<b>-149,806</b>				
<b>Liabilities</b>						
	US Bank Visa (DDS card) - balance as of 1/9/13 - Included In practice valuation line item above			(32,034)		
	US Bank Loan (DDS) - debt included in practice valuation line item above			(30,000)		

-197

LD

**EXHIBIT B**

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Community Property

- Rug that was in Chloe's room at Prospect Street home (if it can be located)
- Foss Appraisal Item #7 - Rug
- Foss Appraisal Item #14 - Contemporary presentation bowl
- Foss Appraisal Item #23 - Oil painting - Lanauve
- Foss Appraisal Item #32 - Kenneth Callahan
- Foss Appraisal Item #35 - Mirrored armoire
- Foss Appraisal Item #47 - Ottoman
- Foss Appraisal Item #49 - Sofa
- Foss Appraisal Item #53 - Oil painting - Lanauve
- Foss Appraisal Item #56 - camel back couch
- Foss Appraisal Item #58 - occasional table
- Foss Appraisal Item #62 - 19<sup>th</sup> century commode
- Foss Appraisal Item #63 - Ornate Italian wall mirror
- Foss Appraisal #65 - Table
- Foss Appraisal #73 - Arch top wall mirror
- Foss Appraisal #79 - Aquatint
- Foss Appraisal #83 - Rug
- Foss Appraisal 84-93 - China
- Foss Appraisal #98 - Chloe's bed (purchased by Perry for Chloe)
- Small Armoire from piano room
- Old small sofa from the landing
- Oak kitchen table and chairs
- Embroidered "100 Children" brought by folks from Asia
- Lithograph from Boucherots
- Jean Chuseau Lanauve 'bathers'
- Canopied bed frame that was in the blue bed room
- Gilded Mirror from the spare bedroom
- Filigree Frame from Master bedroom wall
- A few pieces of Chinese Porcelain (Each girl would like a few)
- Pinkish velvet sofa
- Blue and green etching that was in the upstairs hall from Monique and Christian
- Marble top French 2 drawer small buffet
- Pair of Chinese Wood Plaques
- Large vase (on landing) - floral garden motif

LAW OFFICES

MICHAEL W. BUGNI & ASSOC., PLLC  
11300 ROOSEVELT WAY NE, STE. 300  
SEATTLE, WA 98125  
(206) 365-5300 • FACSIMILE (206) 363-8067

**EXHIBIT C**

A handwritten mark or signature, possibly initials, located in the lower right quadrant of the page.

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Family Heirlooms/Gifts

- Small "telephone" table
- Sewing table
- Victorian commode with mirror back
- Victorian music cabinet
- Chair – Family Heirloom
- Chair
- Chair
- Rattan chaise
- Table
- Victorian wash stand
- Painted side table
- Mahogany sideboard
- Plates, tableware, vase, pitchers
- Wicker chair
- East Indian chest
- Letters exchanged between my grandparents;
- Chloe's Surfboard. This was a gift to Chloe for her 15<sup>th</sup> birthday
- Chair
- Framed Mirror belonging to bedroom set from Karen's Grandparents
- Bedroom set from Karen's Grandparents
- Framed Mirror belonging to bedroom set from Karen's Grandparents
- Victorian headboard/Bedroom set from Karen's Grandparents
- Silver from Karen's Mother and Grandmother (anything not Buttercup Pattern)
- Wicker chair

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

In re the Marriage of:

KAREN M. JONES,

Petitioner,

and

PERRY JAY JONES, III,

Respondent.

No. 12-3-02252-0 SEA

**Sealed Source Documents  
(Cover Sheet)  
(SEALFN)  
Clerk's Action Required**

**Sealed Financial Source Documents**

(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

Exhibit C to Amended Motion to Vacate or Modify Arbitrator's Award.

Submitted by:

*Andrea M. Gilbert*

Andrea M. Gilbert, WSBA#12650

SEALED SOURCE DOCUMENT - 1

LAWRIE & GILBERT P.L.L.C  
Attorneys at Law  
2107 Elliott Avenue, Suite 302  
Seattle, Washington 98121-2159  
(206) 728-0500/FAX (206) 728-0214

Sealed

## EXHIBIT C

Sealed

ARBITRATION RULES  
JUDICIAL DISPUTE RESOLUTION

The following arbitration rules will be applied by the panelists at Judicial Dispute Resolution where not in conflict with the requirements of Washington law (see RCW Chapter 7.04A, the Uniform Arbitration Act). The goal of these rules is to provide parties to civil disputes with fair, private, expeditious and final decisions. If the parties agree to other rules or procedures, they will be enforced as long as not contrary to law. Where an issue is not covered by these rules or by stipulation of the parties, the Superior Court Rules (CR), the Local Rules of the Superior Court for King County (LR) and RCW 7.04A, et seq., will govern.

1. Commencement of an Arbitration: An Arbitration is commenced when the parties agree to arbitrate or either party serves a Notice of Intention to Arbitrate consistent with RCW 7.04A.090 on the other party or parties and on Judicial Dispute Resolution, describing the nature of the controversy and the remedy sought.
2. Selection of an Arbitrator: If the parties have not agreed upon an arbitrator, Judicial Dispute Resolution will provide them with a strike list within seven days of receipt of the Notice of Intention to Arbitrate. The parties will attempt to agree on an arbitrator. If agreement is not reached, each party will return the strike list and the case administrator will notify you of the arbitrator appointment. If the parties do not return the strike list, JDR will deem all arbitrators to be acceptable.
3. Initial Conference Call: Within seven days of service on Judicial Dispute Resolution of Notice of Intention to Arbitrate which designates an arbitrator, or upon selection of an arbitrator from the strike list, Judicial Dispute Resolution will conduct an initial conference call between the arbitrator and the parties. During this initial conference call, a hearing date will be selected and a discovery schedule arranged. Consistent with the goal of providing an expeditious decision, the hearing will be held within 90 days of the initial conference call, unless the arbitrator decides otherwise.
4. Discovery Schedule: Consistent with the goal of an efficient resolution of the dispute, discovery will be limited to matters essential to establish or defend the claim. Therefore, absent the agreement of the parties or other order of the arbitrator, each side will be allowed to propound not more than five requests for production of documents, five interrogatories and take not more than three depositions each lasting no longer than four hours.
5. Pre-hearing matters: Disputes that develop prior to the hearing which cannot be resolved by the parties will be determined by telephone conference call or by written motion.
6. The Arbitration Hearing: Unless agreed otherwise, the arbitration hearing will be conducted at the offices of Judicial Dispute Resolution. The parties are expected to attend, either in person or by counsel. The arbitrator will consider all evidence which appears to the arbitrator to be relevant to the dispute, including, but not limited to, bills, reports, photographs, videotapes or other documentary evidence, and written statements of witnesses. Such evidence will be considered by the arbitrator if the proponent has served a copy on all parties, and has provided the name, address and phone number of the author, at least 14 days prior to the hearing. Enforcement of this rule will be consistent with the enforcement of Superior Court Mandatory Arbitration Rule 5.2.
7. The Arbitration Award: The arbitrator will make every effort to issue a written award within five working days of the conclusion of the hearing.

FILED

13 JUN 07 PM 12:51

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 12-3-02252-0 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

In re the Marriage of:

KAREN M. JONES,

Petitioner,

and

PERRY JAY JONES,III,

Respondent.

No. 12-3-02252-0 SEA

**Sealed Source Documents  
(Cover Sheet)  
(SEALFN)  
Clerk's Action Required**

**Sealed Financial Source Documents**

(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

Exhibit D to Amended Motion to Vacate or Modify Arbitrator's Award.

Submitted by:

*Andrea M. Gilbert*

Andrea M. Gilbert, WSBA#12650

SEALED SOURCE DOCUMENT - 1

LAWRIE & GILBERT P L L C  
Attorneys at Law  
2107 Elliott Avenue, Suite 302  
Seattle, Washington 98121-2159  
(206) 728-0600/FAX (206) 728-0214

Sealed

## EXHIBIT D



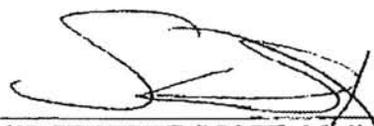
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- f. Collectibles and property (excluding dental practice related equipment and materials) at the dental practice;
- g. The real property in Montana;
- h. The real property in France;
- i. Wine collection;
- j. Porcelain collection.

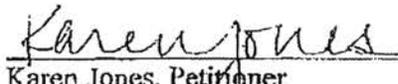
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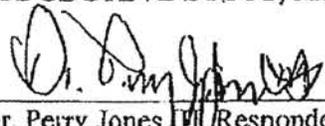
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6. The parties agree that the resolution of the allocation of the parties' remaining assets and liabilities and the determination of spousal maintenance, will be mediated and, if not settled at mediation, arbitrated by Judge Steve Scott, Ret. no later than March 11, 2013. Judge Scott shall determine the manner in which the arbitration shall be conducted. The mediation and arbitration costs and the costs for appraisals shall be paid from the funds on deposit in escrow. JDR rules of arbitration shall apply, not the rules of evidence in arbitration.

Signed this 11<sup>th</sup> day of January, 2013.

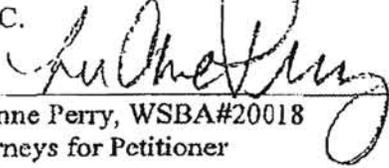
  
JUDGE STEVE SCOTT, Mediator

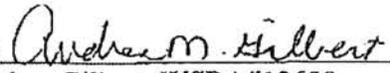
  
Karen Jones, Petitioner

  
Dr. Perry Jones, Respondent

MICHAEL W. BUGNI & ASSOC.  
PLLC.

LAWRIE & GILBERT PLLC

By   
LuAnne Perry, WSBA#20018  
Attorneys for Petitioner

By   
Andrea Gilbert, WSBA#12650  
Attorneys for Respondent

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11100 ROOSEVELT WAY NE, STE. 300  
SEATTLE, WA 98125  
(206) 365-5500 • FACSIMILE (206) 363-8067

# APPENDIX D

Judicial Dispute Resolution, LLC

March 18, 2013

LuAnne Perry  
Law Offices of Michael W. Bugni & Associates  
11300 Roosevelt Way NE, Suite 300  
Seattle, WA 98125

Andrea V. Gilbert  
Lawrie & Gilbert  
2107 Elliott Avenue, Suite 302  
Seattle, WA 98121-2159

RE: In re the Marriage of Jones

Dear Counsel:

Enclosed is the Arbitration Award in the above matter. This letter will explain briefly the reasons for the rulings on the main issues solely for the benefit of the parties. Nothing in this letter, however, should be considered as constituting findings of fact or conclusions of law or in any other way to be part of the Arbitration Award.

Assets and Liabilities

The parties' CR2A Agreement dated January 11, 2013, provided that property, including Sheep Mountain and St. Cyprien, would be jointly appraised. This has not happened and the evidence of value submitted by the parties is of little help in determining specific values. I am satisfied based on everything submitted, however, that the two properties are of essentially equal value and have, accordingly, awarded the Montana property to respondent and the France property to petitioner without assigning specific values.

Steven Kessler's preliminary valuation of respondent's dental practice is the only evidence presented of the value of the practice. Respondent has done nothing to call it into question and I am satisfied that the Kessler valuation, while preliminary, is reasonable. The situation with regard to the Dental Arts Building is similar in that the only indication of value has been presented by petitioner and I have accepted that value.

---

Charles S. Burdell, Jr.  
George Finkle  
Lacy Jordan  
Steve Scott  
Paris K. Kallas  
Bruce W. Hilyer

---

1425 Fourth Avenue, Suite 300  
Seattle, WA 98101  
Phone: (206) 223-1669  
Fax: (206) 223-0450  
www.jdellc.com

LuAnne Perry  
Andrea Gilbert  
March 18, 2013  
Page Two

Several issues relate to the characterization of assets as either community or separate. First, respondent contends that the silver and gold purchased in June of 1975 are separate because they were bought with funds from his personal injury settlement in May of 1975. The presumption, however, is that these assets are community since they were purchased during the marriage. There is no dispute that the personal injury settlement funds were respondent's separate property when they were received in May. The only thing, however, that conceivably can link the funds to the gold and silver is the timing of the purchases approximately a month after receipt of the funds. There is no direct evidence that respondent maintained a separate account or that the funds used for the purchase can be traced. The most reasonable inference to be drawn is that the funds went into a community account and that once intermingled were intended to be used and in fact were used for community purposes. The fact that all of the gold and silver was purchased by respondent jointly in both his and petitioner's names merely confirms the reasonable inference as to the community character of these assets.

Respondent also claims an equitable lien on the proceeds from the sale of the house based on his contention that when the house was purchased in September of 1975, again jointly, his settlement proceeds were used for the down payment. This claim is even further attenuated in terms of respondent's ability to trace the funds used for the down payment back to his settlement. Particularly significant is the failure to show any intention of keeping these funds separate, rather than commingling them with community funds and then using them for community purposes.

With respect to both the gold and silver and the down payment, respondent points to petitioner's initial mediation submission, in which she stated that respondent received a settlement and then purchased silver and gold and used the remaining funds to contribute toward the down payment. Aside for the obvious problem that this was in the context of settlement negotiations, petitioner's statement does not address whether respondent intended to maintain the funds separately, for his separate benefit, or whether, on the other hand, he intended to use the funds for the benefit of the community when he purchased assets jointly with his wife. Nor does the mediation statement address at all the specific amount that respondent "contributed toward the down payment" from any funds he may have maintained as separate. I simply am unconvinced by respondent's contentions, decades after the fact and in the course of a marriage dissolution action, that he intended to and in fact did maintain his settlement funds as separate property.

LuAnne Perry  
Andrea V. Gilbert  
March 18, 2013  
Page Three

With regard to the value of the rugs, I have only a replacement value appraisal. As petitioner has pointed out herself, replacement values are generally higher than fair market values. As is common in dissolution proceedings, petitioner has "offered" all the rugs to respondent at a high price. I have awarded them to respondent at a value of \$40,000, which I am satisfied is a reasonable estimation of fair market value.

With regard to the furniture, china, silver and porcelain, I have awarded petitioner both the heirlooms/gifts and the community property items that she requested in her February 25, 2013 declaration. I also have valued, however, the community property items awarded to petitioner at \$30,000. I have valued the property awarded to respondent at \$89,764.

With regard to the wine, I have awarded it to petitioner but have adjusted the value to \$150,000. This reflects both a reasonable balance between the positions of the parties and a reasonable fair market value.

Respondent has challenged the appraisal of the Native American Indian Art Collection based on his assertion that it was a replacement value appraisal. The appraisal itself, however, indicates that it is a market value appraisal done for purposes of the dissolution. Accordingly, I have used the appraisal value of \$64,475.

There are both characterization and valuation issues relating to the jewelry. All of the jewelry is awarded to petitioner. The question is whether specific items of jewelry were gifts or, on the other hand, were intended as investments for the benefit of the community. I am satisfied that many of the items were given to petitioner by respondent as gifts; however, there were also items that were intended by the parties primarily as investments for the community. The use of the jewelry by petitioner during the course of the marriage is not inconsistent with the community owning it for investment purposes, just as marital communities often do with art. Expensive jewelry certainly can be an excellent investment and while it may be worn by one party, it can be enjoyed by both, while it continues to appreciate substantially in value over time.

With regard to the value of the jewelry, I am persuaded by all the evidence that the replacement value appraisal is more reflective of current market values than the more recent Harrington appraisal. I have afforded substantial weight to the criticisms of the Harrington appraisal expressed by Ed Nowak in his March 1, 2013 declaration. Accordingly, while all of the jewelry has been awarded to petitioner, I have assigned a value of \$30,000 for jewelry owned as community property.

LuAnne Perry  
Andrea V. Gilbert  
March 18, 2013  
Page Four

I have assigned a \$168,499 predistribution to respondent for all of the expenses incurred by the community as a result of his affair with Lisa Luera. This represents all expenses requested by petitioner except for those incurred after the parties finally separated in November of 2011. Prior to the date of separation the marital community had no obligation to pay any of the incurred expenses and it is fair and just that the respondent bear the cost of his marital misconduct. After separation, respondent has paid the expenses from his separate income.

Maintenance

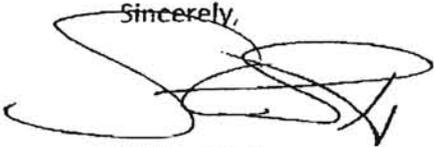
I have awarded petitioner maintenance of \$8,000/month for five years. It is probable that respondent will continue to work for at least that period of time. On the other hand, it is not reasonable to expect him to pay maintenance beyond that. If he becomes unable to work due to total or partial disability he may move to modify the obligation. This award of maintenance is not a "double dip". It is based on that portion of respondent's income that is the reasonable equivalent of what a dentist would earn for his dental services as a non-owner and is not related to respondent's ownership interest in the business.

Fees and Costs

There is no basis for an award of fees and costs.

Thank you for the opportunity to serve as arbitrator in this case and for your excellent representation of your clients. Please convey to them my best regards. If you have questions please contact Beth Forbes.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Scott", with a checkmark at the end.

Steve Scott  
Arbitrator

# APPENDIX E

ARBITRATION RULES  
JUDICIAL DISPUTE RESOLUTION

The following arbitration rules will be applied by the panelists at Judicial Dispute Resolution where not in conflict with the requirements of Washington law (see RCW Chapter 7.04A, the Uniform Arbitration Act). The goal of these rules is to provide parties to civil disputes with fair, private, expeditious and final decisions. If the parties agree to other rules or procedures, they will be enforced as long as not contrary to law. Where an issue is not covered by these rules or by stipulation of the parties, the Superior Court Rules (CR), the Local Rules of the Superior Court for King County (LR) and RCW 7.04A, et seq., will govern.

1. **Commencement of an Arbitration:** An Arbitration is commenced when the parties agree to arbitrate or either party serves a Notice of Intention to Arbitrate consistent with RCW 7.04A.090 on the other party or parties and on Judicial Dispute Resolution, describing the nature of the controversy and the remedy sought.
2. **Selection of an Arbitrator:** If the parties have not agreed upon an arbitrator, Judicial Dispute Resolution will provide them with a strike list within seven days of receipt of the Notice of Intention to Arbitrate. The parties will attempt to agree on an arbitrator. If agreement is not reached, each party will return the strike list and the case administrator will notify you of the arbitrator appointment. If the parties do not return the strike list, JDR will deem all arbitrators to be acceptable.
3. **Initial Conference Call:** Within seven days of service on Judicial Dispute Resolution of Notice of Intention to Arbitrate which designates an arbitrator, or upon selection of an arbitrator from the strike list, Judicial Dispute Resolution will conduct an initial conference call between the arbitrator and the parties. During this initial conference call, a hearing date will be selected and a discovery schedule arranged. Consistent with the goal of providing an expeditious decision, the hearing will be held within 90 days of the initial conference call, unless the arbitrator decides otherwise.
4. **Discovery Schedule:** Consistent with the goal of an efficient resolution of the dispute, discovery will be limited to matters essential to establish or defend the claim. Therefore, absent the agreement of the parties or other order of the arbitrator, each side will be allowed to propound not more than five requests for production of documents, five interrogatories and take not more than three depositions each lasting no longer than four hours.
5. **Pre-hearing matters:** Disputes that develop prior to the hearing which cannot be resolved by the parties will be determined by telephone conference call or by written motion.
6. **The Arbitration Hearing:** Unless agreed otherwise, the arbitration hearing will be conducted at the offices of Judicial Dispute Resolution. The parties are expected to attend, either in person or by counsel. The arbitrator will consider all evidence which appears to the arbitrator to be relevant to the dispute, including, but not limited to, bills, reports, photographs, videotapes or other documentary evidence, and written statements of witnesses. Such evidence will be considered by the arbitrator if the proponent has served a copy on all parties, and has provided the name, address and phone number of the author, at least 14 days prior to the hearing. Enforcement of this rule will be consistent with the enforcement of Superior Court Mandatory Arbitration Rule 5.2.
7. **The Arbitration Award:** The arbitrator will make every effort to issue a written award within five working days of the conclusion of the hearing.

Judicial Dispute Resolution  
1425 Fourth Ave., Suite 300  
Seattle, WA 98101  
206-223-1669  
FAX 206-223-0450  
www.jdrflc.com

# APPENDIX F

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**FILED**  
KING COUNTY WASHINGTON

MAY 01 2013

**SUPERIOR COURT CLERK**  
Victor Bigornia  
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR KING COUNTY

In re the Marriage of:	)	
KAREN M. JONES	)	
	)	NO. 12-3-02252-0
Petitioner,	)	
	)	FINDINGS OF FACT AND
and	)	CONCLUSIONS OF LAW
	)	
PERRY J. JONES III	)	(Marriage)
Respondent.	)	

**I. BASIS FOR FINDINGS**

The Findings are based on arbitration award.

**II. FINDINGS OF FACT**

Upon the basis of the court record, the Court finds:

**2.1 RESIDENCY OF PETITIONER.**

The Petitioner is a resident of the State of Washington.

**2.2 NOTICE TO THE RESPONDENT.**

The Respondent appeared, responded or joined in the Petition.

**LAW OFFICES**  
**MICHAEL W. BUGNI & ASSOC., PLLC**  
 11300 ROOSEVELT WAYNE, STE. 300  
 SEATTLE, WA 98125  
 (206) 365-5500 • FACSIMILE (206) 363-8067

Findings of Fact and Concl of Law (FNFL) - Page 1 of 6  
 WPF DR 04.0300 Mandatory (6/2012) - CR 52; RCW 26.09.030;  
 070(3)

**ORIGINAL**

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**2.3 BASIS OF JURISDICTION OVER THE RESPONDENT.**

The facts below establish personal jurisdiction over the Respondent.

The Respondent is presently residing in Washington.

The parties lived in Washington during their marriage, and both parties continue to reside in this state.

**2.4 DATE AND PLACE OF MARRIAGE.**

The parties were married on 12/20/1974 at Everett, Washington.

**2.5 STATUS OF THE PARTIES:**

The Husband and Wife separated in November, 2011.

**2.6 STATUS OF THE 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 PROPERTY SETTLEMENT AGREEMENT/PRENUPTIAL AGREEMENT.**

There is no written separation contract or prenuptial agreement.

**2.8 COMMUNITY PROPERTY.**

The parties have real or personal community property that has been equitably divided as set forth in the parties' Decree. Said Decree is incorporated by reference into these Findings of Fact as if set forth fully herein.

**2.9 SEPARATE PROPERTY.**

The parties have real or personal separate property which has been awarded to them as set forth in the parties' Decree. Said Decree is incorporated by reference into these Findings of Fact as if set forth fully herein.

1 **2.10 COMMUNITY LIABILITIES.**

2 The parties have incurred community liabilities which have been allocated to them  
3 as set forth in the parties' Decree. Said Decree is incorporated by reference into  
4 these Findings of Fact as if set forth fully herein.

5 **2.11 SEPARATE LIABILITIES.**

6 The parties have incurred separate liabilities that have been allocated to them as set  
7 forth in the parties' Decree. Said Decree is incorporated by reference into these  
8 Findings of Fact as if set forth fully herein.

9 **2.12 MAINTENANCE.**

10 Maintenance should be ordered because the Petitioner has demonstrated a need for  
11 maintenance and Respondent has the ability to pay.

12 The Husband shall pay maintenance to the Wife as follows: US \$8,000.00 (EIGHT  
13 THOUSAND DOLLARS 00/100) each month for sixty (60) months beginning April  
14 1, 2013, and ending with the last payment on March 1, 2018. Said monthly payment  
15 shall be due on the first day of each month and shall continue to be made by  
16 automatic transfer into the Wife's designated account. The obligation to pay future  
17 maintenance shall terminate upon the death or remarriage of the Wife. The  
18 Respondent/Husband's decreasing maintenance obligation shall be secured by his  
19 current life insurance policy, Great West Financial ADA Term Life Policy  
20 #129740529 which he shall maintain, and Wife shall be entitled to verification of the  
21 payment of the policy premium. Respondent may move to modify the maintenance  
22 obligation if he becomes unable to work due to total or partial disability.

23 **2.13 CONTINUING RESTRAINING ORDER.**

24 Does not apply.

25 **2.14 PROTECTION ORDER.**

Does not apply.

1 **2.15 FEES AND COSTS.**

2 There is no award of fees or costs prior to issuance of the Arbitration Award. Fees  
3 and Cost are awarded to Petitioner as reflected in the Decree of Dissolution.

4 **2.16 PREGNANCY.**

5 The Wife is not pregnant.

6 **2.17 DEPENDENT CHILDREN.**

7 The parties have no dependent children of this marriage. The Husband has a  
8 dependent child who is provided for in King County Superior Court Cause Number  
9 09-3-08083-0 SEA

10 **2.18 JURISDICTION OVER THE CHILDREN.**

11 Does not apply because there are no dependent children.

12 **2.19 PARENTING PLAN.**

13 Does not apply.

14 **2.20 CHILD SUPPORT.**

15 Does not apply.

16 **2.21 OTHER.**

17 There are other provisions which are set forth in the parties' Decree which are  
18 incorporated by reference into these Findings as if set forth fully herein.

19  
20 **III. CONCLUSIONS OF LAW**

21 The Court makes the following Conclusions of Law from the foregoing Findings of Fact:

22 **3.1 JURISDICTION.**

23 The Court has jurisdiction to enter a Decree in this matter.  
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**3.2 GRANTING OF A DECREE.**

The parties should be granted a Decree.

**3.3 PREGNANCY.**

The Wife is not pregnant.

**3.4 DISPOSITION.**

The Court should determine the marital status of the parties, consider or approve provision for maintenance of the Wife, make provision for the disposition of property and liabilities of the parties. 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'S FEES AND COSTS.**

Does not apply.

**3.8 OTHER.**

Does not apply.

Dated: May 1, 2013

  
THE HONORABLE MONICA BENTON

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Presented by:

MICHAEL W. BUGNI & ASSOC., PLLC

LAWRIE & GILBERT PLLC

By \_\_\_\_\_  
LuAnne Perry, WSBA#20018  
Attorneys for Petitioner Karen Jones

By \_\_\_\_\_  
Andrea Gilbert, WSBA #12650  
Attorneys for Respondent Dr. Perry Jones

# APPENDIX G



D.	Interest to date of Judgment (\$2.63 per day 4/1/13 to 4/30/13 and \$5.26 per day 5/1/13 – 5/8/13)	\$120.98
E.	Attorney's Fees	
F.	Costs	\$203.28
G.	Other Recovery Amount	N/A
H.	Principal judgment shall bear interest at 12% per annum.	N/A
I.	Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum.	
J.	Attorney for Judgment Creditor	LuAnne Perry
K.	Attorney for Judgment Debtor	Andrea Gilbert

**END OF SUMMARIES**

**II. BASIS**

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

**III. DECREE**

IT IS DECREED that:

**3.1 STATUS OF THE MARRIAGE**

The marriage of the parties is hereby dissolved.

Further references to the "Wife" shall be synonymous with the Petitioner Karen Jones. Further references to the "Husband" shall be synonymous with the Respondent Perry Jones.

**3.2 PROPERTY TO BE AWARDED TO THE HUSBAND**

The Husband is awarded as his separate property the property set forth in Exhibit "A" and all furniture, furnishings, clothing, personal items and personal property of any description presently in his possession. This exhibit is attached or filed and incorporated by reference as part of this Decree.

**3.3 PROPERTY TO BE AWARDED TO THE WIFE**

The Wife is awarded as her separate property the property set forth in Exhibit "B" and all furniture, furnishings, clothing, personal items and personal property of any

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 SEATTLE, WA 98125  
 (206) 365-5500 • FACSIMILE (206) 363-8067

Decree (DCD) (DCLGSP) (DCINMG) - Page 2 of 9  
 WPF DR 04.0400 Mandstory (6/2012) - RCW 26.09.030; .040; .070  
 (3)

1 description presently in her possession. The specific personal property is awarded as set  
2 forth in Exhibit "B". This exhibit is attached or filed and incorporated by reference as  
3 part of this Decree.

4 **3.4 LIABILITIES TO BE PAID BY THE HUSBAND**

5 Unless otherwise provided herein, the Husband shall pay all liabilities incurred by him  
6 since the date of separation, which was November 2011.

7 The Husband shall pay the community or separate liabilities associated with the assets  
8 awarded to him unless payment is otherwise set forth in paragraph 3.15 below.

9 **3.5 LIABILITIES TO BE PAID BY THE WIFE**

10 Unless otherwise provided herein, the Wife shall pay all liabilities incurred by her  
11 since the date of separation, which was which was November 2011.

12 The Wife shall pay the community or separate liabilities associated with the assets  
13 awarded to her unless payment is otherwise set forth in paragraph 3.15 below.

14 **3.6 HOLD HARMLESS PROVISION**

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

19 **3.7 MAINTENANCE**

20 The Husband shall pay maintenance as follows: The Respondent/Husband shall pay  
21 Petitioner/Wife US \$8,000.00 (EIGHT THOUSAND DOLLARS 00/100) each month  
22 for sixty (60) months beginning April 1, 2013, and ending with the last payment on  
23 March 1, 2018. Said monthly payment shall be due on the first day of each month and  
24 shall be made by automatic transfer into the Wife's designated account.

25 The obligation to pay future maintenance shall terminate upon the death or remarriage  
of the Wife. The decreasing maintenance obligation shall be secured by  
Respondent/Husband's current life insurance policy, Great West Financial ADA Term  
Life Policy #129740529, which he shall maintain and Wife shall be entitled to  
verification of the payment of the policy premium.

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1 Respondent may move to modify the maintenance obligation if he becomes unable to  
2 work due to total or partial disability.

3 **3.8 RESTRAINING ORDER.**

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

5 **3.9 PROTECTION ORDER**

6 Does not apply.

7  
8 **3.10 JURISDICTION OVER THE CHILDREN**

9 Does not apply.

10 **3.11 PARENTING PLAN**

11 Does not apply.

12 **3.12 CHILD SUPPORT**

13 Does not apply.

14  
15 **3.13 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS**

16 There is no need to award fees or costs prior to the Arbitration Award. The Wife is  
17 awarded fees and costs incurred post-arbitration award as set forth above.

18 In the event either party fails to abide by the terms of this Decree, the defaulting party  
19 shall be liable to and shall pay to the prevailing party all expenses incurred by the  
20 prevailing party as a result of said default, including, but not limited to, reasonable  
attorney's fees and court costs.

21 **3.14 NAME CHANGES**

22 Does not apply.  
23  
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25

1 3.15 OTHER.

2 3.15.1 Real Property. The parties have a community interest in real property  
3 located at St. Cyprien, Dordogne France described as follows:

4 Grelat, 24220 Bezenac including: a dwelling house, stone a  
5 barn, a stone workshop, a tobacco drying shed; a swimming  
6 pool; a baker's oven and ground

7 Said real property and any entity in which the property is held, and all  
8 personal property at the real property (unless the personal property is  
9 specifically awarded otherwise herein) is hereby awarded to the Wife as her  
10 sole and separate property, free and clear of any interest in the Husband. The  
11 Wife shall henceforth assume and pay all taxes, utilities, insurance, mortgage  
12 and other obligations on said property and hold the Husband harmless and  
13 indemnify him from any liability thereon (including reasonable attorney's  
14 fees).

15 Upon entry of this Decree, the Husband shall execute a Quit Claim Deed  
16 (and/or any other documents that may be deemed necessary to accomplish a  
17 transfer of said property in France) in favor of the Wife conveying all right,  
18 title and interest in and to the aforesaid real property to the Wife. Upon the  
19 Husband's failure to so convey all right, title and interest in and to said  
20 property, this Decree shall be, constitute and operate as such conveyance,  
21 and the County Auditor (or other similar entity in France) is hereby  
22 authorized and directed to transfer and record the same for a public record of  
23 such conveyance. The parties shall cooperate in any re-execution of  
24 documents which might be needed in order to amend or correct a legal  
25 description.

26 3.15.2 Real Property. The parties have a community interest in Sheep Mountain  
27 Lodge LLC which owns real property located at 264 Sverdsten Lane,  
28 Superior, Mineral County, Montana 59872 described as follows:

29 S13, T17 N, R27 W, TRACT IN SWNW & GOVT LTS 3 & 4 COS  
30 362B

31 Said LLC, the real property and all personal property at the real property  
32 (unless the personal property is specifically awarded otherwise herein) is

1 hereby awarded to the Husband as his sole and separate property, free and  
2 clear of any interest in the Wife. The Husband shall henceforth assume and  
3 pay all taxes, utilities, insurance, mortgage and other obligations on said  
4 property or arising from the LLC and hold the Wife harmless and indemnify  
5 him from any liability thereon (including reasonable attorney's fees).

6 Upon entry of this Decree, the Wife shall execute a Quit Claim Deed (and/or  
7 any other documents that may be deemed necessary to accomplish a transfer  
8 of said property and LLC interest) in favor of the Husband conveying all  
9 right, title and interest in and to the aforesaid real property and LLC to the  
10 Husband. Upon the Wife's failure to so convey all right, title and interest in  
11 and to said property and LLC, this Decree shall be, constitute and operate as  
12 such conveyance, and the County Auditor (or other similar entity) is hereby  
13 authorized and directed to transfer and record the same for a public record of  
14 such conveyance. The parties shall cooperate in any re-execution of  
15 documents which might be needed in order to amend or correct a legal  
16 description.

17 **3.15.2 Employment Benefits.**

18 Each party shall retain as his or her sole and separate property, free and clear  
19 of any interest in the other, all those rights and benefits which have been  
20 derived as the result of his or her past or present employment, union  
21 affiliations, military service, United States or other citizenship and/or  
22 residence within a state including, but not limited to:

23 Various forms of insurance, right to social security payments, welfare  
24 payments, unemployment compensation payments, disability payments,  
25 Medicare and Medicaid payments, retirement benefits, sick leave  
benefits, educational benefits and grants, interests in health or welfare  
plans, interests in profit-sharing plans, and all other legislated,  
contractual and/or donated benefits, whether vested or non-vested and  
whether directly or indirectly derived through the activity of that  
specific party; provided, however, that said benefit or benefits have not  
been otherwise divided herein.

26 **3.15.3 Property Disbursal.** There are personal property items assigned by this  
27 Decree which remain to be delivered to either party by the other party. Each  
28 party shall allow the other party and persons assisting them unhindered and  
29 unharassed access upon 72 hours' notice for the purpose of removal of said

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1 property listed above and each party shall take possession of said property as  
2 soon as practical following entry of this Decree. The 1000 oz. of silver  
3 included in the DDS profit sharing awarded to Wife shall be delivered to her  
4 or her counsel within 72 hours of entry of this Decree. This Decree shall  
operate to provide access to the Wife to the storage facilities holding  
property awarded to her, including the wine storage.

5 3.15.4 Bankruptcy. In the event either party should file for protection under the  
6 United States Bankruptcy Code for any debts or obligations allocated to such  
7 party by this Decree, and in the event such action should result in any  
8 collection against the other party, the other party shall have a right of  
9 indemnification, including attorney's fees and costs, against the obligated  
10 party irrespective of the bankruptcy. That right of recovery shall be  
considered a new and separate obligation subject to judgment under this  
cause number upon motion to the family law department of a court of  
competent jurisdiction in this matter.

11 3.15.5 Revocation of Wills, Powers of Attorney and Other Instruments. All  
12 previous wills, powers of attorney, contracts and community property  
13 agreements between the parties hereto are hereby revoked and the parties are  
prohibited from exercising same.

14 3.15.6 Enforcement Expenses. If either party defaults in the performance of any of  
15 the terms, provisions or obligations herein set forth, and it becomes  
16 necessary to institute legal proceedings to effectuate the performance of any  
17 provisions of this Decree, then the party found to be in default shall pay all  
18 expenses, including reasonable attorney fees, incurred in connection with  
such enforcement proceedings.

19 3.15.7 Federal Income Tax. The parties shall file a joint return for the 2012 income  
20 tax year and separately thereafter. The parties shall cooperate in preparing  
and filing their joint tax return promptly. Any refund shall be awarded to the  
Husband and any taxes owed shall be paid by the Husband.

21 The parties are ordered to maintain in good order all tax returns, property  
22 records, and documents related to any tax returns filed during the marriage,  
23 which are in that party's possession.  
24  
25

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1 In the event that any prior income tax returns of the parties should be audited  
2 for any year during the marriage, any additional tax found to be due thereby  
(including penalties and interest) shall be paid equally.

3 The parties intend that the property and debt division made in this Decree are  
4 subject to Section 1041 of the Internal Revenue Code (26 U.S.C. § 1041) and  
5 will result in no recognition of taxable gain or loss to either party, and that  
6 neither party shall adjust the basis of any asset or debt awarded or distributed  
7 pursuant to this Decree for income tax purposes as a consequence of the  
division.

8 3.15.8 Warranty Against Liens. Each party warrants to the other that there are no  
9 undisclosed liens, encumbrances, or defects of title attached to or affecting  
10 any of the property awarded to the other party herein. Should any  
11 encumbrances, liens or clouds of title created or incurred prior to the date of  
12 recording this Decree exist but not be disclosed herein, the party incurring  
13 the encumbrance, lien or clouds of title shall be responsible and shall pay all  
14 costs (including attorney's fees) for removing the lien, encumbrance or cloud  
of title from the property. Should the encumbrance, lien or cloud of title  
15 have been acquired or incurred jointly, each party shall pay for one-half of  
16 the encumbrance, lien or cloud of title and one-half of the attorney's fees and  
17 costs incurred in removing the encumbrance, lien or cloud of title from the  
18 property.

19 3.15.9 Performance of Necessary Acts. Each party shall execute any and all deeds,  
20 bills of sale, endorsements, forms, conveyances or other documents, and  
21 perform any act which may be required or necessary to carry out and  
22 effectuate any and all of the purposes and provisions herein set forth. Upon  
23 the failure of either party to execute and deliver any such deed, bill of sale,  
24 endorsement, form, conveyance or other document to the other party upon  
25 demand, a certified copy of the Decree shall constitute and operate as such  
properly executed document. The County Auditor and any and all other  
public and private officials are directed to accept the Decree or a properly  
certified copy thereof in lieu of the document regularly required for the  
conveyance or transfer.

3.15.10 Payment of Debts. The following debts shall be paid immediately from the  
house sale proceeds account:

**LAW OFFICES**

**MICHAEL W. BUGNI & ASSOC., PLLC**

11300 ROOSEVELT WAY NE, STE. 300  
SEATTLE, WA 98125

(206) 365-5500 • FACSIMILE (206) 363-8067

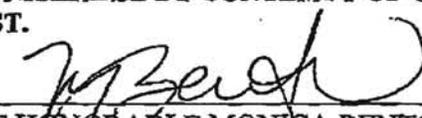
<u>CREDITOR</u>	<u>AMOUNT TO PAY</u>
Dave Munko	-\$2,816
Steven Kessler	-3,500
American Express	-50,000
US Bank Personal LOC	-26,975
Nordstrom Credit Card	-2,983
Alaska Airlines Visa	-13,862
Venza loan	-16,257
Student loan in Karen's name	-27,737
Student loan in Perry's name	-5,676

In the event any principal balance owed to a creditor is less than the amount designated above and in the Arbitration Award, the lower amount shall be paid. In the event any balance owed to a creditor is higher than the amount designated above and in the Arbitration Award, only the amount designated shall be paid. The funds remaining in the house sale proceeds account after payment of the above creditors shall then be distributed as follows: 30.18% to Dr. Perry Jones and 69.82% to Karen Jones;

3.15.11 The joint credit cards shall be separated or if the credit institution is unable to separate the cards, the accounts shall be closed. The parties shall cooperate in removing their names and/or executing the requisite documents to enable the credit institution to establish separate accounts.

**WARNING: VIOLATION OF THE SUPPORT PROVISIONS OF THIS ORDER, WITH ACTUAL KNOWLEDGE OF ITS TERMS, IS PUNISHABLE BY CONTEMPT OF COURT, AND MAY SUBJECT A VIOLATOR TO ARREST.**

DATED: May 1, 2013  
 Presented by:  
 MICHAEL W. BUGNI & ASSOC., PLLC

  
 THE HONORABLE MONICA BENTON  
 Respondent or Respondent's Attorney:  
 LAWRIE & GILBERT PLLC

By \_\_\_\_\_  
 LuAnne Perry, WSBA#20018  
 Attorneys for Karen M. Jones

\_\_\_\_\_  
 Andrea Gilbert, WSBA #12650  
 Attorneys for Perry J. Jones III

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**EXHIBIT "A" TO DECREE OF DISSOLUTION**  
**ASSETS AND LIABILITIES AWARDED TO HUSBAND- DR. PERRY JONES**

**ASSETS**

1. The real property located in Superior, Mineral County, Montana commonly known as Sheep Mountain Lodge and held in the LLC commonly known as Sheep Mountain Lodge LLC, and all of the interest in Sheep Mountain Lodge, LLC.
2. All personal property located at the real property in paragraph 1 above;
3. All bank accounts, checking accounts, saving accounts and credit union accounts in his name only and in the name of any entity awarded to him;
4. Husband is awarded 30.18% of the balance of the house sale proceeds remaining in the Commerce Bank Account managed by Dave Munko, CPA after payment of the community liabilities listed in paragraph 3.15.10 of the Decree, except that all judgment sums listed in the Decree or other judgments entered contemporaneously with the Decree against Husband in favor of Wife shall be deducted from Husband's award and paid to the Wife, AND FURTHER, all interest and/or late fees, and storage costs in the amount of \$7,767.62 shall be deducted from the Husband's award with the additional interest being paid to the creditors and the storage fees being paid to the storage facility.
5. Charles Schwab Contributory IRA (Perry J. Jones III);
6. All right, title and interest in his dental practice commonly known as Dr. Perry J. Jones III DDS including, but not limited to, all accounts receivable, equipment, fixtures and other personal property located therein;
7. All right, title and interest in Ballard Dental Arts LLC (50% interest in office building);
8. All rights and interest in Great West Financial ADA Term Life Policy #129740529 except to the extent there is unpaid maintenance owing to the Wife, she shall be listed as a beneficiary of the policy to secure the declining maintenance balance;
9. 2005 Ford Excursion. The Husband shall become solely obligated for all costs which may become due for the use, operation, maintenance and financing thereof, and shall hold the Wife harmless thereon;
10. 1993 Jaguar. The Husband shall become solely obligated for all costs which may become due for the use, operation, maintenance and financing thereof, and shall hold the Wife harmless thereon;
11. Any insurance policy covering the 2005 Ford Excursion and/or the 1993 Jaguar;
12. One-half of the Alaska Airlines miles;
13. Any property acquired by the Husband prior to marriage or subsequent to the date of the parties' separation unless otherwise specifically awarded herein;
14. All non-vehicle tangible personal property including furniture, furnishings, clothing, personal items and personal property of any description presently in his possession unless otherwise specifically awarded herein or owned by the wife prior to the marriage or acquired by her post-separation.

The following specific items of personal property (except the specific items awarded to the Wife as listed in Exhibit B-2 and B-3):

Native American Indian Art Collection;

Furniture, silver, china, porcelain;

Tie-Making Machine;

Inventory for Tie Making Enterprise;

Collectibles at Dental Office;

Stamps and Postcards;

Rock/Gem Collection;

Etchings and Engravings;

Guns;

Outdoor Gear;

Watercraft;

Silver coins held in a bag;

Austrian Coronas;

Krugerrands; and

Miscellaneous coins appraised at approximately \$840

#### LIABILITIES

1. The Husband will keep and be responsible for any and all credit card accounts or debts in his sole name or in the name of any entity or business awarded to him.
2. The Husband is solely responsible for any new charges on the debts being paid under paragraph 3.15.10 after issuance of the Arbitration Award.

**EXHIBIT "B" TO DECREE OF DISSOLUTION**  
**ASSETS AND LIABILITIES AWARDED TO WIFE- KAREN JONES**

**ASSETS**

1. The real property located St. Cyprien, Dordogne France commonly described as follows: Grelat, 24220 Bezenac including: a dwelling house, stone a barn, a stone workshop, a tobacco drying shed; a swimming pool; a baker's oven and ground. The award specifically includes 100% of the interest in any entity in which the real property is held.
2. All personal property located at the real property in paragraph 1 above;
3. All bank accounts, checking accounts, saving accounts and credit union accounts in her name only and in the name of any entity awarded to her or associated with any asset awarded to her and, specifically, the joint US Bank account. The Wife may close said US Bank account if she chooses, and Husband shall cooperate in being removed from the account;
4. Wife is awarded 69.8% of the balance of the house sale proceeds remaining in the Commerce Bank Account managed by Dave Munko, CPA after payment of the community liabilities listed in paragraph 3.15.10 of the Decree, in addition to all judgment amounts as reflected in paragraph 4 of Exhibit A;
5. Charles Schwab Contributory IRA (Karen Jones);
6. Charles Schwab Brokerage Account #XXXXX1451 (Perry J. Jones III & Karen M. Jones Jt. Ten.);
7. The entirety of the assets/balance(s) including the 1000 oz. of silver attributed to Dr. Perry Jones and/or Karen Jones in the Dr. Perry Jones DDS Profit Sharing account as of January 18, 2013;
8. All wine owned by the parties wherever stored including, but not limited to, storage at Elliott Avenue Wine Storage, Seattle Washington;
9. 2009 Toyota Venza. The Wife shall become the solely obligated for all costs which may become due for the use, operation and maintenance thereof after payment of the outstanding loan owed per paragraph 3.15.10 of the Decree of Dissolution, and shall hold the Husband harmless thereon;
10. Any insurance policy covering the 2009 Toyota Venza;
11. All non-vehicle tangible personal property including furniture, furnishings, clothing, personal items and personal property of any description presently in her possession unless otherwise specifically awarded herein to the Husband;
12. Any property acquired by the Wife prior to marriage or subsequent to the date of the parties' separation unless otherwise specifically awarded to the Husband herein;
13. The specific items of personal property allocated to the Wife on the following pages B-2 and B-3;
14. All of her jewelry and personal effects wherever located; and
15. One-half of the Alaska Airlines miles;

LIABILITIES

1. The Wife will keep and be responsible for credit card accounts in her sole name except to the extent provided in paragraph 3.15.10 of the Decree of Dissolution and page 2 of Exhibit A.

STATE OF WASHINGTON } ss.  
County of King

I, BARBARA MINER, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument, as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office at Seattle this \_\_\_\_\_ day of MAY 10 2013 20

BARBARA MINER, Superior Court Clerk  
By \_\_\_\_\_  
Deputy Clerk



# APPENDIX H

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**FILED**  
KING COUNTY CLERK  
MAY 01 2013  
SUPERIOR COURT CLERK  
Victor Bigonile  
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR KING COUNTY

In re the Marriage of:	)	
KAREN M. JONES	)	NO. 12-3-02252-0
	)	ORDER ON CROSS
Petitioner,	)	MOTION TO CONFIRM
and	)	ARBITRATION AWARD
PERRY J. JONES III	)	AWARD LEGAL FEES.
	)	
Respondent.	)	

**I. ORDER**

THIS MATTER, having come on regularly before the above-entitled Court, the undersigned Judge, upon the request of the Petitioner, and the Court being otherwise fully advised in the premises, NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED that:

LAW OFFICES  
MICHAEL W. BUGNI & ASSOC., PLLC  
11300 ROOSEVELT WAY NE, STE. 300  
SEATTLE, WA 98125  
(206) 365-5500 • FACSIMILE (206) 363-8067

**ORIGINAL**

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1. Respondent's request for oral argument on his Motion to Vacate is DENIED;
2. Petitioner's Request to consider Respondent's Motion to Vacate and Petitioner's Motion to Confirm Award and for other relief together, on April 30, 2013, is GRANTED;
3. Respondent's Motion to Vacate is DENIED;
4. Petitioner's Motion to Confirm the Award is GRANTED;
5. Petitioner's request to strike Respondent's submission of all documents submitted to the Arbitrator is GRANTED;
6. Petitioner's request for fees and costs incurred after the Arbitration Award was entered is GRANTED in the amount set forth in the Decree of Dissolution and these amounts are considered reasonable;
7. Petitioner's request to shift to Respondent the additional interest and/or late fees and storage costs as established in the Declaration of Karen M. Jones dated April 22, 2013 is granted as provided in the Decree of Dissolution.

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LAW OFFICES  
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SEATTLE, WA 98125  
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Dated: May 1, 2013

[Signature]  
HONORABLE MONICA BENTON

Presented by:  
LAW OFFICES OF MICHAEL W. BUGNI  
& ASSOC., PLLC

Copy Received, Approved for Entry and  
Notice of Presentation Waived by:  
LAWRIE & GILBERT

By [Signature]  
LuAnne Perry, WSBA No. 20018  
Attorneys for Petitioner

By \_\_\_\_\_  
Andrea Gilbert, WSBA No. 12650  
Attorneys for Respondent

LAW OFFICES  
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# APPENDIX I

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**FILED**  
KING COUNTY, WASHINGTON  
JUL -9 2013  
SUPERIOR COURT CLERK  
ANDRE JONES  
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR KING COUNTY

In re the Marriage of:	)	NO. 12-3-02252-0
KAREN M. JONES	)	
	)	ORDER DENYING AMENDED
	)	MOTION TO VACATE OR MODIFY
Petitioner,	)	ARBITRATION AWARD AND
and	)	AWARDING ATTORNEYS FEES
	)	AND CORRECTING JUDGMENT
PERRY J. JONES III	)	SUMMARY; CONCLUDING ALL
	)	MOTIONS PENDING BEFORE THE
Respondent.	)	COURT FILED PRIOR TO JUNE 13,
	)	2013
	)	

**JUDGMENT SUMMARY.**

A.	Judgment Creditor	Karen M. Jones
B.	Judgment Debtor	Perry J. Jones III
C.	Principal Judgment Amount	\$
D.	Interest to date of Judgment	\$
E.	Attorney's Fees	\$16,937.50
F.	Costs	\$293.23
G.	Other Recovery Amount	N/A
H.	Principal judgment shall bear interest at 12% per annum.	N/A
I.	Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum.	
J.	Attorney for Judgment Creditor	LuAnne Perry
K.	Attorney for Judgment Debtor	Andrea Gilbert

ORDER DENYING AMENDED MOTION TO  
VACATE OR MODIFY ARBITRATION AWARD -  
Page 1 of 3

**LAW OFFICES**  
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**ORIGINAL**  
Page 384

1  
2 THIS MATTER, having come on regularly before the above-entitled Court, the  
3 undersigned Judge Monica Benton presiding, upon the motion of the Respondent filed on  
4 June 7, 2013, and the Court being otherwise fully advised in the premises, NOW,  
5 THEREFORE, IT IS HEREBY

6 ORDERED, ADJUDGED AND DECREED that

- 7
- 8 1. Respondent's Amended Motion to Vacate or Modify Arbitration Award is  
9 DENIED.
  - 10 2. Petitioner's request to strike Respondent's submission of all documents submitted  
11 to the Arbitrator is GRANTED;
  - 12 3. Petitioner's request for fees and costs incurred in responding to the Amended  
13 Motion to Vacate and also those established in the Declarations of LuAnne Perry  
14 filed on April 23 and April 30, 2013 and which were awarded on May 1, 2013, is  
15 GRANTED in the amount of \$16,937.50 and the costs in the amount of 293.23.  
16 These amounts are considered reasonable and are reflected above in the judgment  
17 summary of this order;
  - 18 4. It is the intention of the Court this Order addresses all outstanding motions and  
19 requests for relief filed by either party to this Court prior to June 13, 2013.  
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22  
23 Dated: July 8, 2013

24   
25 HONORABLE MONICA BENTON

ORDER DENYING AMENDED MOTION TO  
VACATE OR MODIFY ARBITRATION AWARD -  
Page 2 of 3

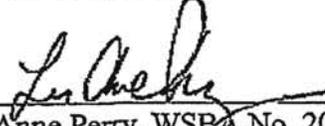
**LAW OFFICES**

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Presented by:

LAW OFFICES OF MICHAEL W. BUGNI  
& ASSOC., PLLC

By   
LuAnne Perry, WSBA No. 20018  
Attorneys for Petitioner

Copy Received, Approved for Entry and  
Notice of Presentation Waived by:  
LAWRIE & GILBERT

By \_\_\_\_\_  
Andrea Gilbert, WSBA No. 12650  
Attorneys for Respondent

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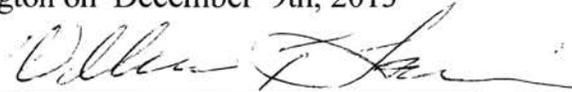
OTHER AUTHORITIES

Black’s Law Dictionary.....p 23

PROOF OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on the 9th day of December, 2013 I delivered a copy of the document(s) to which the certificate is affixed for delivery by ABC legal service to Luanne Perry, attorney for Respondent.

Signed at Seattle, Washington on December 9th, 2013

  
WILLIAM T. LAWRIE