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FILED
COURT OF APPEALS DIV
STATE OF WASHINGTON

2014 FEB 26 PM 2:49

No 71017-6-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

BARBARA KAYE, Respondent

v.

KARL KAYE, Appellant

BRIEF OF RESPONDENT

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STATEMENT OF CASE
Underlying facts

Respondent, Barbara Kaye, (“Barbara”) accepts in substance most of the appellant’s (Karl’s) Statement of Case as set forth in his brief.

Financial. Karl’s account gives a misleading picture of the parties’ finances during their marriage. Barbara does not believe that Karl, as stated on page 10 of his brief without reference to the record, contributed \$650,000 of his separate estate to the community. Karl never worked. In 1984, when Karl and Barbara married, she was making \$25,000. RP 62. When they went on vacations each paid his or her own way. RP 62 They shared expenses until 1996 at which time Karl told Barbara he had no more money. RP 63. Barbara was earning \$67,000 then, but that was not enough to cover their expenses. RP 63. Karl told Barbara that she “needed to earn more money because he didn’t have any money. . .” She liquidated all of the separate property during the marriage. RP 29. Barbara inherited \$5,800 in 1998, which was used to pay real estate taxes on Karl’s property. RP 65 When the parties married the debt was \$18,000 EX 104, RP 58 It was \$385,000 or \$390,000 when the separated. The property was refinanced 6 times during the marriage RP 57, sometimes to take cash out RP 57 or pay debts to support their life

style, so that the debt secured by the property went from \$18,000 of Karl's separate debt when the parties married to \$385,000 of community debt when they separated. RP 58.

Karl was not interested in a budget. RP 131 In 2003, Barbara was making \$80,000 and was paying all the bills. RP 69 Karl also sold his rental property for about \$500,000 in 2003 Ex 110. The money lasted nine years. RP 73. EX 111 is the check register showing where the money went. Barbara was paying community bills at the time and she believes \$173,000 of the \$500,000 went for community expenses. RP 123 Karl did not reimburse Barbara for any of her separate contributions to his separate expenses. RP 74 He did not repay the community for community funds used to support his separate expenses. RP 127 After Barbara moved out she continued to pay approximately \$5,000 per month of Karl's expenses RP 77 and EX 4.

Prenuptial Agreement. Barb **did not** testify, p 11, appellant's brief, that Karl suggested that she consult a lawyer. She testified that consulting a lawyer "crossed [her] mind" that she "noticed that it [the agreement] said that [she] had an opportunity to go to a lawyer." RP 115. Karl said he told her she "should talk to a lawyer if she wanted to." RP 150 She did not consult a lawyer because Karl told her "not to worry about it, that he had all the money that he needed to take care of all of his stuff

and that I wouldn't be asked to be giving a gift of any sort—" RP 123, 4 It didn't matter because he had enough money to take care of whatever he needed to take care of . . ." She understood the agreement to be that "I took care of my stuff. He had his, I had mine. It was going to be separate." RP 128 Apparently Karl was also unaware of the actual provisions of the agreement. He told Barbara it was normal, standard. RP 124 He agreed, RP 194, that he didn't understand it when he signed it.

Explaining why he wanted it, he said,

I had two reasons: One is I wanted to protect my separate property. I had been divorced previously and I didn't want to be put in the position of losing my home or my separate property. And the other reason, which I don't know if its valid or not but I thought at the time made sense, was that if something ever happened to Barb, I didn't want to be in the position of having my separate estate taxed as an estate tax situation where it would become taxable as community property, if it was fell (sic) under the category of being large enough to be taxed for estate taxes.

RP 147

The trial judge stated

[I]t's abundantly clear to me that neither of these spouses understood what was in that agreement whatsoever. Mr Kaye was extremely unclear. He didn't know what was in there. He—obviously the agreement was drafted by by extremely competent counsel, preeminent counsel, but Mr Kaye didn't know what was there. And neither did Ms Kaye. They had no understanding of what the contents of this prenuptial agreement was."

RP 322

Date of separation. The parties separated on March 25, 2011. Finding of Fact 2.5, when Barb moved out. She had no intention of returning. RP 133 Karl's brief alleges, p. 26, without any citation to the record, that "Barbara was undecided, ambivalent between her desire to stay married and her love for her boss's boss with whom she was involved and her love for Karl." She denied ambivalence about Karl and being involved with Mark Nelson. RP 133 She cared about Karl's welfare. RP 242 Karl wanted counseling in hopes of reconciliation, RP 143. She went to counseling not with thought of reconciliation with Karl, because "I was just helping Karl to understand why I had left. And he had mentioned he was, you know not getting along real well, like being depressed and I just wanted to help him through the process of why I was leaving so he would know why I was leaving." RP 132

That is consistent with what Karl and Barb's counselor said, (a) that the purpose of the counseling was "to provide a forum for them to communicate, because they were not having communication otherwise, and to see if the issues that had led Mrs. Kaye to leave the house could be addressed and clarified." RP 222 The counselor said "She certainly expressed caring for him and concern for him. It is quite possible that she said that she loved him, but I don't recall that clearly." RP 224. Those two statements are the totality of Karl's evidence that the marriage was not

defunct. Of course she cared for him. She had been providing most of the funds to support the household since 1996. RP 63 “The mortgage, the credit cards, the bills, the household. I paid pretty much everything.” RP 75 She kept providing for Karl’s support after she moved out of his house. However she never had any intention of returning to Karl. RP 133

**RESPONSE TO FIRST ASSIGNMENT OF ERROR:
THE PRENUPTIAL AGREEMENT**

Karl asks the court to enforce the parties’ prenuptial agreement.

The law regarding prenuptial agreements has evolved somewhat over time. The present state of the law of prenuptial agreements is summarized by Judge Appelwick in the 2012 case of *Kellar v. Kellar*:

We rely on the reasoning in *Flannery*, *Crawford*, and *Hollett* in holding that a prenuptial agreement that is substantively and procedurally unfair is void from the inception and incapable of ratification. . . . A prenuptial agreement is substantively fair if it provides a fair and reasonable provision for the party not seeking enforcement of the agreement. *In re Marriage of Matson*, 107 Wash.2d 479, 482, 730 P.2d 668 (1986). If it is substantively fair, the inquiry ends. *Id.* If it is substantively unfair, then the court considers whether or not it is nonetheless procedurally fair. *Id.* At 482-83, 730 P.2d 668. To determine whether a prenuptial agreement is procedurally fair, we consider (1) whether there was full disclosure of the parties of the amount, character, and value of the property, and (2) whether the agreement was entered into freely and voluntarily, upon independent advice, and with full knowledge by both spouses of their rights. *Id.* At 483, 730 P.2d 668. Thus a prenuptial agreement is valid if it is either substantively fair or procedurally fair. The party seeking to enforce the agreement has the burden of proving its validity. *Crawford*, 107 Wash.2d at 496, 730 P.2d 675

Kellar v. Estate of Kellar, 172 Wn.App 562 par 43, 44, 291 P.3d 906
(2012)

FIRST PRONG: SUBSTANTIVE UNFAIRNESS

Several indicia of substantive unfairness, which are present in the Kaye prenuptial agreement, have been enunciated by the courts:

“Peggy waived any and all equitable liens which the marital community might otherwise acquire by virtue of the expenditure of community funds or community labor on or for the benefit of James’s separate estate.” *Marriage of Foran*, 67 Wn.App. 242, 249, 834 P.2d 1081 (1992) Kaye Agreement Paragraph 6

“Peggy also waived all of her statutory rights as a surviving spouse in the event that James should predecease her.” *Foran* at 250 Kaye Agreement Paragraph 9

“She also waived any right to make a claim against James’ separate estate in the event of a marital dissolution.” *Foran* at 250 Kaye Agreement Paragraph 8

“There was no contractual requirement that the marital community be reimbursed for the value of any financial contributions and personal services it might contribute to James’ separately owned business.” *Foran* at 250 Paragraphs 6 and 10

On these facts the court found the prenuptial agreement to be substantively unfair:

“The contract fails the test of economic fairness and we must ‘zealously and scrupulously’ examine the circumstances leading up to its execution, with an eye to procedural fairness.” *Foran* at 251

Similar indicia of substantive unfairness are found in *Marriage of Bernard*, 165 Wn.2d 895, 204 P.3d 907 (2009)

In addition to these indicia of unfairness, the Kaye Agreement contains a provision that is even more unfair. It provides that if the parties borrow money on the security of Karl’s separate property, then the proceeds of the loan are Karl’s separate funds but the debt remains a community debt. Kaye Agreement Paragraph 6.

Since interest rates are lower for secured loans than they are for unsecured loans, and since Barbara had no significant separate property to use as security, the Kaye Agreement is in practicality an agreement that loan proceeds all belong to Karl and the community owes the debt.

The Kaye Agreement does allow for the creation of community property, paragraph 7(C) but since it was contemplated that Karl would not work RP 144, 145, what that meant in practicality is that fruit of Karl’s labor would belong entirely to him, Kaye Agreement Paragraphs 6 and 10, and the fruit of Barbara’s labor would also belong at least half to him,

because it was community property or possibly his separate property if it was spent on his separate property. Kaye Agreement Paragraphs 6 and 7.

Obviously it is possible to disagree about what is fair, especially in close cases. However, there should be no disagreement in a case as clear as this one. The courts have found the agreements in *Foran*, *Bernard*, *Kellar*, all of which were less unfair than the agreement in Kaye to be unenforceable.

“To determine the enforceability of a prenuptial agreement, this court undertakes a two prong analysis. Cites omitted. The burden of proof lies with the spouse seeking enforcement. Friedlander, 80 Wash.2d at 300, 494 P.2d 208” *Bernard* par 13

“Under the first prong, the court determines whether the agreement is substantively fair, specifically whether it makes reasonable provision for the spouse not seeking to enforce it.. . This is entirely a question of law unless there are factual disputes that must be resolved in order for a court to interpret the meaning of the contract. . . .”*Bernard* Par 14

The indicia of substantive unfairness found were that “the amended agreement severely restricted the creation of community property” par 19; it “permit[ed] Thomas to enrich his separate property at the expense of the community” par 19; the “agreement provided nothing

for Gloria from Thomas's separate property" par 20; there was no "reimburse[ment to] her for her contributions to Thomas's separate property" par 20; and the agreement "precluded any inheritance."

"[O]verall [the agreement] made provisions for Gloria, disproportionate to the means of Thomas, and limited Gloria's ability to accumulate her separate property while precluding her common law or statutory claims on Thomas's property." *Bernard* par 23

Every one of these Bernard indicia of substantive unfairness is present in the Kaye case.

In addition, a further unfair provision is that whenever the parties borrowed money secured by Karl's separate property the funds received automatically became Karl's separate property and the debt became legally the community's debt, but in fact , Barbara's debt. (Agreement par 6) since only Karl had property with which to secure a debt and only Barbara had community income to repay the debt. Thus when the community borrowed money to buy a car, getting the lowest interest rate possible by borrowing on Karl's real property, then although Barb paid for the car by repaying the loan, since only she had income, the car belonged solely to Karl since it was paid for by the loan proceeds which, by the terms of the agreement were his separate property.

The agreement was substantively unfair when it was entered into. *In re Marriage of Zier*, 136 Wash.App. 40, 147 P.3d 624 (2006) cited in *Bernard* at par 20.

In the Kaye Prenuptial Agreement, Karl disclosed assets and debts netting \$958,406.41 but did not disclose the value of a trust or an annuity. Barbara's net worth was \$75,725. According to the terms of the prenuptial agreement their relative disparity was sure to increase, as it has, since the value of any work he did in managing his separate property was his separate property and any return on work Barb did in her employment was community property.

Evaluated now, the agreement would be even more unfair since Barbara's separate assets have largely disappeared, spent by the parties to pay living expenses and debt associated with Karl's separate property. The latest refinance in 2009 resulted in Barbara being legally responsible for approximately \$380,000 in indebtedness secured by Karl's separate real property.

Karl believes, in spite of all of this, that the agreement is fair, that it does "make a fair and reasonable provision for the party not seeking enforcement of the agreement." *In re Marriage of Matson*, 107 Wash.2d 479, 482, 730 P.2d 668 (1986). But Karl's ideas of fair and reasonable are idiosyncratic:

Q: Okay, I guess what I am suggesting is that sooner or later you're going to have to adjust to less money than you are spending now, aren't you?

A: Yes

Q: Okay at an absolute minimum it's going to be when she dies or retires, isn't it?

A: Probably

Q: Okay. In the meantime, in order to support this lifestyle you have, since it costs you \$8,000 a month to live and your income is a little over a thousand, she's going to have to pay you \$7,000 a month, isn't she.

A: Based on the figures that we've—yes.

Q: Okay. Do you think that is reasonable.

A: Yes, considering that she doesn't have any housing expense.

RP 180,181

Q: If you split that [the community property] 50/50, after subtracting the community debt, that's about \$60,000 a piece, isn't it?

A: Okay

Q: Okay? So if you keep your separate property, and she keeps her separate property, and she gets half the community property, and she pays the maintenance to you that you need and she gets \$60,000 and you get \$8,000 a month until she retires, is that fair?

A: I think so. . .

RP 184

We believe that the agreement was clearly unfair at the time it was signed and that subsequent events have made its initial unfairness manifest. Even though Karl started out with far more than Barbara the agreement was designed to shift property from Barbara to Karl and that's what happened.

Nonetheless the agreement would be enforceable if sufficient procedural safeguards had been observed.

SECOND PRONG; PROCEDURAL FAIRNESS

If, however, the agreement is substantively unfair to the spouse not seeking enforcement, the court proceeds to the second prong. Under the second prong, the court determines whether the agreement is procedurally fair by asking two questions: (1) whether the spouses made a full disclosure of the amount, character, and value of the property involved and (2) whether the agreement was freely entered into on independent advice from counsel with full knowledge of both spouses of their rights. *Matson*, 107 Wash.2d at 484, 730 P.2d 668. If the court determines the second prong is satisfied, then an otherwise unfair distribution of property is valid and binding.

Marriage of Bernard, par 15

When “ the contract fails the test of economic fairness . . . we must ‘zealously and scrupulously’ examine the circumstances leading up to its execution, with an eye to procedural fairness.” *Matson*, 107 Wash.2d at 486, 730 P.2d 668” *Foran* at 25

Full disclosure. The assets Karl disclosed in the prenuptial agreement have a disclosed value of a little over a million dollars. Although he did disclose that he had an inheritance, both as a lifetime beneficiary of a trust and as a remainderman of a trust, he did not disclose any value of this presumably not-trivial asset. Judge Lum opined that he had no duty to disclose what he did not know and excused him.

We believe at a minimum he should have said that he did not know. One is required under the rules of discovery to find things out when asked by one's opponent. Presumably when under a duty of "the highest degree of good faith, candor and sincerity in all matters bearing on the proposed agreement" Karl should have at least made an effort to find out. By not disclosing the values of these substantial assets he violated his duty of "mutual trust and candor." [Parties entering into prenuptial agreements] must exercise the highest degree of good faith, candor and sincerity in all matters bearing on the proposed agreement" *Marriage of Mattson* 107 Wn.2d479,484, 730 P.2d668 (1986), citing "*Whitney*, at 108, 379 P.2d 937 (quoting *Hamlin*, 44 Wash.2d at 864, 272 P.2d 125. "To uphold the validity of a prenuptial agreement under Washington law, it still requires full disclosure by both parties of all aspects of each party's assets" *Mattson* at 484.

The value of the assets that Karl disclosed is a little whimsical: e.g. personal property rounded off to \$100,000 (item 7); one share of Dalfort Corp. \$15.00 (item 1(g)). The “disclosure” was certainly not designed to give a full picture since cash and values were omitted. Karl’s only additional disclosure to Barbara was his oral assurance that he had sufficient assets so that she would never have to be responsible for financially supporting his separate property. RP 123, 4

Necessity of legal advice.

Barb received no legal advice because she didn’t know she needed any. The reason she didn’t know she needed any legal advice was that she didn’t know what she was signing, and the reason she didn’t know what she was signing is that she didn’t receive any legal advice.

The purpose of independent counsel is more than simply to explain just how unfair a given proposed contract may be; it is for the primary purpose of assisting the subservient party to negotiate an economically fair contract. The desire of the economically dominant party to preserve the bulk of his or her wealth, and for some reasonable degree of certainty in the event of divorce, is not necessarily entirely inconsistent with the goal of economic fairness for the disadvantaged party. It is not conducive to marital tranquility to ask a party who comes into the marriage to leave the marriage equally destitute, or worse. . .

Foran at 254, 255

There is no absolute requirement of independent counsel. . . Whitney, however, did not require the advice of independent counsel because the agreement was fair and reasonable, and there was no showing of fraud or overreaching. **Here the agreement was patently unreasonable. Independent counsel was required.** (emphasis supplied)

Foran at 256

The **opportunity** to have legal counsel is not sufficient, because people sometimes need legal advice to find out they need legal advice. In this case, where Barbara so completely misunderstood what she was signing, legal advice was absolutely required.

Barbara did not have independent counsel. Moreover, the primary reason she did not have someone to (a) tell her what the agreement meant (b) tell how contrary to Washington Law it was, and (c) point out to her necessary modifications and to try to negotiate them, was that Karl told her, RP 124, that the agreement was “normal, standard” and she took his word for that. It was understandable for her to believe him because she trusted him and because he believed it too. According to Karl’s trial testimony what he wanted from a prenuptial agreement would have occurred without any agreement at all. E.g. RP 201 Since all he wanted was for both to keep their separate property separate presumably it would have not been difficult to negotiate more fair modifications

Karl was represented by extremely competent counsel in the drafting of the Agreement. Karl’s assertion to Barbara that the Agreement was “standard” was very misleading. We concede that this false characterization of the agreement was not fraudulent, since it became clear

at trial that Karl did not know any better. Even by the time of trial he still did not understand the agreement. The trial judge observed: “It’s abundantly clear to me that neither of these spouses understood what was in that agreement whatsoever.” RP 322 Since neither party knew the import of what was being signed, an argument can be made that he contract is voidable by reason of mutual mistake.

BURDEN OF PROOF

As the party wishing to enforce the agreement, the burden of proof. *Kellar v. Estate of Kellar*, 172 Wn.App 562 par 43, 44, 291 P.3d 906 (2012) That is, the burden of proof is on Karl to show (1) either that the agreement is fair, i.e. that it makes reasonable financial provisions for Barbara or (2) that the agreement was entered into after the procedural safeguards for Barbara set forth in the case law which is cited. He has done neither.

**RESPONSE TO SECOND ASSIGNMENT OF ERROR;
CREATION OF SEPARATE PROPERTY**

Karl claims that the court erred in finding that the stock benefits that Barbara received between March 23, 2011 and the date the petition was filed are not her separate property. He believes that although the parties had separated, Finding of Fact 2.5, CP 48, they were not “living separate and apart,” within the meaning of RCW 26.16.140.

There are two issues: (a) When was the marriage sufficiently defunct that RCW 26.16.140 applies? (b) When did the stock benefits vest?

(a) *Separation*. The marriage was defunct when Barbara moved out. There is a thorough summary of what various authorities have taken it to mean that a marriage is defunct so that subsequent earnings are separate property in *Marriage of Pletz*:

When a husband and wife are living separate and apart, their respective earnings and accumulations shall be the separate property of each....

The applicability of RCW 26.16.140 has been described in various ways, each seemingly equivalent to the others. According to some authorities, the statute applies when a marriage is "for all practical purposes 'defunct' ", regardless of the fact that the marriage has not been legally dissolved. *Bunt*, 110 Wash.2d at 372 (citing *Rustad v. Rustad*, 61 Wash.2d 176, 180, 377 P.2d 414 (1963)); *Oil Heat Co. of Port Angeles, Inc. v. Sweeney*, 26 Wash.App. 351, 354, 613 P.2d 169 (1980). According to other authorities, the statute applies when the parties have ceased to have a "community" relationship, thus retaining only a skeletal "marital" relationship. *Bunt*, 110 Wash.2d at 372, 754 P.2d 993; *Togliatti*, 29 Wash.2d at 852, 190 P.2d 575; H. Cross, *The Community Property Law in Washington* (revised 1986), 61 *Wash.L.Rev.* 13, 33 (1986). [13] According to yet other authorities, the statute applies when the parties have permanently separated, Cross, 61 *Wash.L.Rev.* 71 *Wn.App.* 706 at 34, but not merely because they have physically separated. *Bunt*, 110 Wash.2d at 372, 754 P.2d 993; *Aetna Life Ins. Co. v. Boober*, 56 Wash.App. 567, 570, 784 P.2d 186 (1990); *Oil Heat Co.*, 26 Wash.App. at 354, 613 P.2d 169 Under any of these formulations, the question "is whether the parties by their conduct have exhibited a decision to [861 P.2d 1085] renounce the community, with no intention of ever resuming the marital relationship." *In re Marriage of Nuss*, 65 Wash.App. 334, 344, 828 P.2d 627 (1992) (quoting *Oil Heat Co.*, 26 Wash.App. at 354, 613 P.2d 169); *Boober*, 56 Wash.App. at 571, 784 P.2d 186. The question is one of fact, and its resolution depends on all the facts and circumstances of the case.

[14] *Dizard & Getty v. Damson*, 63 Wash.2d 526, 529, 387 P.2d 964 (1964); *Togliatti*, 29 Wash.2d at 852, 190 P.2d 575; *Nuss*, 65 Wash.App. at 344, 828 P.2d 627. Like any question of fact, it is decided primarily by the trial court, and review on appeal is limited to determining whether the trial court's finding is supported by substantial evidence. *Colonial Imports, Inc. v. Carlton Northwest, Inc.*, 121 Wash.2d 726, 730 n. 1, 853 P.2d 913 (1993); *Doe v. Boeing Co.*, 121 Wash.2d 8, 18, 846 P.2d 531 (1993). Evidence is substantial if, when viewed in the light most favorable to the party prevailing below, it is such that a rational trier could find the fact in question by a preponderance of the evidence. See *In re Dependency of C.B.*, 61 Wash.App. 280, 285-86, 810 P.2d 518 (1991).

Marriage of Plelz, 71 Wn.App. 699, 705-706, 861 P.2d 1080 (1993)

On any of the various formulations or glosses on RCW 26.16.140, the trial judge clearly had substantial evidence to support his finding that the marriage was defunct when Barbara moved out. Barbara said she had no intention of coming back to Karl and apparently preferred paying Karl's expenses and living apart to living with him.

(b) Separate Property. The stock that was acquired after separation is Barbara's separate property. The ownership of stock of stock options which were unvested during marriage but became vested during separation is addressed in *Marriage of Short*, 125 Wn.2d 865, 890 P.2d 12 (1995).

The stock vesting schedule is set forth in Exhibit ???. Under the principles set for in *Short*, the stock vested and became Barbara's property after separation.

In *Short*, our Supreme Court addressed the question whether employee stock options, which were unvested during the spouses'

marriage but became vested during their separation, should be characterized as separate or community. The court applied the so-called "time rule": To determine how unvested employee stock options are characterized under RCW 26.16, a trial court must first ascertain whether the stock options were granted to compensate the employee for past, present, or future employment services. This involves a specific fact-finding inquiry in every case to evaluate the circumstances surrounding the grant of the employee stock options. Unvested employee stock options granted during marriage for present employment services, assuming the parties were not "living separate and apart" under RCW 26.16.140 when the stock options were granted, are acquired when granted. Unvested employee stock options granted for future employment services are acquired over time as the stock options vest. *See In re Estate of Binge*, 5 Wash.2d 446, 484, 105 P.2d 689 (1940). *Short*, 125 Wash.2d at 873, 890 P.2d 1.

Marriage of Griswold, 112 Wn.App. 333, 340, 48 P.3d 1018 (2002)

Most of Barbara's stock did not become vested until after separation. RP 37 – 39. Consequently, it is her separate property. Given the court's finding that the parties separated "when petitioner left the family residence" Finding of Fact 2.5, CP 48, the marriage was defunct at that point so that the court's subsequent conclusion that the stock was Barbara's separate property is correct.

RESPONSE TO THIRD ASSIGNMENT OF ERROR MAINTENANCE

Karl says, page 27 Appellant's brief, that the court ordered three months' maintenance so that he could within that period "to either sell his residence, property valued at \$1.2 million, subdivide it, or obtain a reverse

mortgage, all within a three month period.” Finding of Fact 2.12, from which Karl quotes, when read in full does not say this. The court gave him three more months of maintenance “to allow the husband to make additional arrangements **such as** (emphasis supplied) obtaining a reverse mortgage, selling the property as a whole, or subdividing and selling a portion to pay off the community mortgage on his separate property, the SBA loan, providing for his own medical and making arrangements for his own support.” The trial judge obviously thought that Karl should have begun earlier “to take other proactive steps to perhaps make alternative financial arrangements.” RP 316 “His lifestyle was simply unsustainable. And I think virtually anybody could see that this was unsustainable and headed to a problem in the marriage.” RP 317

Karl asks the court to maintain what was unsustainable. He asks this court to consider maintenance and property divisions as if they were two entirely separate and independent issues. They are not.

RCW 26.09.080 instructs the court to “make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors. . .” The statute lists some, but not all, of the factors the court should consider in achieving a “just and equitable” result.

RCW 26.09.090 states “the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just. . .” As in the statute pertaining to property, the statute regarding maintenance lists some, but not all, of the factors the court should consider in deciding what is “just.”

The two statutes, RCW 26.09.080 and 090, **require** justice; they offer **guidance in achieving** what is just and equitable.

A fair and equitable division by a trial court "does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of parties."

In re Marriage of Crosetto, 82 Wash.App 545, 556, 918 P.2d 954 (1996).

In re Marriage of Zahm, 138 Wn.2d 213, 978 P.2d 498, 501 (1999)

... This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be given greater weight than other relevant factors. The statute directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The character of the property is a relevant factor which must be considered, but is not controlling.

In re Marriage of Konzen, 103 Wash.2d 470, 477-78, 693 P.2d 97, *cert.*

denied, 473 U.S. 906, 105 S.Ct. 3530, 87 L.Ed.2d 654 (1985).

Division of property is not bookkeeping. Each case depends on its particular circumstances. Case law can be a guide but it is not like calling

balls and strikes since all cases are different, and since this case is well outside the usual: The court clearly recognized that Karl could not continue to spend \$8,000 per month with an income of slightly over a thousand per month. The court clearly recognized that Barbara had continued to pay Karl's bills in the amount of \$5,000 each month after separation. In his oral decision, Judge Lum observed that during the 27 months between separation and trial, Karl had failed to "take other proactive steps to perhaps make alternative financial arrangements. Perhaps he was hoping that his marriage could be salvaged. Perhaps he was hoping that it would simply go away or the status quo would somehow magically reappear." The word "magically" captures Karl's financial thinking. Karl wanted life time maintenance. RP 172 Karl testified, apparently seriously, that perhaps Barbara would actually be able to pay him the lifetime maintenance he wanted and which his life style required: "I can't predict the future. I mean, maybe she'll win the lottery." RP 181 The court's decision does not rely on luck or magic.

Instead, the court's decision requires Karl to make alternative financial arrangements. It does **not**, as Karl suggests, specify what financial arrangements he must make. There are no time requirements. The court specifically recognized that Karl might not be able to pay his

mortgage. Decree 3.6 CP 39 Even if Barbara were to support Karl until she retires (assuming she does not win the lottery) **sooner or later** Karl would have to live without Barbara's continuing support.

The court opted for **sooner** rather than later. That was reasonable since **later** would have delayed, but would not have solved, Karl's income to expense shortfall. Sooner or later, now or eventually, Karl will have to arrange for his own support, and the longer Barbara supports Karl the less time she will have to make provisions for her own support and retirement.

The gist of the court's resolution of the problem is that Karl live on his assets and Barbara be allowed to accumulate assets for her retirement. The court allowed Karl three more months of post trial maintenance by way of further support, presumably being cognizant of the more than \$135,000 in support Barbara had already provided Karl between separation and trial. The court's decision, in order to provide the intended relief, requires Barbara to work and save and requires Karl to establish a workable correspondence between his income and his expenses. If each of them does that they will be able to enjoy roughly equal life styles.

CONCLUSION

Marriage of Wilson is a recent case, with ample citations, setting forth the principles pertaining to appellate review:

The party challenging a trial court's dissolution decision, here Walter, has the burden of demonstrating that the trial court manifestly abused its discretion. *Griffin*, 114 Wash.2d at 776, 791 P.2d 519. "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wash.2d 39, 46-47, 940 P.2d 1362 (1997). A court's decision is manifestly unreasonable if it is based on an incorrect legal standard. *Littlefield*, 133 Wash.2d at 47, 940 P.2d 1362. We review the trial court's findings of fact for substantial evidence. *In re Marriage of Skarbek*, 100 Wash.App. 444, 447, 997 P.2d 447 (2000). "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *Bering v. SHARE*, 106 Wash.2d 212, 220, 721 P.2d 918 (1986). Where the trial court has weighed the evidence, the reviewing court's role is simply to determine whether substantial evidence supports the findings of fact and, if so, whether the findings in turn support the trial court's conclusions of law. *In re Marriage of Greene*, 97 Wash.App. 708, 714, 986 P.2d 144 (1999). An appellate court should "not substitute [its] judgment for the trial court's, weigh the evidence, or adjudge witness credibility." [267 P.3d 489] *Greene*, 97 Wash.App. at 714, 986 P.2d 144.

Marriage of Wilson, 165 Wn.App. 333, 339-340, 267 P.3d485 (2011)

The trial judge resolved a difficult situation in a way that **required** Karl to change his life style and **allowed** Barbara to change hers. Even if Barbara supported Karl until she retired (assuming she did not win the lottery) sooner or later Karl would have to live without Barbara's continuing support. The court opted for **sooner** rather than later. That

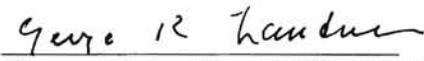
was reasonable since later would have delayed but would not have solved the problem that Karl would eventually have to arrange for his own support and the longer Barbara supported Karl the less time she had to provide for her own support. The court carefully heard the evidence. It was aware of all of the financial circumstances of the parties. Judge Lum fashioned a remedy for the unusual situation the parties had created for themselves, allowing both parties to get on with their lives. The court's decision, in order to provide the intended relief, requires Barbara to work and save and requires Karl to rationalize his finances and expenses. If both of them do that they both will be able to enjoy roughly equal life styles. That is what is fair as required by the law.

CONCLUSION

The decision should be upheld in all respects.

Dated: 26 February 2014

Respectfully submitted


George R. Landrum/ WSBA 7373
Attorney for Respondent

APPENDIX

PRENUPTIAL AGREEMENT

THIS AGREEMENT, made this 10th day of July, 1984, by and between BARBARA G. McGUIRE (hereinafter referred to as "Wife") and KARL H. KAYE, JR. (hereinafter referred to as "Husband") shall be effective as of the date the marriage of the parties is solemnized.

W I T N E S S E T H:

WHEREAS, the parties are to be married and are presently residents of the State of Washington; AND

WHEREAS, the parties desire to enter into this agreement respecting the nature of their property to define their financial rights and responsibilities with respect to the disposition of their property upon the dissolution of their marriage or the death of either party; AND

WHEREAS, the parties wish to conserve and preserve his and/or her separate assets, as defined hereinbelow, to the greatest extent that such conservation and preservation are consistent with the laws of the State of Washington;

NOW, THEREFORE, in consideration of the marriage and in further consideration of the mutual promises and undertakings hereinafter set forth, the parties agree as follows:

(1) Assets of BARBARA G. McGUIRE: Attached hereto and marked as Exhibit "A" is a complete list of all the assets owned by BARBARA G. McGUIRE as of July 10, 1984, which list shows the fair market value of each of said assets as of said date. BARBARA G. McGUIRE acknowledges that the attached list of assets contained in Exhibit "A" is the property presently owned by her and that said assets have the value stated therein to the best of her knowledge as of said date. KARL H. KAYE, JR. acknowledges and accepts the fact that these properties have not been appraised by expert appraisers and are approximation or estimates of the value of BARBARA G. McGUIRE'S property.

(2) Debts of BARBARA G. McGUIRE: Attached hereto and marked as Exhibit "C" is a complete list of all the debts of BARBARA G. McGUIRE as of July 10, 1984. BARBARA G. McGUIRE acknowledges that the attached list of debts contained in Exhibit "C" are the debts that she has incurred as of said date. KARL H. KAYE, JR. acknowledges

and accepts the fact that these debts are debts of BARBARA G. McGUIRE.

(3) Assets of KARL H. KAYE, JR.: Attached hereto and marked as Exhibit "B" is a complete list of all the assets owned by KARL H. KAYE, JR. as of June 26, 1984, which list shows the fair market value of each of said assets as of said date, except where otherwise may be indicated. KARL H. KAYE, JR. hereby acknowledges the attached list of assets contained in Exhibit "B" is the property presently owned by him and said assets have the value stated herein to the best of his knowledge. BARBARA G. McGUIRE acknowledges and accepts the fact that these properties have not been appraised by expert appraisers and are approximations or estimates of the value of KARL H. KAYE, JR.'S property.

(4) Debts of KARL H. KAYE, JR.: Attached hereto and marked as Exhibit "D" is a complete list of all the debts of KARL H. KAYE, JR. as of June 26, 1984. KARL H. KAYE, JR. acknowledges that the attached list of debts contained in Exhibit "D" are the debts that he has incurred as of said date. BARBARA G. McGUIRE acknowledges and accepts the fact that these debts are debts of KARL H. KAYE, JR.

(5) Financial Disclosures: Each party has fully disclosed their financial circumstances to the other.

(6) Separate Property: The assets presently owned by the parties as set forth in Exhibits "A" and "B", together with all income, rent, dividends, and/or interest received therefrom, shall be and remain the separate property of each of the respective parties, notwithstanding their marriage. In addition thereto, any addition or enhancement in the value of the separate property of either party shall remain the separate property of each of the parties. Any additions to or enhancement in the value of separate property of either party which occurs due to major structural improvements to said property shall be and remain the separate property of the party owning such separate property. In addition, any enhancement in the value of separate property as set forth in Exhibits "A" and "B" and the proceeds therefrom due to mere appreciation shall be and hereby remains the separate property of the party owning such separate property which has appreciated. In the event any community funds are utilized for the direct benefit of any separate property of either party, such community funds so utilized shall be deemed a gift of community property to the party owning the separate property benefited by such community funds.

Any assets acquired through the proceeds of loans secured by separate property shall be the separate property of the party whose property secured or was collateral for the loan.

(7) Earnings and Subsequent Acquired Assets:

A. The parties agree that all assets acquired during marriage which are the proceeds of

separate property shall retain the separate ownership and character of the assets from which said proceeds were originally derived.

B. The parties agree that the commingling of their separate property shall not change the character and/or ownership of said separate property.

C. The parties agree that any wages, salaries or other employment benefits attributable to the labor of either of them during such time that they shall be living together as husband and wife shall be deemed community property.

(8) Dissolution of the Marriage: While the parties are to be married and intend that said relationship will remain permanent, in the event of a dissolution of their marriage, it is hereby agreed that each shall be awarded all of his or her own separate property as defined in this agreement; and each of them expressly waives any right or interest that he or she may have or subsequently acquire in the separate property of the other. In addition, if the separate property contains any community property investment or lien therein which is to be divided by reason of marriage dissolution, such separate property shall nevertheless be awarded to the party who owned said property as his or her own separate property notwithstanding any community investment therein. The remaining community property is to be divided between the parties equally.

This agreement is not intended to be conducive to a divorce of the parties. It is not made in contemplation of divorce, but for the benefit of both parties, and is simply setting forth certain rights and liabilities as they intend in the event of divorce.

(9) Death of Either Party: Upon the death of either party, it is hereby contemplated and agreed by them that neither of them will claim any interest in the separate properties as defined herein of the other, either by inheritance or otherwise, unless the survivor has been named by the deceased party in his or her will to be the specific recipient of such separate property or portion thereof. In addition, if any separate property of the deceased party contains any community investment, over which the surviving party would have the power to will one-half thereof, it is hereby expressly agreed between the parties that said separate property shall be awarded to the deceased party's heirs at law, or by will, whichever is applicable notwithstanding said community investment and power to will said community investment. The parties also expressly waive any right he or she may have to claim a homestead and/or family allowance out of the separate real property of the other party, notwithstanding a potential community investment therein. The remaining community property otherwise accumulated is to go to surviving spouse.

(10) Disposition Powers Over Separate Property: The parties hereby agree that, subsequent to their

marriage, each party shall retain and reserve the absolute legal right to dispose of his or her separate property as he or she may so choose, whether said disposition occurs during his or her lifetime or by any testamentary document upon his or her death. Except as otherwise set forth in this agreement, the parties hereby waive and release any and all rights and claims of every kind, nature and description that each may have as against the other in the other party's separate estate upon the other party's death, including but not by way of limitation, any and all rights in testacy.

(11) Documents: The parties shall, upon the other's request, take any and all steps and execute, acknowledge and deliver to the other party any and all further instruments necessary or expedient to effectuate the purpose and intent of this agreement.

(12) Estate Planning: Nothing herein contained shall constitute a waiver or release by the parties of any voluntary provisions that either party may make by the other by will or codicil.

(13) Gifts: Neither party intends by this agreement to limit or restrict his or her right to receive any gift from the other.

(14) Acknowledgements: Each party acknowledges that:

A. Each is fully acquainted with the resources of the other and knows their extent and value to his or her full satisfaction.

B. Each party has answered all the questions the other has asked about the other's income and assets.

C. BARBARA G. McGUIRE has been encouraged to seek independent counsel to review this agreement and has been given a reasonable opportunity to seek out said advice from independent counsel concerning the effect and ramifications of this agreement, concerning the laws of the State of Washington with respect to community and separate property, and concerning the law respecting the disposition of property upon the divorce or death of a spouse.

D. This agreement was drafted by KARL H. KAYE, JR.'S attorney, who is representing his interests solely and is not representing BARBARA G. McGUIRE nor her interests.

E. BARBARA G. McGUIRE has received absolutely no legal advice from KARL H. KAYE, JR.'S attorneys or representatives.

F. Each has weighed carefully all of the facts and circumstances, and desires to execute this agreement regardless of any financial arrangements made for each other's benefit.

G. Each is entering into this agreement freely, voluntarily, and with full knowledge of his or her rights and of all the facts, including, but not limited to, the amount, character and value of the parties' property and obligations.

H. This agreement is fair.

I. Each has sufficient knowledge of the amount, character and value of the property involved to permit and form an intelligent decision regarding the execution of this agreement.

(15) Severability: In the event any of the provisions of this agreement are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of this agreement and shall not cause the invalidity or unenforceability of the remainder of this agreement. If such provisions shall be deemed invalid due to its scope or breadth, such provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

(16) Attorney's Fees: Should the parties retain counsel for the purpose of enforcing or preventing the breach of any provision herein, including, but not limited to, by instituting any action or proceeding to enforce any provision herein, for damages by reason of any alleged breach of any provision herein, for declaration of such party's rights or obligations hereunder or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys fees and costs for the services rendered to such prevailing party.

IN WITNESS WHEREOF, the parties have signed this agreement on the date and year shown above.

Barbara G. McGuire
BARBARA G. McGUIRE

Karl H. Kaye, Jr.
KARL H. KAYE, JR.

STATE OF WASHINGTON)
: ss.
COUNTY OF KING)

On this day personally appeared before me BARBARA G. McGUIRE, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 10th day of July, 1984.

Carolyn S. Regis
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

STATE OF WASHINGTON)
: ss.
COUNTY OF KING)

On this day personally appeared before me KARL H. KAYE, JR. to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 10th day of July, 1984.

Carolyn S. Regis
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

EXHIBIT "A"

ASSETS OF WIFE

1. Cash in hand or in other banks - \$2,100.00;
2. Seattle Trust & Savings Bank - 400 shares,
total market value \$6,800.00
3. Real estate located at 25220 105th Place S.E.
Q-5, Kent, Washington 98031 (Unit Q-5, Kenthill
Townhomes, a condominium) - valuation is
\$43,000;
4. 1981 Fiat automobile - \$10,000.00;
5. Gun collection - \$1,000.00;
6. Personal property - \$10,000.00;
7. Life insurance policy - Prudential, face value
\$39,000.00

EXHIBIT "B"

ASSETS OF HUSBAND

1. Stocks and bonds as follows:
 - a. 23 shares of Ameritech Inc. - \$1,466.25;
 - b. 180 shares of Amer Pac CP - \$720.00;
 - c. 236 shares of Amer Tel & Teleg Company NY - \$3,628.50;
 - d. 300 shares of Barnett Banks of Fla - \$10,312.50;
 - e. 23 shares of Bell Atlantic Corp. - \$1,569.75;
 - f. 23 shares of Bellsouth Corp. - \$652.62;
 - g. 1 share of Dalfort Corp. - \$15.00;
 - h. 200 shares of Home Group 1 10 CU Pref A - \$1,700.00;
 - i. 130 shares Marine Midland Banks - \$2,746.25;
 - j. 23 shares of NYNEX Corp. - \$1,362.75;
 - k. 720 shares of Pacific Gas and Electric - \$9,720.00;
 - l. 158 shares of Pac Gas El 10.18 Pct Red 1st PF - \$2,765.00;
 - m. 23 shares of Pacific Telesis Group - \$1,265.00;
 - n. 5000 shares of Puget Snd Pwr&Lt 10.45 *85Aurg - \$4,843.75;
 - o. 200 shares of Puget Sound Pw&Lt 10.90 Cum Pr - \$3,725.00;
 - p. 200 shares Quaker Oats Co. - \$11,825.00;
 - q. 280 shares Rainier Bancorporation - \$9,835.00;
 - r. 2598 shares Safeco Corp - \$78,589.00;
 - s. 23 shares Southwestern Bell Corp - \$1,273.62;
 - t. 344 shares of Std Oil of Calif - \$12,814.00;
 - u. 30 shares of Sun Company Inc. 225 Cum Cnv PF - \$3,000.00;
 - v. 93 shares Texas Eastern Trans 2.875 Pfd - \$2,278.50;
 - w. 23 shares of US West Inc. - \$1,299.00;
2. Real estate located at 12930 Sunrise Dr. N.E. Bainbridge Island, Washington valuation of \$500,000.00, legall described as follows:

Commencing at the quarter corner common to Sections 2 and 11, Township 25 North, Range 2 East, W.M.; thence East 20 feet; thence North 0°37' West 450 feet to the true place of beginning; thence North 0°37' West 50 feet; thence South 89°51'10" East approximately 538 feet to the Government Meander line; thence South 5°15' West 50.22 feet; thence North

89°51'10" West approximately 533 feet to the true place of beginning; together with all tide lands of the second class in front thereof; (being known as Tract 31, Beverly Hills, unrecorded) ALSO, commencing at the quarter corner common to Sections 2 and 11, Township 25 North, Range 2 East, W.M.; thence East 20 feet; thence North 0°37' West 500 feet to the true place of beginning; thence North 0°37' West 50 feet; thence South 89°51'10" East approximately 544 feet to the Government meander line; thence South 5°15' West 50.22 feet; thence North 89°51'10" West 538 feet to the true place of the beginning; TOGETHER with all tide lands of the second class in front thereof; (being known as Tract 32, Beverly Hills, unrecorded); ALSO commencing at the quarter section corner common to Sections 2 and 11, Township 25 North, Range 2 East, W.M.; thence East 20 feet; thence North 0°37' West 550 feet to the true place of beginning; thence North 0°37' West 50 feet; thence South 89°51'10" East approximately 549 feet to the Government meander line; thence South 5°15' West 50.20 feet; thence North 89°51'10" West approximately 544 feet to the true place of beginning; TOGETHER with all tidelands of the 2nd class in front thereof; (being known as Tract 33, Beverly Hills unrecorded); ALSO, Tract #34, commencing at the quarter corner common to Sections 2 and 11 of Township 25 North, Range 2 E.W.M.; thence East 20 feet; thence North 0°37' West 600 feet to the true place of beginning; thence North 0°37' West 50 feet; thence South 89° 51'10" East approximately 554 feet to the Government Meander line; thence South 6°15' West 50.22 feet; thence North 89°51'10" West approximately 549 feet to the true beginning, together with all tide lands in front thereof even to extreme low tide; also described as tract No. 34, Beverly Hills unrecorded Bainbridge Island.

Tract #35, commencing at the quarter corner common to Sections 2 and 11 of Township 25, Range 2 E.W.M.; thence East 20 feet thence North 0°37' West 650 feet to the true place of beginning; thence North 0°37' West 50 feet; thence South 89°51'10" East approximately 559 feet to the Government meander line; thence South 5°15' West 50.22 feet; thence North 89°51'10" West 554 feet to the true place of beginning, together with all tide lands in front thereof even to extreme low tide; also described as Tract No. 35, Beverly Hills, unrecorded Bainbridge Island.

An undivided 30 percent interest in real estate located at 12898 Sunrise Dr. and 12870 Sunrise Dr., Bainbridge Island, Washington -

valuation of \$150,000, legally described as follows:

Portions of Government Lot 4, Section 2, Township 25 North, Range 2 East, W.M., and tidelands fronting thereon, described as follows: Commencing at the quarter corner common to Sections 2 and 11, Township 25 North, Range 2 East, W.M., thence east 20 feet; thence north 0°37' west 300 feet to the true place of beginning; then north 0°37' west 50 feet, thence south 89°51'10" east approximately 523 feet to the government meander line, thence south 5°15' west 50.22 feet; thence north 89°51'10" west approximately 518 feet to the true place of beginning, TOGETHER with all tidelands of the second class in front thereof to the line of extreme low tide, (Being known as Tract 28, Beverly Hills, according to the unrecorded plat thereof); and

Commencing at the quarter corner common to Sections 2 and 11, Township 25 North, Range 2 East, W.M.; thence east 20 feet, thence north 0°37' west 350 feet to the true place of beginning, thence north 0°37' west 50 feet; thence south 89°51'10" east approximately 528 feet to the government meander line; thence south 5°15' west 50.22 feet, thence north 89°51'10" west approximately 523 feet to the true place of beginning; TOGETHER with all tidelines of the second class in front thereof to the line of extreme low tide; (Being known as Tract 29, Beverly Hills, according to the unrecorded plat thereof;) and Commencing at the quarter corner common to Sections 2 and 11, Township 25 north, Range 2 East, W.M., thence east 20 feet, thence north 0°37' west 400 feet to the true place of beginning, thence north 0°37' west 50 feet, thence south 89°51'10" east approximately 533 feet to the government meander line, thence south 5°15' west 50.22 feet, thence north 89°51'10" west 528 feet to the true place of beginning, TOGETHER with all tidelands of the second class in front thereof to the line of extreme low tide, (Being known as Tract 30, Beverly Hills, according to the unrecorded plat thereof).

SUBJECT TO exceptions and reservations as expressed in the deed from the State of Washington under which title to said tidelands of the second class is claimed.

3. 1979 Cadillac - \$10,000.00;
4. 1972 Ford Pickup - \$500.00;
5. 12' boat, motor and trailer - \$2,000.00;

6. Gun collection - \$1,500.00;
7. Personal property - \$100,000;
8. Northwestern Mutual life Insurance - \$10,000.00, face value;
9. American Express Life Insurance - \$100,000.00 face value;
10. New York Life - \$10,000.00 face value;
11. Beneficiary in Trust at Seattle First National Bank under the Will of Karl H. Kaye;
12. Remaindermen in trust at Seattle First National Bank under the Will of Karl H. Kaye.

EXHIBIT "C"

DEBTS OF WIFE

1. \$27,600.00 mortgage on property located at
25220 105th Place S.E. Q-5, Kent, Washington
98031;
2. Nordstrom - \$400.00;
3. Visa - SeaTrust - \$900.00;
4. Mastercharge - SeaTrust - \$1,275.00;
5. SeaTrust - \$6,000.00

EXHIBIT "D"

DEBTS OF HUSBAND

1. \$18,000.00 mortgage on property located at 12930 Sunrise Dr. N.E., Bainbridge Island, Washington;
2. Visa - Rainier - \$3,400.00;
3. Visa - SeaTrust - \$1,600.00;
4. Mastercharge - SeaTrust - \$1,600.00.
5. Dean Witter Reynolds Inc. margin account - \$70,000.00.

2.7 Separation Contract or Prenuptial Agreement

A written separation contract or prenuptial agreement was executed on July 10, 1984 and is incorporated herein.

The prenuptial agreement should not be approved because:

The burden of enforcement of the prenuptial agreement is Respondent's since he is the person seeking to enforce the agreement. Substantively, the agreement must make adequate provision for the spouse not seeking enforcement and it does not. The agreement is completely one sided and was unfair at the time it was entered into.

Procedurally, there is no evidence of fraud or misrepresentation on the part of the husband in the drafting or presentation of the Agreement. The wife had two weeks to review the language. The husband's failure to disclose value of trusts may not have been possible given his status as remainder beneficiary.

To be procedurally fair, the Agreement required that both parties execute it voluntarily, but neither understood the significance of the agreement when it was entered into. Based on the testimony of the parties, it is clear that neither spouse fully understood what was in the Agreement. The husband understood the general intent of the Agreement, but neither party entered into the Agreement with full understanding of its provisions or their significance.

The wife, who is the party against whom the agreement is sought to be enforced, did not receive any legal advice. She certainly did not receive independent advice and thus did not have full knowledge of her rights the legal consequences of the agreement.

The prenuptial agreement should not be enforced.

2.8 Community Property

The parties have the following real or personal community property:

Item	Value
-2002 VW Beetle	\$ 5,000.00
-Rancho Mirage IRA	\$290,000.00
-John Hancock IRA	18,376.00
-Tangibles	undetermined
-401(k) Columbia Bank	9,248.00

The fair market value of the Rancho Mirage IRA property was determined by testimony and an appraisal.

The parties do not wish to incur the costs of a formal appraisal of tangible personal property acquired during the marriage. The parties have agreed that wife will prepare a list of items she wishes to have and that husband shall list any of those items he objects to including his reasons for the objection.

Columbia Bank 401(k) interest acquired prior to date of separation, March 23, 2011.

2.9 Separate Property

The petitioner has the following real or personal separate property:

-401(k) Columbia Bank	\$ 49,061.00
-Columbia Bank Stock (vested)	10,xxx
-Columbia Bank Stock (unvested)	?

Columbia Bank 401(k) interest acquired after date of separation, March 23, 2011.

Columbia Bank stock consists of those shares that have vested and purchased by the petitioner after date of separation of the parties and having a market value of \$10,xxx as of 5/31/13. The unvested portion of stock granted to the petitioner by Columbia Bank has not vested and is unavailable to petitioner until dates in the future so long as she remains employed by Columbia Bank.

The respondent has the following real or personal separate property:

-12930 Sunrise, Bainbridge	\$1,200,000.00#
-2008 Cadillac truck	30,000.00
-Annuity	50,000.00

The Sunrise property is subject to a debt of approximately \$375,000 secured by a Deed of Trust. Both petitioner and respondent are obligated on the note. Respondent has title to the property.

2.12 Maintenance

The husband has requested maintenance to be paid by the wife until her retirement and receipt of social security at age 66 years and 10 months. The wife has paid maintenance to the husband in the amount of \$4,700 per month from February 2013 through June 2013. Prior to that, wife paid husband's expenses including mortgage, SBA loan, credit cards, medical insurance and miscellaneous expenses from date of separation through January 2013, in the approximate amount of \$4,500 to \$5,000 per month. Husband has substantial equity in his separate property.

The wife is unable to pay her own costs of living and save for her retirement if she has to pay substantial maintenance to husband. There is a huge disparity in the separate assets available to the wife for her needs.

Husband has need for three months of transitional maintenance at the amount ordered in the temporary order of April 4, 2013 in order to allow husband to make additional arrangements concerning paying off the community mortgage on his separate property, providing for his own medical and making arrangements for his own support. The amount and duration of maintenance should be non-modifiable.

