No. 91746-9
(Court of Appeals, Division I Case No. 72830-0-I)

SUPREME COURT
OF THE STATE OF WASHINGTON

LUCINDA B. CARPENTER,
Respondent,

v.

BRADLEY A. CARPENTER,
Appellant.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner is Bradley A. Carpenter.

II. COURT OF APPEALS DIVISION

Bradley Carpenter seeks review of the decision of Division I of the Washington Court of Appeals issued under case number 72830-0-1 on April 20, 2015.[1] A motion for reconsideration was not brought.

III. ISSUES PRESENTED FOR REVIEW

1. *Should this Court accept review of the decision issued by Division I?*

IV. STATEMENT OF THE CASE

A decree of legal separation and the subsequent division of marital property entered by default underlies this appeal.

Appellant Bradley A. Carpenter is the respondent to a petition for legal separation filed by his wife on June 13, 2013. CP 20 - 22.

Respondent Lucinda B. Carpenter is the petitioner in the legal separation proceeding at issue in this appeal. CP 20 - 22.

Lucinda and Bradley Carpenter[2] were married on March 7, 1992. CP 21; VRP (Nov. 15, 2013) at 4. Lucinda filed a petition for

[1] This case was initially filed in Division II and assigned case number 45657-5-II, but was subsequently transferred to Division I for disposition.

[2] For ease of identification, the parties are referred to herein by their first names. No disrespect whatsoever is intended by so doing.

legal separation on June 13, 2013 under Pierce County Superior Court cause number 13-3-02263-9. CP 20 - 22; VRP (Nov. 15, 2013) at 5.

In the petition, Lucinda pleaded that "the division of property should be determined by the court at a later date," providing no further detail. CP 21 at para. 1.8; VRP (Nov. 15, 2013) at 5.

With similar regard to debts and liabilities, Lucinda pleaded that "the court should make a fair and equitable division of all debts and liabilities" in the petition. CP 21 at para. 1.9. Lucinda did not name any specific items of property, debts or liabilities subject to distribution in the petition, nor did she assign any values to said property, debts or liabilities. CP 20 - 21.

On June 14, 2013, Bradley and Lucinda jointly filed for bankruptcy protection. CP 54.

That same day, June 14, 2013, Bradley executed an Acceptance of Service. CP 25; VRP (Nov. 15, 2013) at 5. Bradley acknowledged acceptance of the Order Assigning Case to Department, Summons and Petition for Legal Separation. CP 25. At paragraph 2, which refers to consent to personal jurisdiction, the document states "does not apply." CP 25. The Acceptance of Service was filed with the Court on July 16, 2013. CP 25. Bradley did not file a Response to the Petition,

nor did he or anyone else file a Notice of Appearance on his behalf.

At that time, Lucinda was earning between $9,000 and $10,500 per month, exclusive of bonuses, and Bradley was earning about $2,000 per month. VRP (Nov. 15, 2013) at 5.

On July 17, 2013, Lucinda filed a Motion and Declaration for Default. CP 26 – 30. In the motion, she stated under penalty of perjury, "**the other party has appeared by signing the Acceptance of Service**, but has failed to respond." CP 27 at para. 2.5 (emphasis added); VRP (July 17, 2013).

In presenting the motion in the Ex Parte Department, counsel stated:

> We're asking for an order of default. This case was served on the 14th of June. I've got the proof of service right here, the acceptance of service, **and there's been no appearance or response**. And we're not trying to enter a final. This is a petition for legal separation, we could, but we're not trying to enter any final at this time.

VRP (July 17, 2013) at 2 (emphasis added). Moreover, Lucinda did not seek the division of the property at that time, and there was no mention of or reference to the bankruptcy proceeding. VRP (July 17, 2013). The Court Commissioner granted Lucinda's motion. CP 31 – 32. Bradley was given no notice of the motion. CP 55; VRP (Nov. 15, 2013) at 6.

On September 25, 2013, the bankruptcy was discharged. CP 55, 63 - 66.

A Decree of Legal Separation and Findings of Fact and Conclusions of Law were subsequently entered by the Court on September 30, 2013 in the Ex Parte Department. CP 42 - 46; 37 - 41; VRP (Sept. 30, 2013).

The following items were listed as community property in the Findings of Fact and Conclusions of Law:

1. 20% ownership in Treos Café;
2. 401(k) account in the name of Bradley Carpenter;
3. Whistler timeshare;
4. Residence at 5611 134th Street Ct., Gig Harbor, WA 98332;
5. Wife's 401(k) through Allstate with an account number ending in 753;
6. 2011 Jeep Cherokee;
7. Two (2) Havanese dogs

CP 38 (Finding of Fact 2.8).

The Findings of Fact and Conclusions of Law also listed the following community liabilities:

1. Any obligations related to Treos Café or Forza Coffee to the extent said obligation survives bankruptcy;
2. Chase Bank in the amount of approximately $269,000.00;
3. 0BEE Credit Union in the amount of approximately $15,000;
4. Key Bank account number ending in 8731, balance approximately $140,000.00;

5. Bank of America in the amount of approximately $37,000.00.

CP 38 – 39 (Finding of Fact 2.10).

In the decree of legal separation, Bradley was awarded the following property:

1. 20% ownership in Treos Café;
2. 401(k) accounts in the name of Bradley Carpenter;
3. Whistler timeshare;
4. 2005 Acura vehicle;
5. The parties' dining room set;
6. All of the furniture and contents of his office and residence;
7. All furniture acquired by husband prior to marriage;
8. His personal clothing and jewelry;
9. All other personal property in his possession except that expressly awarded to wife; and,
10. All bank accounts in his name.

CP 43 at paragraph 3.2.

In the Decree of Legal Separation, Lucinda was awarded the following property:

1. Residence at 5611 134th Street, Ct., Gig Harbor, Washington 98332, subject to the mortgage obligation to Chase awarded to wife, as more particularly described on exhibit "A" attached hereto and incorporated herein by this reference;
2. Wife's 401(k) through Allstate with an account number ending in 753;
3. 2011 Jeep Cherokee;
4. Two (2), Havanese dogs;
5. All household goods, furnishings and personal property in her possession except those expressly awarded to Husband;

6. All bank accounts in her name.

CP 43 at paragraph 3.3. No values were assigned to any of these items of property. CP 43 at paragraphs 3.2 and 3.3.

In the decree of legal separation, Bradley was awarded the following liabilities:

1. Any obligations related to the operation of Treos Café or Forza Coffee,
2. Key Bank account number ending in 8731, with an approximate balance of $140,000.00;
3. OBEE Credit Union in the amount of $15,000.00;
4. All other debts incurred by him at any time, whether before marriage, during marriage, or after separation.

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

CP 43 – 44 at paragraph 3.4.

In the Decree of Legal Separation, Lucinda was awarded the following liabilities:

1. Mortgage with Chase Bank in the amount of approximately $269,000.00;
2. Bank of America account in the amount of approximately $37,000.00;
3. All other debts incurred by her at any time, whether before marriage, during marriage, or after separation.

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

CP 44 at paragraph 3.5.

On the same date the Decree of Legal Separation and Findings of Fact and Conclusions of Law were entered by the Court (September 30, 2013), Bradley obtained counsel, who entered a Notice of Appearance on his behalf. CP 36.

On October 24, 2013, Bradley filed a motion to vacate the final legal separation orders that had been entered by the Court on September 30, 2013. CP 47 - 52. In his motion to vacate the final orders, Bradley relied on Civil Rules 60(b)(1), 60(b)(11) and 54. CP 47 - 52.

Oral argument on Bradley's motion to vacate the final orders was heard on November 15, 2013. VRP (Nov. 15, 2013).

At the hearing, Bradley's counsel argued:

> Rule 60(b)(11) says, 'The Court may vacate final orders for any other reason justifying relief.' And, Your Honor, this isn't just a court of law, it's a court of equity and a court of justice, and the result that would occur from those final documents would be unfair and inequitable.

VRP (Nov. 15, 2013) at 7.

Counsel further argued

> I would ask the Court to also consider rule 54(c) which says clearly, 'a judgment or decree entered by default shall not be different in kind from or exceed an amount that prayed for in the demand from justice.'

VRP (Nov. 15, 2013) at 8.

The trial court denied Bradley's motion to vacate the final orders. CP 106 - 107. In addition, the trial court awarded Lucinda attorney's fees in the amount of $1,732.50 for having to respond to Bradley's motion to vacate. CP 106.

Bradley timely filed this appeal with Division II. CP 108 - 123. It was subsequently transferred to Division I for disposition.

V. ARGUMENT

A. PURSUANT TO RAP 13.4(b), THIS COURT SHOULD ACCEPT REVIEW OF THIS MATTER ON PUBLIC POLICY GROUNDS.

1. RAP 13.4(b)(1), (2) and (3) DO NOT APPLY.

Mr. Carpenter is not arguing that any of these factors apply in this case.

2. THIS COURT SHOULD ACCEPT REVIEW BECAUSE THIS MATTER INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST. RAP 13.4(b)(4).

Issues involving public policy or public interest are defined as "being of fundamental concern to the state and the whole of society." BLACK'S LAW DICTIONARY 1245 (7th ed. 1999). The fair and equitable exercise of discretion by our trial courts is of paramount public interest.

a. Deciding matters by default is not favored in the law and is against public interest.

"It is the policy of the law that controversies be determined on the merits rather than by default." *Dlouhy v. Dlouhy*, 55 Wn.2d 718, 721, 349 P.2d 1073 (1960). Proceedings to vacate default judgments are regarded as equitable; therefore, relief is to be granted according to equitable principles. *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979).

Washington courts disfavor orders and judgments entered by default. *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979). A trial court has wide discretion to vacate orders entered by default. It may do so for good cause or "upon such terms as the court deems just." CR 55(c)(1); *Seek Sys., Inc. v. Lincoln Moving/Global Van Lines, Inc.*, 63 Wn. App. 266, 271, 818 P.2d 618 (1991). In this case, the trial court erred by failing to exercise its wide discretion to vacate the default orders, and the Court of Appeals erred by affirming the trial court. This contravenes the policy of deciding controversies on the merits.

b. The inequitable exercise of discretion is against the public interest.

Family courts are courts of equity. It is well-settled that courts considering family law matters are vested with wide discretion, including the division of marital property. *See, e.g., Hilsenberg v.*

Hilsenberg, 54 Wn.2d 650, 653, 344 P.2d 214 (1959); *Mumm v. Mumm,* 387 P.2d 547, 63 Wn.2d 349 (1963).

However, trial courts are not vested with unfettered, unassailable discretion. Discretion must be exercised equitably.

> In order that a court may make a just and equitable division of the property of the parties it must have evidence concerning the value of the various properties. It is obvious that the trial court abuses its discretion when it orders a division of property without having knowledge of the value of a substantial part of it.
>
> (Footnote omitted.) 24 Am.Jur.2d Divorce & Separation § 933 (1966).

Wold v. Wold, 7 Wn.App. 872, 503 P.2d 118 (1972) (review of property distribution cannot be undertaken without knowledge of its value).

Washington courts have long held that it is impossible to review a trial court's division of assets and liabilities if there are not specific findings as to the value of said property. *Shaffer v. Shaffer,* 43 Wn.2d 629, 631, 262 P.2d 763 (1953); *Wold v. Wold,* 7 Wn. App. 872, 878, 503 P.2d 118 (1972) ("The review of the award of properties cannot be undertaken without knowledge of their value.").

In this case, the parties' community property was listed as follows in the Findings of Fact and Conclusions of Law:

1. 20% ownership in Treos Café;
2. 401(k) account in the name of Bradley Carpenter;
3. Whistler timeshare;
4. Residence at 5611 134th Street Ct., Gig Harbor, WA 98332;
5. Wife's 401(k) through Allstate with an account number ending in 753;
6. 2011 Jeep Cherokee;
7. Two (2) Havanese dogs

CP 38 (Finding of Fact 2.8). None of these assets was valued by the trial court.

The community liabilities are listed in the Findings of Fact and Conclusions of Law as follows:

1. Any obligations related to Treos Café or Forza Coffee to the extent said obligation survives bankruptcy;
2. Chase Bank in the amount of approximately $269,000.00;
3. 0BEE Credit Union in the amount of approximately $15,000;
4. Key Bank account number ending in 8731, balance approximately $140,000.00;
5. Bank of America in the amount of approximately $37,000.00.

CP 38 – 39 (Finding of Fact 2.10). There are no findings of fact with regard to the value of the liabilities related to Treos Café or Forza Coffee. CP 37 – 41.

In this case, the trial court approved a property division after making no findings as to the values of the various assets, and only valuing part of the parties' debts. Therefore, on review, it is

impossible for this Court to determine whether the overall property division was "just and equitable" as required by RCW 26.09.080.[3] *Shaffer*, 43 Wn.2d at 631; *Wold*, 7 Wn. App. at 878. *See also Marriage of Hadley*, 88 Wn.2d 649, 657, 565 P.2d 790 (1977); *In re the Marriage of Greene*, 97 Wn. App. 708, 712, 986 P.2d 144 (1999).

In addition, "[a] trial court abuses its discretion when it orders a division of property without having knowledge of the value of a substantial part of it." *Wold*, 7 Wn. App. at 878 (quoting 24 AM. JUR. 2D Divorce & Separation § 933 (1966)) (footnote omitted). Here, the trial court had no knowledge of the value of a substantial value of the marital estate it divided in the Decree of Legal Separation. CP 37 – 41. The debts related to Treos Café and Forza Café were not valued. CP 37 – 41. This was a clear abuse of discretion by the trial court.

There are three possible remedies available when a trial court

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[3] In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, 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 after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;
(2) The nature and extent of the separate property;
(3) The duration of the marriage or domestic partnership; and
(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

omits material findings of fact:

> (1) Remand without reversal, giving the parties an opportunity to file additional arguments after the necessary finding has been supplied;
> (2) Reverse and remand with instructions to the trial judge to make and enter the necessary findings and
>
> conclusions and judgment thereon from which either party may appeal; or
> (3) Reverse and remand for a new trial.

Wold, 7 Wn. App. at 877.

In this case, the property division is against the public interest, and it is contrary to well-settled law.

c. Expecting a self-represented party to understand the distinction between and Acceptance of Service and a Notice of Appearance is against public policy, because it potentially denies such parties access to justice.

CR 55(a) requires that Bradley should have been given notice of Lucinda's motion for default.

> (3) Notice. **Any party who has appeared in the action <u>for any purpose</u>** shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in rule 55(f)(2)(A).

CR 55(a) (emphasis added).

In Washington, when default orders are entered and a party who is entitled to notice has not been given the requisite notice, that

party is entitled to have any such order or judgment set aside as a matter of right. CR 55(a)(3); *Batterman v. Red Lion Hotels*, 106 Wn. App. 54, 58, 21 P.3d 1174 (2001). A party generally "appears" in an action when the party "answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his appearance." RCW 4.28.210.

Courts in other jurisdictions have similarly held that an acceptance of service constitutes an appearance in an action, requiring that notice be given to the other party prior to seeking an order of default.

In one Colorado case, the defendants' attorney had filed an acceptance of service, but did not timely respond to the complaint. The plaintiff obtained a default judgment against defendants with no notice to the defendants or their counsel. The trial court denied the defendants' CR 60 motion to vacate the default judgment. The Colorado Court of Appeals set the judgment aside, holding that the defendants' acceptance of service constituted an appearance in the proceeding. *Southerlin v. Automotive Electronics Corp.*, 773 P.2d 599 (Colo. Ct. App. 1988) (holding that "any contact with the court which is 'responsive' to the plaintiff's legal action, and which evidences an

intent to resist the suit, constitutes an 'appearance,' requiring written notice before a default judgment may be entered.") (citing *Sisneros v. First National Bank*, 689 P.2d 1178 (Colo. Ct. App. 1983); *Biella v. Dep't of Highways*, 652 P.2d 1100 (Colo. Ct. App. 1983), *aff'd*, 672 P.2d 1983)). *See Bradley v. Bradley*, 118 P.3d 984 (Wyo. 2005) (holding that even though wife had not answered complaint, her acceptance of service very likely constituted an appearance, entitling her to notice of default proceeding) (citations omitted); *MROP v. Design-Build-Manage, Inc.*, 45 P.3d 647 (Wyo. 2002); *Arekay Realty Group v. Lievi*, 595 A.2d 1036 (Me. 1991); *City of Philadelphia v. Sulzer's Estate*, 20 A.2d 233, 342 Pa. 37 (Pa. 1941) ("acceptance of service is, of course, equivalent to a general appearance"). *See also* 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kayne, *Federal Practice and Procedure* § 3686 at 54 (1998); 6 C.J.S. *Appearances* §§ 18, 19 (2004); *but see Maddocks v. Maddocks*, 676 A.2d 937 (Me. 1996).

Bradley did not respond to the petition, but he did make an appearance in the proceeding. CP 27 at para. 2.5. Lucinda acknowledged under penalty of perjury that Bradley had "appeared by signing the Acceptance of Service. . ." CP 27 at para. 2.5 (Motion and Declaration for Default).

"At common law, any action on the part of a defendant [or respondent], except to object to the jurisdiction, which recognizes the case as in court, amounts to a general appearance. *Dlouhy v. Dlouhy*, 55 Wn.2d 718, 349 P.2d 1073 (1960), *overruled on other grounds; Di Bernardo-Wallace v. Gullo*, 34 Wn. App. 362, 661 P.2d 991 (1983). By signing the Acceptance of Service, Bradley "recognized the case" and entered a general appearance. *Id.*

Although Lucinda's counsel represented to the Court upon presenting her Motion for Default that Bradley had not appeared or responded (VRP (July 17, 2013) at 2), in her Motion and Declaration for Order of Default, Lucinda acknowledged under penalty of perjury that Bradley "**has appeared** by signing the Acceptance of Service, but has failed to respond." CP 27 (emphasis added). Bradley had indeed appeared in the proceeding, and he was entitled to notice of the motion for default as a matter of right pursuant to CR 55. Therefore, the trial court erred by denying his motion to vacate. He is entitled to have the default orders set aside as a matter of right.

d. A court granting relief far in excess of that initially prayed for is against the public interest.

It is well settled that any relief granted by default cannot exceed or substantially differ from that prayed for in the petition. *See,*

e.g., Sceva Steel Buildings, Inc. v. Weitz, 66 Wn.2d 260, 262, 401 P.2d 980 (1965)), *rev. denied*, 85 Wn.2d 1018 (1975); *Columbia Val. Credit Exchange, Inc. v. Lampson*, 12 Wn. App. 952, 954, 533 P.2d 152 (1975).

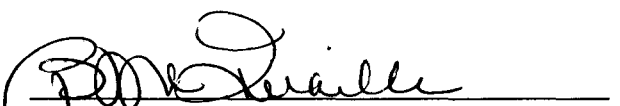
To the extent a default judgment exceeds the relief prayed for in the petition, that portion of the default judgment is void. *Marriage of Leslie*, 112 Wn.2d 612, 618, 772 P.2d 612 (1989) (emphasis added). Granting such relief without notice and an opportunity to be heard denies the defaulted party procedural due process. *Id.* at 617. Bradley was wrongfully denied the opportunity to receive notice and be heard. He was thus denied access to justice.

VI. CONCLUSION

While any trial court in such matters is vested with wide discretion, that discretion needs to be exercised equitably, whether or not exercised by default. This Court should accept review of this matter.

DATED this 20th day of May, 2015.

RESPECTFULLY SUBMITTED,



Barbara McInvaille, WSBA #32386
Attorney for Appellant

Declaration of Transmittal

Under penalty of perjury under the laws of the State of Washington I affirm the following to be true:

On this date I transmitted the original Brief of Appellant to the Washington State Court of Appeals, Division II by personal service, and delivered a copy of said document via legal messenger, to the following:

Barton Adams
Adams & Adams Law PS
2626 N. Pearl St.
Tacoma, WA 98407-2499
bartonladamsl@msn.com

Signed at Tacoma, Washington on this 20th day of May, 2015.

Barbara McInvaille

Appendix A

Opinion, *In re Marriage of Carpenter*, Division I, 72830-0-I (April 20, 2015)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of LUCINDA B. CARPENTER, Respondent, and BRADLEY A. CARPENTER, Appellant.	)	No. 72830-0-I DIVISION ONE UNPUBLISHED OPINION FILED: April 20, 2015

SCHINDLER, J. — Bradley A. Carpenter appeals denial of his motion to vacate the decree of legal separation. Bradley claims that his acceptance of service of process required Lucinda B. Carpenter to provide notice of the motion for default.[1] Bradley also claims the allocation of assets and liabilities in the decree of legal separation exceeds or differs from the relief requested in the petition. In the alternative, Bradley asserts the court abused its discretion in allocating the assets and liabilities. We affirm.

FACTS

Bradley and Lucinda Carpenter married in 1992. On June 13, 2013, Lucinda filed a petition for legal separation. The petition requests a "fair and equitable division" of assets and liabilities. On June 14, Lucinda delivered the summons and petition to

[1] We refer to the parties by their first names for purposes of clarity.

Bradley. Bradley accepted service of the "Order Assigning Case to Department," the summons, and the petition for legal separation.

On July 17, Lucinda filed a motion for an order of default. The court entered an order of default and scheduled a hearing on September 30 for entry of a final decree of legal separation.

Before the September 30 hearing, Lucinda filed a "Verification of Petitioner in Lieu of Testimony" and a declaration setting forth the value of assets and liabilities.

On September 30, the court entered a decree of legal separation and findings of fact and conclusions of law. The court awarded Lucinda the family home, her retirement account, and her vehicle. Lucinda is responsible for the first mortgage on the home "in the amount of approximately $269,000.00" and a Bank of America debt "in the amount of approximately $37,000.00." The court awarded Bradley the Whistler time-share property, his retirement account, his vehicle, and the couple's ownership interest in Treos Café. Bradley is responsible for the second mortgage on the home "with an approximate balance of $140,000.00," a credit union debt "in the amount of $15,000.00," and "[a]ny obligations related to the operation of Treos Café."

Later that day, after entry of the decree, Bradley's attorney filed a notice of appearance.

On October 24, Bradley filed a motion to vacate the decree of legal separation. Bradley argued that his failure to appear was the result of mistake or excusable neglect under CR 60(b)(1). Bradley stated he "believed that the Acceptance of Service was notice to the court of his appearance." Bradley also argued justice requires the decree be vacated under CR 60(b)(11) because it does not result in a fair and equitable division

of property and liabilities. In the alternative, Bradley claimed the allocation of assets and liabilities "differs significantly from the relief requested" in the petition for legal separation in violation of CR 54(c).

Bradley filed a declaration in support of the motion to vacate. Bradley explained that he and Lucinda started Treos Café, a coffee business, in 2002 and tried to "franchise our business," but protracted litigation forced them to file for bankruptcy. Bradley stated, "In hind sight I certainly would conduct the [coffee] business differently . . . . I did make some business decisions which had a significant financial impact on our family." Bradley challenged the valuation of the family home and the allocation of assets and liabilities. Bradley opposed awarding Lucinda the family home yet requiring him to pay the second mortgage.

The court scheduled a show cause hearing for November 15 on the motion to vacate the decree of legal separation.[2]

Before the show cause hearing, Lucinda filed a "Memorandum of Authorities" opposing the motion to vacate. Lucinda argued that Bradley's failure to appear was not the result of mistake or excusable neglect because he received the summons, "spoke to an attorney" about the petition, and "elect[ed] not to respond." Lucinda also argued the court's allocation of assets and liabilities does not differ from the request in the petition. Lucinda pointed out that except for the family home, Bradley "has not put any evidence in the record to establish the value of the assets awarded." Lucinda also asked the court to award her attorney fees incurred in responding to Bradley's motion to vacate.

[2] On October 29, Bradley filed an answer to the petition for legal separation and requested an award of maintenance.

In her declaration in opposition to the motion to vacate, Lucida states that before she delivered the summons and petition for legal separation to Bradley, "I provided him with my proposed division of assets." Lucinda states that she delivered the summons and petition to Bradley on June 14 and specifically told him that signing the acceptance of service "had the same effect as would have occurred had he been served by a process server." Lucinda also states that when she and Bradley were sued by a Treos Café franchisee in 2009, "[w]e did not appear and a default judgment was entered against us. My husband learned the result of failing to appear in litigation once served."

In response, Bradley admitted Lucinda gave him the proposed valuation and allocation of assets and liabilities "[i]n the spring, well before I accepted service of the separation documents." Bradley also admitted that the "bulk of the loan" associated with the second mortgage on the home "was related to" their coffee company and the resulting litigation.

The court denied Bradley's motion to vacate the decree of legal separation. The court found that Bradley "signed an Acceptance of Service that he was receiving the Summons." The court found the summons "clearly put him on notice" that he had to file a written response within 20 days of service and that he had to file a notice of appearance to avoid entry of an order of default. The court also found "there is no proof that he has a valid defense to the Petition for Legal Separation by substantial evidence such as a balance sheet which would have shown that this was not a fair and equitable distribution of assets and debts." The court awarded Lucinda attorney fees for responding to the motion to vacate.

ANALYSIS

Notice of Motion for Default

Bradley asserts the decree of legal separation is void under CR 55(a)(3) because he did not receive notice of the motion for entry of a default judgment. "[W]hether a judgment is void is a question of law that we review de novo." Trinity Universal Ins. Co. of Kan. V. Ohio Cas. Ins. Co., 176 Wn. App. 185, 195, 312 P.3d 976 (2013).

Under CR 55(a)(3), a party who "has appeared in the action for any purpose" is entitled to notice of another party's motion for default. CR 55(a) states, in pertinent part:

> (1) Motion. When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.
>
> . . .
>
> (3) Notice. Any party who has appeared in the action for any purpose shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in rule 55(f)(2)(A).

"A defendant appears in an action when he or she answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his or her appearance." RCW 4.28.210.

Bradley argues that the acceptance of service of process is the equivalent of a notice of appearance for purposes of CR 55(a)(3). We disagree.

Acceptance of service of process, without more, does not constitute an appearance. To appear by filing a notice of appearance, the notice must "be in writing, shall be signed by the defendant or his attorney, and shall be served upon the person whose name is signed on the summons." CR 4(a)(3); see In re Estate of Stevens, 94

Wn. App. 20, 32, 971 P.2d 58 (1999) (defendant did not appear by "accept[ing] service of the petition, summons, and notice of hearing" and then choosing "to do nothing").

Bradley's reliance on Southerlin v. Automotive Electronics Corp., 773 P.2d 599 (Colo. App. 1988), is misplaced. In Southerlin, the parties entered into "a stipulation in open court" to resolve objections to a foreclosure. Southerlin, 773 P.2d at 600. The plaintiffs later filed a lawsuit against the defendants and attached the stipulation to the complaint. Southerlin, 773 P.2d at 600. The defendants' attorney "signed a written acceptance of service, indicating that he was doing so 'as the attorney' for defendants." Southerlin, 773 P.2d at 600. After accepting service of process, the defendants' attorney and the plaintiffs' attorney entered into a "specific agreement extending the time for defendants to file a responsive pleading." Southerlin, 773 P.2d at 602. The Colorado Court of Appeals held that defendants were entitled to notice of the motion for default "[i]n light of all of these circumstances." Southerlin, 773 P.2d at 602.

Here, there is no dispute that Bradley received the summons and the petition for legal separation on June 14. There is also no dispute that Bradley did not file a notice of appearance until after the court entered the decree on September 30.

The summons clearly informed Bradley that the court could enter an order of default if he did not file a written response within 20 days of service, and that he was entitled to notice before entry of an order of default only if he served a notice of appearance on Lucinda. The summons states, in pertinent part:

> If you do not serve your written response within 20 days . . . after the date this summons was served on you, . . . the Court may enter an order of default against you, and the Court may, without further notice to you, enter a decree and approve or provide for the relief requested in the petition. . . . If you serve a notice of appearance on the undersigned person, you are entitled to notice before an order of default or a decree may be entered.

Bradley admits he met with an attorney about the petition in June but chose not to hire an attorney until "late September," after entry of the order of default. Because Bradley did not appear in the legal separation proceeding, he was not entitled to notice of the motion for default.

CR 54(c)

Bradley also contends the court erred in granting relief that exceeds or differs from the relief requested in the petition for legal separation.

Under CR 54(c), "[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." "To the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void." In re Marriage of Leslie, 112 Wn.2d 612, 618, 772 P.2d 1013 (1989).

Here, the allocation of assets and liabilities does not exceed or differ from the relief Lucinda requested. The petition for legal separation specifically requested a "fair and equitable division of all the property" and an award of "attorney fees, other professional fees and costs."

Allocation of Assets and Liabilities

In the alternative, Bradley contends the court abused its discretion in allocating the assets and liabilities.

We review a trial court's division of marital property for a manifest abuse of discretion. In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). " 'A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.' " Muhammad, 153 Wn.2d at 803 (quoting In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)). We review a

trial court's factual findings for substantial evidence. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Substantial evidence is the quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. Olson, 69 Wn. App. at 626. In determining whether substantial evidence supports the court's findings, we review the record "in the light most favorable to the party in whose favor the findings were entered." In re Marriage of Gillespie, 89 Wn. App. 390, 404, 948 P.2d 1338 (1997). Where, as here, the court does not enter explicit findings as to the value of property allocated, "the appellate court may look to the record to determine the value of the assets." In re Marriage of Greene, 97 Wn. App. 708, 712, 986 P.2d 144 (1999).

Bradley asserts the court abused its discretion in allocating assets and liabilities because neither the decree of legal separation nor the findings of fact and conclusions of law state the value of the assets or the amount of the "obligations related to Treos Café." Bradley also asserts substantial evidence does not support the valuation of the other liabilities.

But the record establishes Bradley did not challenge Lucinda's valuation of the retirement accounts, the vehicles, the Whistler time-share property, or the debt related to Treos Café.[3] See RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court.").

Below, Bradley challenged the valuation of only the family home. The record supports the court's valuation of the family home. Lucinda submitted a declaration stating the house has "a value of approximately $475,000.00 subject to a debt of

[3] Lucinda testified her retirement account has "a balance of approximately $19,0000.00" and Bradley's retirement account "has a value that I believe is in excess of $100,000.00." Lucinda testified that her car has "substantially negative equity" and Bradley's car "has a value approximately equal to its debt." Lucinda also testified that "the Treos Café that [Bradley] owns is worth . . . equal to or greater than the debt he is assuming."

$269,000.00 which, after sales costs, would net about $155,000.00." In response, Bradley claimed the outstanding debt on the first mortgage is "approximately $271,000.00," the debt on the second mortgage is "around $150,000.00," and the value of the home is "approximately $570,000.00." In his second declaration, Bradley asserted the home "is listed by Zillow at $538,727.00." Bradley's estimate of the net equity value of the home does not differ substantially from Lucinda's $155,000.00 valuation. Bradley testified that "after the first and second mortgage the house has between $140,000.00 and $150,000.00 in equity at this time." Viewed in the light most favorable to Lucinda, substantial evidence in the record supports the court's valuation of the family home. See Gillespie, 89 Wn. App. at 404.

Bradley also claims the allocation of assets and liabilities is not just and equitable. In a legal separation proceeding, the court must "make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable." RCW 26.09.080. The court must consider a number of factors, including the "economic circumstances of each spouse or domestic partner at the time the division of property is to become effective." RCW 26.09.080(4).

The court's "paramount concern" in allocating assets and liabilities is "the economic condition in which the decree leaves the parties." Gillespie, 89 Wn. App. at 399. Because the trial court is in "the best position to assess the assets and liabilities of the parties," it has "broad discretion" to determine what is just and equitable under the circumstances. In re Marriage of Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999).

Bradley relies on his assertion of the relative income of the parties to argue the allocation of assets and liabilities is not just and equitable. But the 2012 income tax

return Bradley submitted shows he received far more in retirement account distributions than Lucinda's gross earnings. Substantial evidence supports the valuation and allocation of the assets and liabilities.

Bradley also contends the court erred in awarding Lucinda attorney fees for responding to his motion to vacate the decree of legal separation but provides no citation to authority in support of his argument. See RAP 10.3(a)(6) (Appellant's brief must contain "argument in support of the issues presented for review, together with citations to legal authority."); Regan v. McLachlan, 163 Wn. App. 171, 178, 257 P.3d 1122 (2011) ("We will not address issues raised without proper citation to legal authority.").

We affirm entry of the decree of legal separation.[4]

WE CONCUR:

[4] Lucinda requests attorney fees on appeal based on Bradley's intransigence and under RAP 18.9. Because the record does not support a finding of intransigence and the appeal is not "so devoid of merit that no reasonable possibility of reversal exists," we decline to award Lucinda attorney fees on appeal. In re Marriage of Meredith, 148 Wn. App. 887, 906, 201 P.3d 1056 (2009); In re Marriage of Mattson, 95 Wn. App. 592, 605-06, 976 P.2d 157 (1999).