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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:

PATRICIA MCCARTHY
Respondent,

v.

FEARGHAL MCCARTHY,
Appellant

RESPONDENT'S BRIEF

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I. RESPONDENT'S RESTATEMENT OF THE CASE

Appellant Fearghal McCarthy ("Fearghal") correctly notes that the underlying dissolution proceedings in this matter were extremely contentious.[1] They were also lengthy and expensive: by the time the Final Order of Child Support ("Final OCS") was entered on January 23, 2009, the case had gone on for over three years and accumulated over 690 docket entries. CP 1.[2] Shortly before that point, however, *pro se* Respondent Patricia McCarthy ("Patricia") effectively capitulated, and stipulated to facts that led to Fearghal gaining primary custody of their two minor children and obliging Patricia to pay child support.[3]

Ultimately, each of the three orders bringing this matter to its initial resolution—the Parenting Plan, the Final OCS, and the Decree of Dissolution—was based on stipulated facts, and was drawn-up on pleading paper and presented to the superior court by Fearghal or Fearghal's attorney. CP 7, 16.[4] None of these orders was entered after a fully

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[1] Appellant's Brief at p. 6.

[2] The Final Order of Child Support shows a handwritten "696" in the bottom right corner. CP 1. This corresponds to the "Sub#" shown for this docket entry in the Index to the Clerks Papers. *See also* CP 241.

[3] Pursuant to RAP 9.6(a), Patricia is filing a Supplemental Designation of Clerk's Papers which lists, among other docket items to be added to the record on appeal, the Order Adopting Stipulated Findings of Fact in Support of the Final Parenting Plan. A copy of Respondent's Supplemental Designation of Clerk's Papers is attached to this Brief as Appendix A. Copies of the newly designated documents are attached to this Brief as Appendix B.

[4] *See also* Appendix B, at p. B-13-B-21 (Parenting Plan); *and* Appellant's Brief, at p. 6 (stating that "[b]ased on Patricia's admissions and their mutual desire to reduce conflict, the parties stipulated to a Parenting Plan

contested hearing. Perhaps as a result, the Final OCS contained at least two facially problematic provisions: 1) it stated that support could continue indefinitely, provided only that the child remains enrolled in an accredited postsecondary school; and 2) it required Patricia to pay both child support *and* postsecondary support for the same child at the same time. CP 4, ¶¶ 3.13-3.14.

Several months after the Final OCS was entered, Fearghal and Patricia executed another document that looms in the background of this appeal. This is the Dissolution of Marriage Agreement and Promissory Note (the "Note"), dated May 13, 2009.[5] The Note purports to be "[i]n consideration for settling Wife's obligations under [a] June 2000 post-nuptial agreement."[6] The purported underlying post-nuptial agreement was nowhere referenced in either the Final OCS or the worksheets that supported it. CP 1-12. The Note was, however, subsequently referenced in the Decree of Dissolution (dated January 29, 2010), which states in pertinent part that "a money judgment for the promissory note shall be deferred and not be issued at this time. In the event that one of the conditions of paragraph 13 of the promissory note becomes fulfilled, the Court shall then enter a monetary judgment for the note balance upon Respondent's Motion." CP 16.

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entered on 10/27/08, a Final Order of Child Support entered on 1/23/09, and a Decree of Dissolution adopting these orders on 1/29/10").

[5] *See* Appendix B at B-30-31.

[6] Appendix B, at B-30.

Four years after the Note was drafted, on April 3, 2013, Fearghal filed a Motion/Declaration for Judgment with the superior court, asserting that the conditions for judgment on the Note were fulfilled.[7] On April 24, 2013 the superior court entered judgment on the Note in favor of Fearghal and against Patricia in the amount of $224,200.[8] Shortly thereafter, Patricia and her current husband, Shaun Martin, filed a Chapter 13 bankruptcy.[9]

Approximately a month after obtaining judgment on the Note, Fearghal filed the pleading which ultimately led to this appeal: his Motion and Declaration for Adjustment of Child Support, dated May 29, 2013. CP 29. Neither Fearghal's motion nor his accompanying worksheets mentioned the Note as either an asset of Fearghal's or as a liability of Patricia's. CP 29-35.[10]

An initial hearing on Fearghal's Motion for Adjustment was held before the Commissioner Schienberg of the Clark County Superior Court (the "Commissioner") on June 26, 2013. CP 67.[11] At this hearing, the Commissioner ordered Fearghal to file and serve certain financial

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[7] Appendix B at B-26.
[8] Appendix B at B-35-36.
[9] *See* CP 123 (asserting that "Petitioner has also declared bankruptcy in order to solely avoid a marital lien of $224,000 that she owes to Respondent"); *and* CP 37 and 124 (giving date of bankruptcy filing as April 28, 2013).
[10] *Compare* Child Support Schedule Worksheet submitted by Patricia, dated June 19, 2013, at Appendix B-57, ¶21 (listing debt of $224,000 for "Judgment Marriage Dissolution").
[11] Compare Appellant's Brief, at p. 5.

documents that he had previously failed to provide, and set a new hearing date of July 24, 2013. CP 67. This new hearing date was in turn cancelled at Fearghal's request. CP 93; CP 194 at line 31.

On September 10, 2013, Patricia filed a cross-motion for adjustment, based in part on the hardship caused by the judgment on the Note and her subsequent bankruptcy. CP 94. Subsequently, Fearghal was unavailable between September 18, 2013 and October 4, 2013.[12] On the latter date, Fearghal filed a Declaration re Motion for Adjustment of Child Support, in which he stated that he "was hoping to defer my motion for adjustment of child support until Petitioner's bankruptcy proceedings concluded." CP 126. Nonetheless, the Commissioner held hearings on October 9 and October 23, 2013. CP 195. She entered her Order re Adjustment of Child Support and Order of Child Support on December 11, 2013. CP 173- 186.

Fearghal filed a motion for revision of the Commissioner's orders on December 20, 2013. CP 206. The superior court granted the motion for revision, in part, and issued a new Final Order of Child Support (Revised) (the "Revised Final OCS") on January 31, 2014. CP 209-219. The Revised Final OCS increased Patricia's monthly transfer obligation by $250 compared to the Final OCS, set a start date for the new payment level of January 1, 2014, and made various other changes to the original

[12] Appendix B at B-46.

Final OCS.[13] Neither the Revised Final OCS, nor the incorporated Child Support Worksheet, refers to the Note as an asset of Fearghal's or as a liability of Patricia's. Unsatisfied with the outcome, Fearghal appealed.

II. ARGUMENT

1. Summary of the argument.

The fact that the superior court modified the Final OCS without establishing a substantial change in circumstances is not error, because the Final OCS was entered based on the parties' stipulation. Moreover, most of the changes made by the Superior Court, and in particular those pertaining to the termination of support and the provision of postsecondary support, were clearly reasonable under the circumstances, and supported by—indeed, compelled by—consideration of all the relevant factors. These changes were not error. The trial court also did not abuse its discretion by setting a January 1, 2014 start date for Patricia's new support obligations.

However, certain of the trial court's changes, including the grant of a deviation, the determination of Patricia's costs of providing health insurance for the children, and the calculation of Patricia's tax withholdings, are only proper if supported by substantial evidence. Patricia submits that these changes were clearly supported by some evidence. If this Court nonetheless agrees with Fearghal that the evidence

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[13] *Compare* CP 3 (showing a total monthly transfer amount of $857 commencing in July, 2011) *with* CP 212 (showing total monthly transfer amount of $1,107, and setting start date of January 1, 2014).

is not substantial, and remands this matter for further proceedings, it should also instruct the trial court to consider the Note, and any income it may generate, as an asset of Fearghal's, and as a corresponding liability of Patricia's. In addition, if this Court should conclude that a substantial change of circumstances was in fact necessary to justify modifying the Final OCS, its instructions on remand should direct the trial court to consider whether the entry of judgment on the Note, Patricia's subsequent bankruptcy, and any garnishment of Patricia's wages to pay that judgment, individually or collectively satisfy that requirement.

2. This Court reviews an adjustment or modification for abuse of discretion.

Child support orders are reviewed for abuse of discretion.[14] Accordingly, as the challenging party, Fearghal "must demonstrate that the trial court's decision is manifestly unreasonable, based on untenable grounds, or granted for untenable reasons."[15] A trial court does not abuse its discretion where the record shows that it considered all the relevant factors and the child support award is not unreasonable under the circumstances.[16]

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[14] *See, e.g., Schumacher v. Watson*, 100 Wn. App. 208, 211, 997 P.2d 399 (2000). *See also* Appellant's Brief, at p. 14.
[15] *Schumacher*, 100 Wn. App. at 211.
[16] *See, e.g., State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 423, 154 P.3d 243 (2007), as amended (Mar. 15, 2007), as amended on reconsideration (May 29, 2007).

It is of course true that "[i]f a ruling is based on an erroneous view of the law, it is necessarily an abuse of discretion."[17] However, contrary to Fearghal's assertion, not every issue on review here is a pure question of law.[18] In particular, Fearghal has assigned error to certain factual findings incorporated into the Child Support Worksheet.[19] Those factual findings are reviewed for substantial evidence.[20] If this Court determines either that the trial court made inadequate findings, or that there is not substantial evidence for the findings made, the proper remedy is to reverse and remand for further proceedings on the points at issue, rather than for this Court to make its own findings of fact.[21]

3. Because the Final OCS was not a product of a fully contested hearing, no substantial change of circumstances was necessary to modify it, and any procedural impropriety involved in issuing the Revised Final OCS in response to motions for adjustment was harmless error.

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[17] *Bevan v. Meyers*, ___Wn. App. ___, 334 P.3d 39, 44 (2014).
[18] *Compare* Appellant's Brief, at pp. 14-15.
[19] Appellant's Brief at p. 2 (challenging factual conclusions as to Patricia's tax deductions and health insurance costs). *Cf.* CP 210, 220-223. *See also In re Marriage of Daubert & Johnson*, 124 Wn. App. 483, 492, 99 P.3d 401 (2004), *as amended on reconsideration* (Dec. 16, 2004) *abrogated on other grounds* by *McCausland v. McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007) (holding that "[t]he child support worksheets adopted by the court constitute findings of fact to the extent of the information contained in them").
[20] *See, e.g., Rideout v. Rideout*, 110 Wn. App. 370, 374, 40 P.3d 1192 (2002) *aff'd sub nom. In re Marriage of Rideout*, 150 Wn. 2d 337, 77 P.3d 1174 (2003), as corrected (Oct. 27, 2003).
[21] *See, e.g., Marcum v. Dep't of Soc. & Health Servs.*, 172 Wn. App. 546, 560, 290 P.3d 1045 (2012) (noting that "[a]n appellate court does not make [factual] findings").

Fearghal's primary assignment of error is that "[t]he trial court erred by modifying an Order of Child Support in an adjustment proceeding." [22] He further alleges that the trial court "erred by making modifications to the support Order [the Final OCS] without any finding of substantial changes in circumstances."[23] Both of these assignments of error fail.

The general rule that courts must find a substantial change of circumstances before modifying an order of child support "presumes that the [initial trial] court independently examined the evidence after a fully contested hearing."[24] Where a court order, including an order regarding child support, arises from an uncontested proceeding, appellate courts presume that the trial court did not independently examine the evidence.[25] Consequently, a subsequent trial court "need not find a substantial change of circumstances" to support a modification.[26]

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[22] Appellant's Brief, at p. 1.
[23] *Id.*
[24] *Schumacher*, 100 Wn. App. at 213 (citing to *Pippins v. Jankelson,* 110 Wn.2d 475, 478, 754 P.2d 105 (1988)).
[25] *Id.*
[26] *Id.* In *Schumacher*, the trial court also found that certain provisions in the child support order worked a severe economic hardship on the child. *Schumacher*, 100 Wn. App. at 211. Under the current RCW 26.09.170(6)(a), this alone would suffice to allow modification of a child support order without a finding of substantially changed circumstances. However, *Schumacher's* conclusion that "[w]here a court order arises from an uncontested proceeding . . . the court need not find a substantial change of circumstances" does not depend on the finding of economic hardship. *Schumacher*, 100 Wn. App. at 213. Thus, the fact that Patricia is not yet claiming hardship based on the postsecondary support provisions in the Final OCS provides no basis for distinguishing *Schumacher*.

Here, as Fearghal acknowledges, all of the initial underlying orders in this matter, including the Final OCS, were entered based on stipulated facts.[27] Because the Final OCS was not entered after a "fully contested hearing," under *Schumacher* and *Pippins*, this Court presumes that the trial court did not conduct an independent examination of the evidence at the time it issued that order.[28] This presumption is strongly supported by a review of the terms of the Final OCS, which included one-sided and arguably illegal provisions calling for a child's support to continue indefinitely so long as that child remains enrolled in an accredited post-secondary school, and for Fearghal to continue to receive child support at the same time as the relevant child receives post-secondary support covering room and board. CP 4, at ¶¶ 3.13-3.14.[29] Patricia submits that there is plainly no evidence that could have supported such provisions.[30] Moreover, Fearghal has offered no evidence—let alone "clear evidence"—to rebut the presumption that the trial court did not base the Final OCS in its own independent review of the facts.[31] Accordingly, once confronted with the parties' respective motions for adjustment, the

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[27] *Id.* at p. 6. *See also* Appendix B at B-1 and B-22.
[28] *Schumacher*, 100 Wash. App. at 213; *Pippins*, 110 Wn.2d at 481-82.
[29] The arguably illegal nature of these provisions is discussed in more detail below in Section III.4.
[30] In particular, nothing in the stipulations on which the parenting plan and the Final OCS were based supports ¶ 3.13 and ¶ 3.14 of the Final OCS. *See* Appendix B at B-2 to B-12 and CP 8-12 (Worksheets).
[31] *Schumacher,* 100 Wash. App. at 213.

trial court here did not need to find any substantial change in circumstance to justify modifying the Final OCS.

The fact that the parties submitted respective motions for adjustment, rather than petitions for modification, also does not create reversible error. As this Court has previously noted, filing a motion pleading instead of filing a petition for modification, as each of the parties did here, can be harmless error.[32] In *Morris,* the error was held harmless because the party resisting the modification: (1) did not identify if and how he was harmed by any procedural deficiencies, or otherwise show prejudice; and (2) the superior court considered the motion for revision based on the parties' declarations, financial documents, and legal arguments.[33]

In the instant case, the superior court clearly considered the motion for revision based on the parties' declarations, financial documents, and legal arguments, and thereby satisfied the second element for harmless error identified in *Morris.*[34] Hence, whether the error was harmless depends on whether Fearghal has succeeded in identifying harm or prejudice. Although Fearghal certainly claims that he was prejudiced, he

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[32] *In re Marriage of Morris,* 176 Wn. App. 893, 309 P.3d 767 (2013)
[33] *Morris,* 176 Wn. App. at 903.
[34] Thus, the trial court's Revised Final OCS enjoys a different status than the trial court's original Final OCS. In January, 2014, the trial court considered a record containing opposing affidavits, and its decision was clearly its own, based on its own examination of the evidence. In January, 2009, the trial court was presented with stipulated facts, and is presumed not to have independently reviewed the underlying evidence. *Schumacher*, 100 Wash. App. at 213.

has not actually established such.[35] His assertion that he was "caught by surprise at the 10/9/2013 adjustment hearing when the court unexpectedly ruled sua sponte to modify provisions of the support order unrelated to the parties' incomes" is undercut by his failure to include the transcript of the hearing in the record.[36] More importantly, Fearghal makes no showing that his limited ability to do discovery adversely affected the trial court's decision on any issue. Any error premised on the fact that the trial court made modifications to the Final OCS in response to motions for adjustment, rather than petitions for modification, was simply harmless.

4. The changes made in the Revised Final OCS to the termination of support and postsecondary support provisions were reasonable under the circumstances and based on a consideration of all relevant factors.

Given that no substantial change in circumstances was necessary here to justify modifying the stipulated Final OCS, and given that any procedural error involved in making modifications in response to motions for adjustment was harmless, the only real questions posed by Fearghal's appeal are whether the changes made by the trial court were reasonable under the circumstances, based on a consideration of all relevant factors, and (in the case of factual findings) supported by substantial evidence.[37] All of the changes made to Paragraphs 3.13 and 3.14 of the Final OCS

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[35] Appellant's Brief at p. 27.

[36] *Id. See also Story v. Shelter Bay Co.*, 52 Wn. App. 334, 345, 760 P.2d 368, 375 (1988) (noting that "appellant . . . ha[s] the burden of providing an adequate record on appeal," and affirming trial court decision on issue where the record was inadequate to allow review).

[37] *State ex rel. J.V.G.*, 137 Wn. App. at 423.

were reasonable under the circumstances and based on a consideration of all relevant factors. Since they represent conclusions of law rather than findings of fact, they need not be based on substantial evidence. Accordingly, Fearghal's assignments of error to these changes fail.

Unlike the Final OCS, the Revised Final OCS acknowledges that "both parents' child support obligation shall terminate when each child either reaches the age of 23 years or stops attending an accredited [secondary] school full time . . ., whichever occurs first." CP 214. This simply tracks the statutory requirement as stated in RCW 26.19.090(5).[38] Fearghal concedes as much, thereby acknowledging that the original Final OCS erred by implying that support could continue indefinitely, provided only that the relevant child remained enrolled in an accredited post-secondary school. CP 4-5, at ¶¶ 3.13-3.14.[39] Moreover, the requirement that the parents return to court regarding postsecondary support prior to the latter of the child's 18th birthday or graduation from high school, in the event the parents don't previously agree, does no more than create a

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[38] The statute states that "[t]he court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities." RCW 26.19.090(5). No exceptional circumstances have been alleged here. *See also In re Marriage of Briscoe*, 134 Wn.2d 344, 348, 949 P.2d 1388 (1998) (noting that "statutes which directly bear upon the subject matter of the [marriage] settlement are incorporated into and become part of the decree").

[39] *See* Appellant's Brief, at p. 25 (stating "Fearghal does not object to the added elements of the rewritten provision which incorporate existing relevant statutory provisions (e.g. support ceases when the child is 23)"). *But see* Appellant's Brief at p. 9, no. iv (apparently assigning error to this precise change).

timely occasion for the mandatory review of the factors specified in RCW 26.19.090(2).[40] The trial court properly reflected these statutory requirements in the Revised Final OCS, and making these changes was no error. CP 213-214.

The trial court also properly removed the requirement contained in the original Final OCS that Patricia simultaneously pay both child support and postsecondary support for the same child. Compare CP 4-5, at ¶ 3.14 with CP 213-214, at ¶¶ 3.13-3.14. Counsel for Patricia has found no statute *expressly* prohibiting simultaneous payment of both child support and postsecondary support for the same child. However, the structures of the relevant statutes, Chapters 26.09 and 26.19 RCW, make it clear that child support and postsecondary support are not to be paid at the same time for the same child. As *In re Marriage of Daubert* puts it,

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[40] RCW 26.19.090(2) states: "When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together." Here, the court has determined, and the parents have agreed, that postsecondary support shall be provided. However, unless the parents reach further detailed agreements, the court must hold a timely hearing to consider the statutory factors before the details of the support can be set.

"[p]ostsecondary educational support *is* child support."[41] It follows that if the level of post-secondary support is properly calculated, continued payment of child support is a double payment, and nothing but an unjustified windfall for the custodial parent. The trial court did not err by making clear in the Revised Final OCS that Patricia is not obligated to continue making the standard transfer payment for any child for whom she is also paying postsecondary support.[42]

Fearghal's remaining objections to changes made in the postsecondary support provisions are also not well-taken.[43] Specifically, Fearghal objects to "i) replacing the formula in the Original Support Order

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[41] *Daubert*, 124 Wn. App. at 502 (emphasis added). Although abrogated by *McCausland*, 159 Wn.2d at 619, on the grounds that it erroneously found that extrapolation from the child support table can be an appropriate method of determining support for families with high incomes, *Duabert's* lengthy discussion of the relationship between child support and postsecondary support, at 124 Wn. App. at 499-505, remains generally valid, and clearly militates against simultaneous payment of both child support and postsecondary support for the same child.

[42] It is also important to note that although Fearghal makes very detailed assignments of error to paragraph 3.14 of the Revised Final OCS (*see* Appellant's Brief at p. 9), his opening brief does not assign error to, or otherwise discuss, the removal of the requirement that Patricia simultaneously pay both child support and postsecondary support for the same child. Nor did Fearghal raise this issue below. CP 193-205. Since "[a]n issue raised and argued for the first time in a reply brief is too late to warrant consideration," *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 801, 809, 828 P.2d 549 (1992), and since appellate courts "generally do not review an error not raised in the trial court," *State v. Trujillo*, 153 Wn. App. 454, 458, 222 P.3d 129 (2009) (citing to RAP 2.5(a)), Fearghal's failure to timely raise any issue with regard to simultaneous payment of child support and postsecondary support provides additional reasons for this Court to uphold the trial court on this particular point.

[43] Appellants Brief at p. 9, pp. 24-25.

with a provision that support would terminate unless a party sought a court determination before the child turned 18 or finished high-school; ii) removing the 10-day requirement for parents to pay educational requirements directly, iii) removing the requirement that Patricia reimburse educational expenses paid by Fearghal within 15 days of presentation of bills . . . and iv) removing the ability of the child to both work and attend school part time by requiring the child's full time attendance at school." [44]

Each of these changes is reasonable under the circumstances, and brings the postsecondary support provision into compliance with both the letter and the spirit of Washington law, and in particular RCW 26.19.090. Apart from the issues involving termination of support discussed immediately above, it is unclear what precisely Fearghal means by "the formula in the Original Support Order." Perhaps this is a reference to the initial requirement that Patricia "shall pay . . . 50% of all costs related to . . . post-secondary educational support." CP 4, at ¶ 3.14. Unfortunately for Fearghal, his own submissions to the superior court affirmatively represented that this formula was outdated, and requested adjustment.[45] Particularly in view of the fact that the two children in question were ages 14 and 10 at the time of entry of the Revised Final OCS, the trial court did not abuse its discretion by replacing the original stipulated language with language taken from the official form Order of Child Support, to the effect

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[44] *Id.* at p. 24.
[45] Appendix B at B-40.

that "postsecondary support provisions will be decided by agreement or by the court." CP 213.[46] Making this change did not "reopen the door for litigation," since even under the initial "formula," either party could come into court during each child's senior year in high school and ask that the support obligation be adjusted in light of the then-prevailing levels of the factors specified in RCW 26.19.090(2).[47] Under either "formula," Fearghal and Patricia will either reach agreement on the allocation of postsecondary support responsibilities, or they won't. If they don't agree, the superior court will decide. The superior court did not err by making this point explicit in the Revised Final OCS. CP 213 at ¶ 3.14.

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[46] Compare WPF PS 01.0500, available online from the Washington State Courts web-site at: http://www.courts.wa.gov/forms/.

[47] Appellant's Brief at p. 25. Arguably, only a review after the time when the child's postsecondary options have become concrete will allow the court to effectively evaluate the mandatory criteria listed in RCW 26.19.090(2). *See, e.g., In re Marriage of Shellenberger*, 80 Wn. App. 71, 85, 906 P.2d 968 (1995) (holding that "the trial court must, at the very least, make specific findings as to the cost and availability of college education in the child's chosen field at publicly funded institutions before ordering an objecting parent to support a more expensive private college education. A trial court should not require objecting parents of modest means to pay for private college where the child can obtain a degree in his or her chosen field at a publicly subsidized institution"). Given the age of the two children here, both their "chosen fields" and the availability of those fields at publicly funded institutions are simply unknowable. To the extent the original Final OCS gave Fearghal a blank check to send the children to expensive private universities, it contravened RCW 26.19.090.

The other changes to the postsecondary support provisions complained of by Fearghal neither affect substantial rights nor are erroneous. First, instead of stating that

> Payments to educational institutions shall be made directly to the educational institution <u>within 10 days of their due date</u>. If a parent fails to make a timely payment to an educational institution, the other parent may make such payment and recover the amount plus interest from the non-compliant parent[,]

as did the original Final OCS, the revised Final OCS states in pertinent part that

> Payments to educational institutions shall be made directly to the educational institution <u>pursuant to the arrangements each parent makes with the college or pursuant to a future court order</u>.
>
> . . .
>
> If a parent fails to make a timely payment to an educational institution, the other parent may make such payment and recover the amount plus interest from the non-compliant parent.

CP 4, 214 (emphasis added in both cases). These provisions are *identical* except for the underlined passages. Given the ambiguity that attends the term "due date" with regard to college billings, which are often subject to optional installment payment plans, any court enforcing the original provision would surely do so subject to a reasonableness constraint. By acknowledging the possibility of flexibility on the part of the college, while maintaining the ability of the other parent to make the payment and recover interest, the new language here simply clarifies the relevant

procedure and makes future resort to the courts *less* likely.[48] This change did not deprive Fearghal or the children of any actual right, and it was certainly not reversible error.

Second, the revised Final OCS replaced language to the effect that "Obligor's share of all other post-secondary educational support expenses shall be paid to the Obligee within 15 days of being presented with bills" with language stating that "all other payments for college expenses made by the parents shall be paid directly to the child or pursuant to future court order." CP 4, 214 (emphasis added in both cases). This change brings the OCS into compliance with RCW 26.19.090(6), which states as follows:

> The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

Under the statute, payment to a parent is only proper "if the child resides with one of the parents."[49] Here, it is simply too early to tell whether one

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[48] An order can be clarified at any time. *See, e.g., Kemmer v. Keiski*, 116 Wn. App. 924, 933, 68 P.3d 1138 (2003) (stating that "an order 'clarifying' a judgment explains or refines rights already given. It neither grants new rights nor extends old ones. Unlike a modification, amendment, or alteration, which must be accomplished under CR 59, CR 60 or some other exception to preclusion, a 'clarification' can be accomplished at any time").

[49] RCW 26.19.090(6).

of the children will be residing with a parent—and if so, which one—while attending college. By establishing that payments for postsecondary expenses not made directly to the educational institution should go to the student or as otherwise established by court order, the Revised Final OCS properly reflects the statutory mandate.[50] Given the stipulated nature of the original Final OCS, making this change is no grounds for reversal.[51]

Third, Fearghal's complaint that the Revised Final OCS "remov[es] the ability of the child to both work and attend school part-time by requiring full-time attendance at school" ignores the fact that postsecondary educational support is, by definition, support for educational expenses.[52] The statute enforces the requirement that support be for education by requiring that "[t]he child . . . enroll in an accredited

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[50] *See Briscoe*, 134 Wn. 2d at 348 (noting that "[a]s a general rule parties to a marriage settlement are presumed to contract with reference to existing statutes, and statutes which directly bear upon the subject matter of the settlement are incorporated into and become part of the decree", and going on to hold that "[a]n express agreement to exclude the relevant statute must be a 'clear manifestation of intent ... to make the general law inapplicable'"). The original Final OCS manifests no clear intent to displace RCW 26.19.090.

[51] *Schumacher*, 100 Wn. App. at 213 (holding that a substantial change of circumstances is not required to modify a stipulated order). Indeed, the language of the original Final OCS on this point—asymmetrically specifying that "obligor" shall pay "obligee" for certain expenses, without considering the possibility that the student may be living with the obligor when he attends college, which could conceivably result in "obligee" owing payments to the "obligor"—demonstrates the wisdom of the rule that stipulated orders of child support can be modified without a finding of substantially changed circumstances.

[52] Appellant's Brief, at p. 24. *See also* RCW 26.19.090(1) (stating that the support it concerns is "for postsecondary educational expenses").

academic or vocational school, . . . be actively pursuing a course of study commensurate with the child's vocational goals, and . . . be in good academic standing as defined by the institution" as conditions for receipt of the support.[53] Fearghal has elsewhere acknowledged that this sort of statutory requirement is imputed by law into an order for child support.[54] Moreover, as a practical matter, Fearghal's position also overlooks the fact (of which this Court may take judicial notice) that many college students who are enrolled "full time" also hold a job. Thus, to the extent Fearghal believes that the revised order will prohibit a child from both working and attending school, his fear is groundless. The addition to the Revised Final OCS of the requirement that the student be enrolled "full time" was no error.[55]

5. The changes made in paragraph 3.15 of the Revised Final OCS were neither substantial nor erroneous.

Fearghal also assigns error to changes made in paragraph 3.15 of the Revised Final OCS regarding "payment of expenses not included in the transfer payment."[56] The gravamen of his objection is that these were

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[53] RCW 26.19.090(3). By contrast, the terms of the original Final OCS imply that mere *application* to college triggers the need to provide postsecondary support. CP 4, at ¶ 3.14. This is yet another example of the wisdom of the law allowing stipulated orders of child support to be modified without a finding of substantially changed circumstances.
[54] Appellant's Brief, at p. 25 (citing to *Briscoe*, 134 Wn.2d at 348).
[55] If this Court perceives an important difference between the requirement in the Revised Final OCS that the student be enrolled "full time" and the statutory requirement that the student "be in good academic standing as defined by the institution," Patricia has no objection to interpreting "full time" to mean "in good standing as defined by the institution."
[56] Appellant's Brief at p. 1, p. 26.

improper modifications, made without a finding of a change of substantial circumstances.[57] This objection has already been dealt with: since the original Final OCS was based on stipulation of the parties, no substantial change of circumstances was necessary to justify modifications.[58]

As for the actual content of the changes, it was reasonable under the circumstances to: 1) require proof of reimbursable educational expenses to be made within 45 days of payment; and 2) limit reimbursable educational expenses to driver's education, graduation pictures, cap and gown, and up to ten applications for college or the Running Start program. CP 215. The original Final OCS lacked this level of specificity, but clearly included an implied norm of reasonableness. It is reasonable that proof of educational expenses be given within 45 days of the expense, and it is reasonable to limit a student to 10 applications to college.[59] The additional specificity in the Revised Final OCS on these issues does not represent a substantial change, and was not reversible error.

6. By releasing Fearghal from his obligation to provide health insurance for the children, the trial court did not change the original Final OCS, but instead simply implemented it.

Under the original Final OCS, Fearghal was only required to provide health insurance in the event that the cost of such coverage did not exceed 25% of his basic child support obligation. CP 5 at ¶ 3.18. In the Revised Final OCS and the attached child support worksheet, the court set

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[57] Appellant's Brief, at p. 26.
[58] *Schumacher*, 100 Wn. App. at 213.
[59] More precisely, it is reasonable to limit the obligor parent's obligation to pay for college applications to no more than 10.

Fearghal's basic child support obligation at $411 (CP 221 at line 9), and determined that health insurance was available to him for the children at a monthly premium of $260.68 (CP 216). $260 is more than 25% of $411 (precisely, it is 63.3% of $411). Thus, by relieving Fearghal of his obligation to provide health insurance for the children in the Revised Final OCS, the trial court did not change the original Final OCS, it implemented it.[60] This was not error.

7. Transfer of the tax exemptions to Patricia was reasonable under the circumstances.

A child's best interests are served when the financial situations of the parents are maximized. Thus, "[t]o ensure that an exemption is used efficiently as tax laws, income levels, and child support obligations change, the trial court must retain the authority to allocate exemptions to the party who will benefit most from them."[61] Here, Fearghal objects to the reallocation of the federal tax exemptions from himself to Patricia, claiming that: a) it was a modification made without a showing of changed circumstances; and b) was not in the children's best interest.[62]

The first objection has already been dealt with above.[63] As for which allocation of the exemption best serves the interest of the children,

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[60] Fearghal of course is not "prohibited" from continuing to purchase health insurance for the children. Compare Appellant's Brief at p. 26. He merely cannot purchase unnecessarily expensive, duplicate health insurance and force Patricia to pay for part of it.

[61] *In re Marriage of Peterson*, 80 Wn. App. 148, 156, 906 P.2d 1009, 1013 (1995).

[62] Appellant's Brief, at pp. 22-23.

[63] *See supra*, Section II.3. *See also Schumacher*, 100 Wash. App. at 213.

Fearghal makes no comparative argument. He claims that he loses $2,000 in federal tax credits as a result of the change, but makes no effort to show how receipt of the tax exemptions reduces Patricia's tax burden.[64] Based on the evidence in the record, the trial court could reasonably conclude that Patricia faces a higher marginal tax rate than does Fearghal, and that total family resources would be increased by giving the exemptions to her.[65] Fearghal has certainly not proven the contrary.

8. Fearghal's assignments of error to factual findings overlook evidence in the record that supports the trial court's holdings. If remand for further factual findings or recalculation of the transfer amount is necessary, this Court should instruct the trial court to consider the Note as an asset for Fearghal's and a liability of Patricia's.

Fearghal also makes numerous assignments of error to factual findings in the Revised Final OCS and the incorporated Child Support Worksheet.[66] In general, the issue here is whether the challenged factual findings are supported by substantial evidence. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the declared premise.[67] "The party challenging a finding of fact bears the burden of showing that it is not supported by the record."[68]

a. **The deviation for Patricia's third minor child**

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[64] Appellant's Brief, at p. 23.
[65] *Compare* CP 45-46 (Fearghal's 2012 1040 showing zero taxes paid) with CP 69 (showing Patricia's bi-weekly federal income tax withholdings of $128.31).
[66] Appellant's Brief at pp. 20-22; 27-33.
[67] *In re Marriage of Lutz,* 74 Wn. App. 356, 370, 873 P.2d 566 (1994).
[68] *Panorama Vill. Homeowners Ass'n v. Golden Rule Roofing, Inc.,* 102 Wn. App. 422, 425, 10 P.3d 417 (2000).

Fearghal objects to the grant of a $223 monthly deviation to Patricia, awarded based on her responsibility for a third minor child, "EM." CP 223.[69] Fearghal asserts that the trial court's deviation award was erroneous because "the income and resources of the parties, their spouses and other adults in their household [we]re not disclosed in the Child Support Worksheet."[70] It is true that the Child Support Worksheet incorporated into the Revised Final OCS states "Not disclosed" on the lines corresponding to the incomes of Patricia's husband, Shaun Martin, and her adult stepdaughter, Adrienne Martin. CP 222. However, the record does contain information about Shaun Martin's income, as well as his exposure to extended periods of lay-off. CP 77-78, 89, 94, 112. It also contains a statement made under penalty of perjury that Adrienne Martin is a college student. CP 89, 94. Since the proceedings leading up to the Revised Final OCS were contested, the trial court is presumed to have reviewed this evidence.[71] Thus, there is arguably substantial evidence supporting the trial court's award of a deviation.

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[69] Appellant's Brief at pp. 20-21. An important part of Fearghal's objection to the deviation is that it was an improper modification, made without a finding of a substantial change of circumstances. However, this objection has already been dealt with: since the original Final OCS was based on stipulation of the parties, no substantial change of circumstances was necessary to justify a modification. *Schumacher*, 100 Wn. App. at 213.

[70] Appellant's Brief, at p. 4.

[71] *See Pippins*, 110 Wn.2d at 481 (noting that "[w]here a court order is the result of a fully contested hearing in which all parties have appeared, it may be presumed that the court has independently examined the evidence").

b. **Calculation of Patricia's costs of providing health insurance to the children.**

Fearghal assigns error to the trial court's use of $333 as Patricia's monthly cost of providing health insurance for the children.[72] CP 221. Citing to *In re Marriage of Scanlon & Witrak*, Fearghal properly notes that "[t]he [health insurance] credit may not include . . . any portion of the premium not covering the children at issue."[73] Here, however, Patricia submitted evidence that she has to spend $333 per month in order to secure health insurance for the children. CP 74. The fact that she cannot procure this insurance without securing redundant insurance for herself is not grounds for discounting the premium, because the entire premium serves only to secure insurance for the children. CP 74. The trial court was entitled to believe Patricia's evidence on this point, and did not err by crediting her with a monthly expenditure of $333 for the children's health insurance.

c. **Calculation of Patricia's federal income tax and FICA withholdings and tax refunds.**

The trial court credited Patricia with monthly federal income tax withholdings of $689. CP 220. It also found her monthly FICA withholdings to be $542. CP 220. Based on Patricia's pay stubs, Fearghal

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[72] Appellant's Brief at pp. 29-30.

[73] Appellant's Brief at p. 29, citing to *In re Marriage of Scanlon & Witrak*, 109 Wn. App. 167, 175, 34 P.3d 877 (2001), *as amended on denial of reconsideration* (Dec. 19, 2001).

asserts that both these amounts are in error, and should instead be $278 and $506, respectively.[74]

In addition, Fearghal claims that Patricia anticipates an income tax refund of $1,400 for 2013 and future tax years.[75] This is a plain distortion of the record. The document to which Fearghal cites, Patricia's Second Amended Chapter 13 plan, simply indicates that future tax refunds will be committed to funding the plan, with the exception of the first $1,400 of any such refund. CP 111. This is clearly not the same thing as stating that Patricia anticipates a refund of $1,400 per year. Thus, there is no basis for Fearghal's assertion that the amount of $1400 should be divided by 12 months and deducted from the amount of Patricia's tax withholdings on a revised Child Support Worksheet. If this Court determines that the trial court's calculation of the underlying income tax and FICA withholdings is inconsistent with the evidence, and remands for further proceedings, it should do so subject to the proviso set forth in the section that follows immediately below.

d. **Any remand for further proceedings should be accompanied by instructions to consider the Note as an asset of Fearghal's and a liability of Patricia's.**

If this Court concludes that the trial court made factual findings not supported by substantial evidence or otherwise remands for further proceedings below, it should accompany the order of remand with

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[74] Appellant's Brief at p. 10, pp. 28-29, citing to CP 108 (Patricia's pay stub for 9/13/13).
[75] Appellant's Brief at p. 29, citing to CP 111.

instructions to the trial court to consider the Note as an asset of Fearghal's and liability of Patricia's.[76]

Patricia makes this request pursuant to RAP 2.4(a), which states in pertinent part that "[t]he appellate court will, at the instance of the respondent, review those acts in the proceeding below which if repeated on remand would constitute error prejudicial to the respondent." Patricia has not cross-appealed, and is not seeking remand. Nonetheless, the trial court did err by not considering the Note as an asset to Fearghal and a liability to Patricia. The existence of the Note, and the judgment thereon, were evidenced in the record, yet the Revised Final OCS makes no reference to them. CP 92-95, 209-223.[77] Given the plain terms of RCW 26.19.071 and RCW 26.09.075, this was error, and prejudicial to Patricia.[78] If the trial court had properly considered Fearghal's income from the Note, the allocation of child support responsibilities would have been different. If this Court does remand for further proceedings, it should instruct the trial court to correct this error.

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[76] *See* Appendix B at B-29 to B-31, B-35 to B-36, and B-53.
[77] *See also* Appendix B at B-29 to B-31, B-35 to B-36.
[78] RCW 26.19.071(1) states in pertinent part that "[a]ll income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent." RCW 26.19.075(1)(e)(iv) states in part that "deviations under this section shall be based on consideration of the total circumstances of both households." RCW 26.19.075(2) states in part that "[a]ll income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section."

9. **In the alternative, if this Court determines that a finding of substantial change in circumstances was required to modify the Final OCS, it should remand to the trial court to determine whether entry of judgment on the Note, and Patricia's subsequent bankruptcy, constituted a substantial change of circumstances.**

Much of the preceding argument, in particular in Section II.3 above, relies on *Schumacher* for the point that no substantial change of circumstances need be shown in the event a child support order is not the product of a fully contested hearing.[79] In the event this Court finds *Schumacher* to be distinguishable, then Patricia requests that on remand the trial court be directed to consider whether entry of judgment on the Note, Patricia's filing for bankruptcy, and the implementation of her Chapter 13 plan, individually or collectively, constitute a substantial change of circumstances that would justify modification of the Final OCS.[80]

10. **The trial court did not abuse its discretion by setting a start date of January 1, 2014 for Patricia's new transfer obligations.**

The trial court has discretion to make a modification of child support effective upon the filing of the petition, upon the date of the order

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[79] *See Schumacher*, 100 Wn. App. at 213, *and Pippins,* 110 Wn.2d at 478.
[80] *See In re Marriage of Jarvis*, 58 Wn. App. 342, 346, 792 P.2d 1259 (1990) (noting that "[w]hether a substantial change in circumstances has occurred is a factual question within the court's discretion after consideration of the circumstances of both parties"). Since "[t]he change of circumstances must . . . be of a kind not within the contemplation of the parties or the court at the time the original order of support was entered," it is important to observe that the Note at issue here was drafted some three and a half months after, and reduced to judgment more than four years after, the Final OCS was entered. *Pippins*, 110 Wash. 2d at 480.

of modification, or any time in between.[81] Here, Fearghal was responsible for many of the delays that occurred after he filed his motion. CP 93, 194.[82] As late as October 4, 2013, he acknowledged that he "was hoping to defer [his] motion for adjustment of child support until Petitioner's bankruptcy proceedings concluded." CP 126, at ¶ 1. In his motion for revision, he did not assign error to the support start date of January 1, 2014 set by the Commissioner's order. CP 178, at ¶ 3.9; CP 193-205.[83] But the dispositive point is that the motion for adjustment was filed on May 29, 2013 (CP 29), the date of the order on the motion for adjustment and the Revised Final OCS was January 31, 2014 (CP 209-210), and the revised support start date was set at January 1, 2014 (CP 212). The start date was thus plainly within the permissible range of the trial court's discretion.[84] The January 1, 2014 start date is not erroneous.

11. Fearghal is not entitled to statutory fees and costs on appeal. Instead, this Court should award reasonable attorney's fees and costs to Patricia.

Fearghal seeks statutory fees and costs on appeal, pursuant to RAP 14.2 and RCW 26.09.140.[85] However, RAP 14.2 expressly conditions an

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[81] *Chase v. Chase,* 74 Wn.2d 253, 259, 444 P.2d 145 (1968) (superseded by statute on other grounds). *See also In re Marriage of Pollard*, 99 Wn. App. 48, 55, 991 P.2d 1201 (2000); *and Scanlon*, 109 Wn. App. at 173 (noting that "an adjustment [is] a form of modification").
[82] *See also* Appendix B at B-45 to B-46.
[83] Under RAP 2.5(a), Fearghal's failure to object to the January 1, 2014 start date set by the Commissioner should operate as a waiver of any objection to the January 1, 2014 start date set by the superior court.
[84] *Pollard*, 99 Wn. App. at 55.
[85] Appellant's Brief at p.35.

award of costs on the requesting party having "substantially prevail[ed] on review." Similarly, case law interpreting RCW 26.09.140 makes it clear that an award of fees under that statute is only properly made to the substantially prevailing party.[86] Since Fearghal will not "substantially prevail," he is entitled to neither fees nor costs. Moreover, as a *pro se* litigant who is not himself an attorney, Fearghal cannot claim attorney's fees.[87] For all of these reasons, this Court should deny Fearghal's request for fees and costs.

However, this Court should grant Patricia her reasonable attorney's fees and costs, under both RCW 26.09.140 and RAP 14.2. Unlike Fearghal, Patricia will substantially prevail on appeal. Also unlike Fearghal, Patricia has been formally represented by counsel since October 3, 2014. Pursuant to RAP 18.1(c), Patricia will file an affidavit of financial need prior to oral argument. In light of Fearghal's receipt of a steady stream of payments from Patricia on the Note, Patricia expects to be able to establish both her need and Fearghal's ability to pay.

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[86] *See, e.g.*, *State ex rel. M.M.G. v. Graham*, 159 Wn. 2d 623, 638, 152 P.3d 1005 (2007), as amended (Feb. 21, 2007), as amended (May 10, 2007) (granting fees to the respondent under RCW 26.09.140 because she was the prevailing party, and denying fees to the petitioner because he was not).

[87] *See In re Marriage of Brown*, 159 Wn. App. 931, 938-39, 247 P.3d 466 (2011).

III. CONCLUSION

For all of the reasons stated above, this Court should affirm the trial court, and award Patricia her reasonable fees and costs. In the event this Court determines that remand is necessary for further proceedings, it should instruct the trial court to consider the Note as an asset of Fearghal's and a liability of Patricia's. If appropriate, it should also instruct the trial court to consider whether entry of judgment on the Note, Patricia's subsequent bankruptcy, and/or the implementation of Patricia's Chapter 13 plan constitute a substantial change of circumstances justifying modification of the Final Order of Child Support.

DATED this 31st day of October, 2014.

DAVID CORBETT PLLC

By _____

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COURT OF APPEALS
DIVISION II

2014 OCT 31 PM 1:03

STATE OF WASHINGTON

BY _____
DEPUTY

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on October 31, 2014 I sent a copy of the attached Respondent's Brief via U.S. mail, first class postage pre-paid, to Appellant Fearghal McCarthy at the following address:

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

Dated this 31st day of October, 2014.

By: _____
David J. Corbett

NO. 45956-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:

PATRICIA MCCARTHY
Respondent,

v.

FEARGHAL MCCARTHY,
Appellant

APPENDIX A TO RESPONDENT'S BRIEF

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

In re the Marriage of: PATRICIA MCCARTHY, Petitioner vs. FEARGHAL MCCARTHY, Respondent	NO. 05-3-01349-1 PATRICIA MCCARTHY'S SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS ON APPEAL Ct. of Appeals No. 45956-6-II [Clerk's Action Required]

Patricia McCarthy, petitioner in the Superior Court and respondent on appeal, designate the following documents for transmission to the Court of Appeals, Division II, of the State of Washington, Cause No. 45956-6-II, pursuant to RAP 9.6, as a supplementation to those clerk's papers previously designated. The clerk shall assemble the copies and number each page of the clerk's papers in chronological order of filing and prepare an alphabetical index to the papers. The clerk shall promptly send a copy of the index to each party.

SUPPLEMENTAL CLERK'S PAPERS

Subnumber	Filing Date	Document
686	10/27/2008	Order Adopting Stipulated Findings of Fact in Support of the Final Parenting Plan
687	10/27/2008	Final Parenting Plan
757	1/29/2010	Findings of Fact and Conclusions of Law
914	4/3/2013	Motion/Declaration for Judgment
931	4/24/2013	Judgment
933	5/29/2013	Proposed Order/Findings
947	6/19/2013	Child Support Worksheet/Proposed
954	6/26/2013	Motion Hearing
963	9/17/2013	Notice of Unavailability
980	10/21/2013	Response to Motion for Reconsideration

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DATED this 31st day of October, 2014.

DAVID CORBETT PLLC

By: _____
David J. Corbett, WSBA # 30895
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CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on October 31, 2014 I sent a copy of the attached Supplemental Designation of Clerk's Papers via U.S. mail, first class postage pre-paid, to Appellant Fearghal McCarthy at the following address:

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

Dated this 31st day of October, 2014.

By: _____
David J. Corbett

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NO. 45956-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:

PATRICIA MCCARTHY
Respondent,

v.

FEARGHAL MCCARTHY,
Appellant

APPENDIX B TO RESPONDENT'S BRIEF

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FILED
OCT 27 2008
Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** ORDER ADOPTING STIPULATED FINDINGS OF FACT IN SUPPORT OF THE FINAL PARENTING PLAN

This matter came before the Court upon Petitioner and Respondent's "Stipulated Findings of Fact in Support of the Final Parenting Plan". Based on the parties stipulation submitted under penalty of perjury, the Court adopts the stipulated findings of fact as presented and as the basis for entering the Final Parenting Plan that is approved and ordered this day.

Accordingly, it is hereby Ordered that the Findings of Fact in Support of the Parenting Plan that are on file herein, and a copy of which are attached to this order, are adopted by this court as a basis entering the final parenting plan.

Dated: 10-27-08

HONORABLE JUDGE EDWIN POYFAIR

Presented by:

Steve Bogdon, WSBA 12956
Attorney for Respondent

Approved for entry:

Patricia McCarthy, Petitioner
Pro Se

ORIGINAL

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OCT 24 2008

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** STIPULATION TO FINDINGS OF FACT IN SUPPORT OF THE FINAL PARENTING PLAN

Petitioner Patricia McCarthy and Respondent Fearghal McCarthy stipulate as follows:

I. BASIS OF FINDINGS

1. Stipulation. The parties stipulate to the findings herein based upon the Court's records and upon what the parties believe would be proven if this matter proceeded to trial.

II. FINDINGS OF FACT

2.1 Jurisdiction. Petitioner and Respondent lived in the State of Washington during their marriage. The Court has personal jurisdiction over both parties.

2.2 Date and Place of Marriage. The parties were married in Ballston Spa, Saratoga County, New York on October 24, 1998.

2.3 Date of Separation. The parties separated on June 3, 2005 (the "separation").

2.4 Status of Marriage. Petitioner is petitioning for the dissolution of the parties' marriage. On this basis, the marriage is irretrievably broken. The parties have lived separately and apart since June 3, 2005.

2.5 Non-dependent Children. After separation on September 4, 2007, Petitioner gave birth to a daughter, Emily Martin. Respondent is not the father. A paternity affidavit acknowledging paternity was signed by Mr. Shaun Martin.

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2.6 Dependent Children of the Marriage. Petitioner is the mother and Respondent is the father of the following children (the "Children").

Conor McCarthy	Age 9	Birth date: July 16, 1999
Cormac McCarthy	Age 5	Birth date: May 10, 2003

2.7 Pregnancy. Petitioner is not currently pregnant.

2.8 Claims to Custody or Visitation. Petitioner warrants that she does not know of any person other than Respondent with claims to custody or visitation rights to the Children.

2.9 Jurisdiction over the Children. The court has previously entered a temporary parenting plan in this matter and retains jurisdiction under RCW 26.27.211. The Children lived in Washington for more than six consecutive months immediately preceding the commencement of this proceeding. This court has exclusive continuing jurisdiction over the Children.

2.10 Final Parenting Plan. The final parenting plan submitted herewith for adoption by the Court is incorporated into these findings. This final parenting plan is the result of an agreement of the parties. It is in the children's best interests that Respondent is the primary custodial parent for the Children and that Petitioner have residential time with the Children.

2.11 Petitioner's Mental Health. Petitioner has obtained treatment from a number of mental health professionals. Petitioner's mental health history includes medical diagnoses of post-partum depression, major depression disorder, anxiety disorder, panic attacks, insomnia, impaired functioning (i.e. depressed GAF scores) and post-traumatic-stress-disorder like symptoms. Petitioner suffered a one-time incident of sexual abuse as a child but did not receive any follow-up counseling. Petitioner has a family history of mental illness: her father has a history of alcoholism, anxiety and depression; her sister was bi-polar and suicided; her maternal grandmother had "nervous breakdowns" and underwent electro-shock therapy for depression; and her maternal uncle was diagnosed with schizophrenia. Medical records and Petitioner's personal diaries evidence that Petitioner has suffered from paranoid fears and various persecutory beliefs such as having "frightening visions [that] are not real"; feelings of being unsafe and trapped; fears that hospital medical staff were plotting against her; fears of harming and being alone with Cormac when he was newborn; feelings of being suffocated and controlled in relationships; and feelings of being harassed and discriminated against in the workplace. Petitioner's psychiatrist recommended that she undergo a full psychiatric evaluation and obtain cognitive behavioral therapy.

2.12 Petitioner's Current Mental Health Status. Petitioner represents: that her mental health issues are under control; that she currently sees a psychiatrist, Dr Hansen, quarterly; that her use of psychotropic medications is limited to Xanax and Wellbutrin as prescribed by Dr. Hansen;

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and that she is presently in good mental health. Petitioner agrees to continue her efforts to address her mental health issues, to keep Respondent timely informed of any changes to her use of psychotropic medications, and to promptly notify Respondent of any material change in her mental health status.

2.13 Petitioner's Development of Drug Dependency. During the marriage and after separation, Petitioner was prescribed various psychotropic drugs to deal with her mental health issues. Medical records evidence that during the marriage, Petitioner made numerous complaints of physical maladies such as chronic back pain, abdominal pain, migraines, leg numbness, arm pain and numbness, body aches, cramps and vision problems. Petitioner was prescribed narcotics in response to her various complaints of physical pain. While medical investigation of these complaints did not establish a clear etiology for many of Petitioner's complaints, medical investigation of Petitioner's back pain complaints revealed a bulged disc but did not find any significant qualitative symptoms. In April 2004, Petitioner's primary care physician, Dr. Tanya Stewart, began expressing concern - in her medical notes, but not directly to Petitioner - about Petitioner's continued need for and prolonged use of narcotics. In June 2004, Dr. Stewart referred Petitioner to the in-house pain management clinic at Kaiser Permanente for monitoring. In August 2004, Petitioner changed her primary care physician and transferred to Dr. Thomas Allmon. Despite Dr. Stewart's recorded concerns, Dr. Allmon recommended that Petitioner be prescribed narcotics on a long-term basis and presented her with a long-term pain management contract, which she signed. Petitioner trusted her doctor and followed his recommendation to use narcotics long-term. Due to the side-effects of her long-term exposure to prescription narcotics, Petitioner subsequently broke her pain management contract in August and September 2004 resulting in her pain contract being discontinued. Dr. Allmon renewed Petitioner's pain contract and continued to prescribe Petitioner with narcotics and psychotropic medications. Petitioner developed a dependency on prescription medications. Marital discord developed between the parties regarding the impairments the prescription drugs were causing to Petitioner's judgment and functionality. Petitioner believed and argued with Respondent that her doctor knew best and it would have been irresponsible of her to over-ride Dr. Allmon's recommendation of long-term narcotic use. Petitioner had no prior history of drug or alcohol abuse. Petitioner believes that she developed a drug dependency because she was taking over-prescribed medications under doctor's orders.

2.14 Petitioner's Drug Addiction & Abuse. After separation, Petitioner's dependency on prescription drugs intensified into drug abuse. Petitioner continued making complaints of physical pain and obtaining prescriptions for narcotics. Petitioner obtained narcotic prescriptions

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from multiple medical providers, urgency care clinics and Internet pharmacies without their common knowledge. In March 2006, Petitioner asked to be taken and was taken to the emergency room for opiate withdrawal. Petitioner admitted she had been abusing narcotics for "the last year and a half". Petitioner completed a four day detoxification program. From March 2006 until December 2006, Petitioner participated in a psychotherapy drug rehabilitation program at Kaiser Permanente. Petitioner experienced relapse and continued to abuse drugs obtaining narcotics from multiple medical providers and Internet pharmacies. In January 2007, Petitioner became pregnant. Petitioner's relapse and abuse of drugs continued raising concern among her medical providers. On April 8, 2007, Petitioner obtained narcotics by making an emergency room complaint which resulted in her obtaining an appendectomy. Petitioner represents that her surgeon, Dr. James Kilway, told her that her appendix was "red and inflamed" and that there was a 70% chance that she would have a miscarriage of her unborn baby if her appendix was not removed. Dr. Kilway's records do not document this conversation. Instead, Dr. Kilway's pre-operative notes state that "[Petitioner's] ultrasounds were all negative" and that "in view of the patient's equivocal studies and concern about appendicitis, [he] elected to take her to the operating room." The post-operative diagnosis was that the appendix was normal, there was "no evidence of malignancy, [and] the pathology was benign." Five days later, Petitioner's primary care physician, Dr. Peter Bessas, advised Petitioner to undergo immediate detoxification, to enter into a rehabilitation program, and to have a third party care for the Children. Dr. Bessas terminated treatment of Petitioner. On April 27, 2007, Petitioner presented at the Southwest Washington Medical Center emergency room requesting prolonged hospitalization and IV narcotics to relieve her complaints of abdominal pain, back pain, migraines and syncope (i.e. passing out on multiple occasions during the prior week). Petitioner's request was denied due to a medical determination that there was "no medical indication for that therapy". Shortly thereafter, Petitioner's obstetrician at the Women's Clinic terminated his treatment of Petitioner. Between July and December 2007, Petitioner submitted documentation and reported to Dr. Edward Vien, the parenting evaluator, that she had been testing negative in drug tests. In other drug tests during this period and afterwards, Petitioner tested positive for benzodiazepines. During the two and a half years following Petitioner and Respondent's separation, medical records evidence that Petitioner was prescribed and used no less than twenty-six different brands and types of drugs.

2.15 Petitioner's Current Addiction Recovery Status. Petitioner represents that she is no longer abusing narcotics or other prescription medications. Petitioner voluntarily submitted to three-month random UA testing and a hair follicle drug screen which substantiates this.

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Petitioner has surgery scheduled in November 2008 to correct spinal stenosis in her neck vertebrae caused by a bony spur (confirmed by MRI) that is impinging on a nerve. Petitioner agrees to continue in her efforts to avoid relapse, to keep Respondent timely informed of her use of all prescription medications, to provide medical releases to Respondent upon request, and to promptly notify Respondent in the event that she has an addiction relapse or needs support.

2.16 Breakdown of the Marriage. Prior to separation, the parties' marriage was under stress. Petitioner was grief-stricken after her sister's suicide on June 10, 2004. The parties were starting up a skincare business. In particular, marital discord developed over the Petitioner's physician supported drug dependency. In an effort to compel Petitioner to immediately address her drug dependency, Respondent threatened divorce. Petitioner became increasingly fearful that she would lose custody of the Children if Respondent initiated a divorce. The parties acknowledge mutual responsibility for the deterioration of the marriage.

2.17 Petitioner's Unfounded Persecutory Thoughts. Petitioner acknowledges, and her personal diaries document, that Respondent was a caring and supportive husband to Petitioner. As the marriage deteriorated and after separation, Petitioner developed unfounded persecutory thoughts towards Respondent. For example, Petitioner reported to third parties false and baseless allegations, including, among others, that Respondent wanted to kill Cormac and harm Conor; that Respondent never visited Petitioner in hospital when she was birthing Cormac; that Respondent was domestically violent physically harming Petitioner daily; and that Respondent was intent on abducting the children to Ireland. These false and baseless allegations were symptomatic of Petitioner's mental health issues and physician supported drug use.

2.18 Petitioner's Initial Allegations of June 3, 2005. On June 3, 2005, the day after the parties had a marital argument in which Respondent threatened divorce unless Petitioner addressed her drug addictions, Petitioner falsely reported to the police that Respondent had assaulted their son Cormac the evening prior. Petitioner's report to the police that Respondent assaulted Cormac, or had any other inappropriate contact with Cormac, was false. When questioned by the deputy sheriff, Respondent denied the allegation. There were no physical manifestations of any injury to Cormac, and there was no discernable damage in the house. In short, there was no physical harm, injury, damage or physical evidence of any kind to support Petitioner's allegation; and the conspicuous absence of any such physical evidence supported Respondent's denial. There was no history of any prior allegations against Respondent. The investigating deputy was dismissive of Respondent's explanations regarding Petitioner's mental health history, drug abuse and state of anxiety. The deputy did not ask to examine Cormac or

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even see him, nor did he question the older child Conor. Despite the total lack of physical evidence, the deputy arrested Respondent. The deputy only had telephonic contact with Petitioner prior to his arrest of Respondent. When finally questioned by the Domestic Violence Prosecution Center in early January 2006, Conor repeatedly stated that the alleged incident did not happen. Petitioner's report to the investigating deputy that Respondent had been domestically abusive to her and the Children over the prior year was also false. Petitioner's allegations contained in the June 3, 2005 police report were made because she feared losing the children. Petitioner's fear of losing her children was based on her belief that Respondent was intent on initiating a divorce if she did not immediately address her addiction to prescription drugs. Petitioner had developed unfounded persecutory fears regarding Respondent arising from her fragile mental health. Because of Petitioner's state of emotional turmoil, she panicked. The criminal assault charge was ultimately dismissed.

2.19 Petitioner's Initial Interaction with CPS: Based on the June 3, 2005 police report, Child Protective Services ("CPS") investigated Petitioner's allegation that Respondent assaulted Cormac. CPS did not interview Respondent. On June 13, 2005 CPS investigator Mr. Patrick Dixson met with Petitioner. Petitioner represents: that Mr. Dixson showed up at Petitioner's residence unannounced; that Mr. Dixson instructed Petitioner to sign a safety plan that required her to ensure that both Conor and Cormac did not have any contact with Respondent; that Mr. Dixson instructed Petitioner to file for divorce; that Mr. Dixson referred Petitioner to divorce attorney Ms. Marcine Miles; that Mr. Dixson told Petitioner that if she did not timely file for divorce she would be guilty of failing to protect the children in accordance with the signed safety plan, which failure would result in CPS removing the children from Petitioner; and, that Mr. Dixson's threats and actions fueled Petitioner's panic, fear of losing the children, and baseless persecutory fears regarding Respondent.

2.20 Petitioner's Interaction with Domestic Violence Prosecution Center: Petitioner represents: that within days of Respondent's arrest in early June 2005, Petitioner was contacted by Ms. Jill Petty of the Domestic Violence Prosecution Center (DVPC) to discuss the case; that Ms. Petty advised Petitioner that Ms. Petty was outraged by the police report and was intent on securing Respondent's criminal conviction because Ms. Petty herself had a two-year old; that in follow-up discussions, Petitioner told Ms. Petty she was reticent about the allegations within the police report and wanted to recant; that Ms. Petty told Petitioner that it was not Petitioner's decision to drop the charges as prosecutorial decisions were "completely out of [Petitioner's] hands"; that all the DVPC staff were outraged by the police report; that Respondent fit the profile of a typical abuser; that Petitioner fit the profile of the typical domestic violence victim; that

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Petitioner should be fearful of Respondent; that Petitioner would lose all credibility in any divorce action if she recanted and as a result would likely lose custody of the children; that Ms. Petty would notify CPS if Petitioner recanted, after which CPS would take the children from Petitioner into CPS custody and put them in foster care; and that if Petitioner did recant, Petitioner would be prosecuted for making a false police report. Ms. Petty contacted Petitioner multiple times, repeating that Petitioner met the typical profile of a domestic violence victim; characterizing Respondent as an abuser; repeating that Petitioner would lose her children if she recanted; encouraging Petitioner to file for divorce; and telling Petitioner to petition for an Order of Protection to eject Respondent from the marital home and preclude Respondent from having any contact with his children for one year. In response, Petitioner represents: that Petitioner complied with Ms. Petty's demands and petitioned the Court for an Order of Protection followed quickly by a petition to dissolve the parties' marriage; that Ms. Petty also met and telephoned Petitioner, during which Ms. Petty asked Petitioner about what other potential criminal charges could be made against Respondent; that Ms. Petty told Petitioner that the more charges the DVPC filed against Respondent the easier it would be for Ms. Petty to criminally convict Respondent and deport him as a non-US citizen. Petitioner represents that at this juncture she: was substantially under the influence of Ms. Petty; was in a state of emotional turmoil; felt incapable of doing anything different than Ms. Petty was demanding from her; and was under the false belief that she needed to follow Ms. Petty's instructions in order to keep from losing her children. In compliance with Ms. Petty's instructions; Petitioner on August 12, 2005, made three criminal complaints alleging that Respondent had violated a no-contact order; and Petitioner made an additional felony criminal complaint on October 18, 2005 alleging that Respondent had attempted to tamper with her testimony. Ms. Petty then filed additional criminal charges against Respondent based upon the police reports documenting Petitioner's new complaints.

2.21 No-Contact Criminal Charges. Petitioner's three allegations that Respondent violated the no-contact order, as set forth in the August 12, 2005 police report, are false. Respondent never violated the no-contact order. After Ms. Petty departed the DVPC, the three criminal no-contact charges filed by Ms. Petty were dismissed by another prosecutor in the DVPC.

2.22 Petitioner's Witness Tampering Charge Against Respondent. Petitioner's allegations that Respondent engaged in witness tampering set forth in the October 18, 2005 police report are false. Contrary to Petitioner's allegations, Respondent did not provide hand-written notes to Petitioner or otherwise attempt to tamper with Petitioner as a witness. Petitioner concedes that she inadvertently obtained Respondent's handwritten notes without Respondent's knowledge or permission. The felony witness tampering charge filed by Ms. Petty was ultimately dismissed.

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2.23 Petitioner's Additional Allegations Against Respondent. As Petitioner became more entrenched in her unfounded persecutory beliefs that Respondent was intent on harming the children and more fearful that Respondent would prove the extent of her drug abuse and remove the Children from her custody; Petitioner initiated additional allegations of child abuse/neglect and expanded her prior allegations against Respondent in the divorce action. CPS declined to investigate a complaint made by Petitioner's mother following Respondent's arrest on June 3, 2005 (a complaint regarding Conor separate from the assault allegation regarding Cormac). CPS also declined to investigate a complaint made against Respondent by Petitioner's mother on November 13, 2007. CPS and the police did investigate Petitioner's allegation that Respondent assaulted Cormac on November 18, 2007. The investigating deputy determined that there was no probable cause to substantiate the allegation stating that "he didn't think there was much to the alleged incident" and CPS determined that the allegation was unfounded. Another referral, made after Petitioner took Cormac to the Vancouver Clinic on June 19, 2008, alleging child neglect against Respondent was declined for investigation by CPS. All Petitioner's allegations that Respondent was domestically violent, abusive and neglectful to her or the children are false, unfounded and without any evidentiary support other than Petitioner's bare assertions, which Petitioner concedes were readily transparent and without any corroborative evidence.

2.24 DVPC Interviews of Conor. On January 11, 2006, Conor was interviewed jointly by Ms. Petty and Respondent's criminal defense attorney, Mr. Jon McMullen. During that interview, Conor was emphatic that Respondent did not hit Cormac and was not domestically violent; that Petitioner was not being honest; that Petitioner had been coaching him; and that Petitioner was angry and intimidating towards him when he would not say what she wanted or tell "her truth". Petitioner admits that Conor was truthful in his statements. During the week prior to this joint interview, Ms. Petty interviewed Conor without Respondent's or Respondent's attorney's knowledge. During that early interview; Ms. Petty told Petitioner to leave the room because Petitioner was yelling at Conor when his answers contradicted Petitioner's allegations and exonerated Respondent. Neither Respondent nor his attorney learned of this interview until Conor referred to it in his January 11, 2006 joint interview with Ms. Petty and Mr. McMullen.

2.25 Petitioner's Coaching of the Children. Following Conor's January 11, 2006 interview at the DVPC, Petitioner berated Conor causing him great emotional distress which is still discernible today. The next day Petitioner took Conor to Dr. Kirk Johnson, who was then conducting the parenting evaluation, with instructions to "protect his brother" and tell Dr. Johnson that Respondent had made him lie the day prior and had in fact hit Cormac. Petitioner

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also took Conor out of school on September 24, 2007 for one-on one time to influence Conor prior to his interview with Dr. Vien later the same day. Regarding Petitioner's November 18, 2007 assault allegation, Cormac reports that after telling Petitioner that her boyfriend's child "Rosie" hit him, Petitioner kept insisting that it was Respondent who had hit him; and that he then told the investigating police officer that Respondent had hit him because "he wanted to make mommy happy." A follow-up interview of Cormac by CPS on November 19, 2007 was discontinued due to maternal prompting. Petitioner represents that her actions were inadvertent in that they were symptomatic of her mental health issues and her emotional distress. Petitioner represents that her baseless persecutory beliefs were bolstered by Respondent's arrest and criminal prosecution.

2.26 Petitioner's Restraining Order Violations: The Court issued mutual domestic violence restraining orders in this dissolution action. On October 5, 2005, Petitioner violated the domestic violence restraining order by phoning Respondent and making verbal threats that Respondent and the paternal grandmother "would never see the children again." Petitioner admitted violating the restraining order to the investigating deputy. On January 11, 2006 after hearing that Conor refuted her allegations in his interview at the DVPC earlier that same day, Petitioner violated the domestic violence restraining order by angrily trespassing into Respondent's residence. Respondent was fearful of being assaulted by Petitioner and her unpredictable enraged behavior. Off-duty Vancouver Police Officer Bill O'Meara intervened and prevented a physical altercation from occurring. Petitioner admitted to the investigating deputy that she violated the restraining order and told the deputy she had a third party present to take the Children in case she was arrested. The DVPC sent Respondent a follow-up May 16, 2006 letter to this incident acknowledging that Respondent was a victim of domestic violence. On December 17, 2006, Petitioner violated the domestic violence restraining order through the actions of third parties (Petitioner's mother, and six men including Petitioner's father and boyfriend) who she had show up when Respondent was fulfilling a Court order to retrieve personal property. Respondent was physically poked with a finger by Petitioner's boyfriend, Mr. Shaun Martin. Petitioner's father, Mr. Winston Greer, was hostile, verbally abusive, threatening and antagonistic towards Respondent. Together, Mr. Martin, Mr. Greer and the other four men who were present put Respondent and his two companions in fear of assault and their physical safety. The Court found Petitioner in contempt, holding her responsible for the actions of these third parties as Petitioner's agents. On June 4, 2007, Petitioner violated the restraining order by inviting Respondent into contact following her failure to present Cormac at transfer, despite the no-contact order she maintained against Respondent and Respondent's stated fear of further false allegations. On November

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29, 2007 Petitioner violated the restraining order by showing up at a minor surgery scheduled for Cormac while Cormac was in Respondent's care, and creating conflict.

2.27 Findings of Contempt and Parenting Order Violations by Petitioner. Approximately thirty findings of contempt have been entered against Petitioner on a variety of issues including non-compliance with discovery -orders, restraining order violations and parenting order violations. Additional contempt matters were reserved for trial. Petitioner's violations of parenting orders include: refusing Respondent a majority of his court-ordered bi-weekly phone contact with the children between October 1, 2005 and January 19, 2006; refusing Respondent's court-ordered residential time on October 2nd, 9th and 18th 2005; refusing Respondent's court-ordered residential time during Thanksgiving week 2005; relocating the Children in mid to late 2006 without giving prior notice to Respondent, with the result that Respondent did not know where the children were living for months; and failing to return the children to Respondent on May 11, 2007 per the parenting plan. Petitioner acknowledges that her failure to comply with court orders reflected a dysfunctional behavior pattern symptomatic of her mental health issues and/or drug abuse, which were ongoing due a lack of timely and effective intervention.

2.28 Dr. Kirk Johnson's Parenting Evaluation. Dr. Kirk Johnson, the court-appointed parenting evaluator, informed Respondent that Respondent's arrest on June 3, 2005 would be the major factor in his parenting evaluation regardless of whether or not Respondent was exonerated. In December 2005, Dr. Johnson suspended his parenting evaluation until Respondent's criminal matters were resolved. Despite this, Dr. Johnson continued to meet and bill Petitioner without Respondent's knowledge. The Court dismissed Dr. Johnson before he completed his evaluation based on its concerns about prejudice.

2.29 Dr. Edward Vien's Evaluation. Dr. Edward Vien did not take an investigative approach in his parenting evaluation and ignored critical information on substantive parenting issues. Dr. Vien: failed to address concerns regarding incomplete discovery of Petitioner's medical records; did not interview key collateral contacts provided by Respondent; refused Respondent's request for an equal opportunity to bring the children for interview; resisted accepting information provided by Respondent; and did not document his review, if any, of substantial collateral materials provided to him in a manner that showed that these collateral materials were given reasonable consideration. Based on personal knowledge, the parties agree that the conclusions upon which Dr. Vien appears to have based his parenting opinions are incorrect and erroneous.

2.30 Harm to the Children. The children were forcibly estranged from Respondent for a period of approximately two years as a result of court decisions based upon Respondent's June

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3, 2005 arrest and the additional criminal charges made against Respondent. During this time, while the children were in the sole care and custody of Petitioner, they suffered harm and neglect as a result of their forced estrangement from Respondent, Petitioner's drug abuse, Petitioner's mental health impairments and other stressors. Conor thought his father was dead. Cormac was not aware of Respondent's existence and thought Petitioner's boyfriend was his father. The effects of this harm are still discernable today.

2.31 Current Parenting Abilities. Each parent has adequate parenting skills. Petitioner has addressed, and continues to address, her mental health and drug addiction issues. Neither party presents an imminent danger to the children.

2.32 Parental Conflict. The parties' relationship since August 2005 has been defined by highly contentious litigation resulting from Petitioner's false allegations and a pattern of parental hostility and antagonism. Petitioner acknowledges that Respondent is not the party responsible for the pattern of parental hostility; and that Respondent acted only to defend himself against numerous unfounded allegations and to present the facts necessary to enable an informed determination of the children's best interests. Respondent acknowledges that Petitioner was struggling with mental health issues, drug addiction, fear of losing her children, persecutory beliefs, drug rehabilitation and external influences which impaired her judgment and perceptions. The parties have resolved their child custody dispute by their agreement to these findings of fact and the attached parenting plan.

III. DECLARATION

I hereby declare under penalty of perjury under the laws of the State of Washington that to the best of my knowledge and belief the foregoing statements are true and correct, and I approve the submission of them to be adopted by the Court as the Stipulated Findings Of Fact In Support Of The Final Parenting Plan that we are submitting herewith.

Executed at Vancouver, Washington, this 24 day of October, 2008

Patricia McCarthy, Petitioner

Fearghal McCarthy, Respondent

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FILED

OCT 27 2008

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** FINAL PARENTING PLAN

This parenting plan is the final parenting plan signed by the court pursuant to an order entered on October 27, 2008, ~~which modifies a previous parenting plan or custody decree~~.

It Is Ordered, Adjudged and Decreed:

I. GENERAL INFORMATION

This parenting plan applies to the following children:

Name	Age
Conor Mc Carthy	9
Cormac Mc Carthy	5

II. BASIS FOR RESTRICTIONS

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the children and the right to make decisions for the children.

2.1 Parental Conduct (RCW 26.09.191(1), (2))

Petitioner has a history of violating retraining orders as detailed in the Stipulated Findings of Fact attached hereto.

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2.2 Other Factors (RCW 26.09.191(3))

There is a history of abusive use of conflict which has been harmful to the children. This harmful conflict along with its underlying factors is detailed in the Stipulated Findings of Fact attached hereto. This abusive use of conflict is attributed to Petitioner.

III. RESIDENTIAL SCHEDULE

The residential schedule must set forth where the children shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the children shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the children and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 Schedule for Children under School Age

There are no children under school age.

3.2 School Schedule

Upon enrollment in school, the children shall reside with the father, except for the following days and times when the children will reside with or be with the other parent:

From Friday at 4.30 pm to Monday at 4.30 pm every other week; and
From Thursday at 4.30 pm to Friday at 4.30 pm in the intervening every other week.

A parent whose residential time is normally scheduled to end the day prior to a school holiday shall have their residential time extended to 6pm of that school holiday.

3.3 Schedule for Winter Vacation

The children shall reside with the Respondent during winter vacation, except for the following days and times when the children will reside with or be with the other parent:

Even Years: Second half of Winter Break - (6pm Sunday – 6pm following Sunday)
Odd Years: First half of Winter Break - (6pm Sunday – 6pm following Sunday)

(Winter break starts in one year and ends in another. For purposes in this section "even" or "odd" shall refer to the year in which the Winter Break begins).

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3.4 Schedule for Other School Breaks

The children shall reside with the Respondent during other school breaks, except for the following days and times when the children will reside with or be with the other parent:

Presidents' Day Break:	Even Years (6pm Thursday – 6pm Saturday) Odd Years (6pm Saturday – 6pm Monday)
Spring Break:	Even Years (6pm Friday – 6pm Wednesday) Odd Years (6pm Wednesday – 6pm Sunday)
Memorial 'Day' Break:	Even Years (6pm Thursday – 6pm Saturday) Odd Years (6pm Saturday – 6pm Monday)
Thanksgiving Break:	Even Years - (6pm Wednesday – 6pm Sunday)

3.5 Summer Schedule

Upon completion of the school year, the children shall reside with the Respondent, except for every other week of Summer Break starting the second week of Summer Break with Petitioner, when the children will reside with Petitioner.

3.6 Vacation With Parents

Upon 60 days notice, each parent shall have the right to swap up to ten consecutive days with the other parent as follows:

Even Years: Petitioner may swap up to ten consecutive from her first half and Respondent may swap up to ten consecutive days from his second half of the summer.

Odd Years: Respondent may swap up to ten consecutive from his first half and Petitioner may swap up to ten consecutive days from her second half of the summer.

(For the purposes of this paragraph, July 21st marks the half-way point of the summer.)

3.7 Schedule for Holidays

The residential schedule for the children for the holidays listed below is as follows:

	With Mother	With Father
Martin Luther King Day	Even Years	Odd Years
Veterans' Day	Odd Years	Even Years

For the purposes of this paragraph, a holiday shall begin at 6pm the day prior and end at 8pm that day.

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3.8 Schedule for Special Occasions

The residential schedule for the children for the following special occasions (for example, birthdays) is as follows:

	With Mother	With Father
Mother's Day	Every Year	N/A
Father's Day	N/A	Every Year

For the purposes of this paragraph, a special occasion shall begin at 6pm the day prior and end at 8pm that day.

3.9 Priorities Under the Residential Schedule

If the residential schedule, paragraphs 3.1 - 3.8, results in a conflict where the children are scheduled to be with both parents at the same time, the conflict shall be resolved by priority being given as follows (with 1 being given the highest priority):

7 school schedule (par. 3.1, 3.2)
5 winter vacation (par. 3.3)
4 school breaks (par. 3.4)
3 summer schedule (par. 3.5)
1 vacation with parents (par. 3.6)
6 holidays (par. 3.7)
2 special occasions (par. 3.8)

3.10 Restrictions

There are limiting factors in paragraphs 2.1 and 2.2, but there are no restrictions on the Petitioner's residential time with the children for the following reasons:

i) Petitioner has addressed and continues to address her prior drug addiction issues in order to avoid relapse. Petitioner agrees to provide medical releases to Respondent upon request, and to promptly notify Respondent in the event she has a relapse or needs support.

ii) Petitioner's mental health issues are under control. She continues to see her psychiatrist quarterly. Her use of psychotropic medications is limited to prescriptions from her psychiatrist. Petitioner has agreed to keep Respondent timely informed of any changes in her use of psychotropic medications and to promptly notify Respondent of any material change in her mental health status.

iii) Petitioner has addressed the underlying factors which gave rise to her violating the restraining orders. The risk of continued harm to the children is remote. The parties have demonstrated an ability to interact with one another effectively and respectfully. A restraining order is no longer necessary. It is in the children's best interests that the parties continue to foster parental communication and co-parenting.

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3.11 Transportation Arrangements

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation shall be arranged by the receiving parent. Exchange shall be curbside at the other party's residence. The children shall be picked up and delivered promptly at the scheduled times. Each parent shall promptly notify the other parent as soon as possible in the event that a residential schedule shall not occur as scheduled. Each parent shall wait not less than fifteen minutes if the other parent fails to appear for a residential exchange.

3.12 Designation of Custodian

The children named in this parenting plan are scheduled to reside the majority of the time with the Respondent. Respondent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 Temporary Changes

The parents acknowledge that there may be certain circumstances where the parties arrange to have the children spend additional residential time with the other parent. For example, the parties' desire is that the children should spend additional residential time with a parent in the event that the children need a babysitter during the other parent's residential time. Accommodating extra-curricular activities or planned social events for the children are other examples where residential time might be flexed. The parties' intent is to accommodate and be flexible with one another as a matter of practicality.

The parties agree that they can temporarily change the terms of this parenting plan by mutual agreement. Any change that is not documented in a court approved modified parenting plan shall be considered a temporary change.

The parties explicitly agree that any flexibility or temporary changes in the residential schedule which results in additional residential time for one parent shall not constitute a substantial deviation from this parenting plan; nor shall it constitute an agreement to modify this parenting plan; nor shall it otherwise qualify as a substantial change in circumstances of either parent or of the children as set forth in RCW 26.09.260.

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3.14 Summary of RCW 26.09.430-.480, Regarding Relocation of a Child

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the children resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the children.

If the move is outside the children's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of a Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the children may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a children at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a children under a court order can file an objection to the children's relocation whether or not he or she received proper notice. An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, [Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule]. The objection must be served on all persons entitled to time with the children.

The relocating person shall not move the children during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the children before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

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IV. DECISION MAKING

4.1 Day-to-Day Decisions

Each parent shall make decisions regarding the day-to-day care and control of each child while the children are residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

The parties agree to make reasonable efforts to discuss day-to-day decisions with one another for the children's benefit. The parties view maintaining amicable and mutually supportive communication as beneficial to the children.

The parents shall jointly make decisions regarding the children's enrollment in extra-curricular activities where child participation in those activities is expected to occur within the residential time of both parents.

4.2 Major Decisions

It is in the best interest of the children that both parents participate and confer with eachother on major decisions pertaining to the children's upbringing and well-being. Recognizing this, Respondent shall notify Petitioner in advance of any major decision regarding the children's education, non-emergency health care and religious upbringing in order to obtain Petitioner's input into these matters. In the event that the parties disagree on upcoming major decisions, the parties agree to use their best efforts to timely seek the advice of a mutually agreed counselor, preferably biblically-trained, to help them reach agreement. Respondent shall have final decision making on major decisions regarding the children's education, non-emergency health-care, and religious upbringing.

Religious Upbringing: The children shall be raised in the Catholic faith. They shall participate in all programs and events required for them to obtain the sacraments of First Holy Communion and Confirmation. In the event that Petitioner is unable or unwilling to take the children to Sunday Catholic Mass during her residential time, she shall notify Respondent and allow Respondent to take the children to Sunday Mass after which the children shall be promptly returned to Petitioner; except that Petitioner may instead bring the children to weekly service at Wellspring Foursquare Church in Battleground one Sunday per month. In support of Petitioner's non-Catholic faith and the parties mutual desire for the children to develop harmonious Christian beliefs, Respondent may occasionally take the children to Sunday Service at Wellspring Foursquare Church. In the event that Petitioner discontinues her attendance at Wellspring Foursquare Church or changes church, the children shall attend Sunday Catholic Mass weekly unless otherwise mutually agreed by the parties in writing.

4.3 Restrictions in Decision Making

Sole decision making shall be ordered to the Respondent because one parent is opposed to mutual decision making, and such opposition is reasonably based on the existence of a limitation under RCW 26.09.191.

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V. DISPUTE RESOLUTION

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must, be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

The parties view filing litigation as a contentious and last resort method of resolving parenting issues. The parties shall attempt to resolve disputes, other than child support disputes, as follows:

1. Either parent may initiate one or more parenting conferences to discuss an area of dispute.
2. If the dispute is not resolved by discussion at a parenting conference, then either parent shall provide a notice of dispute to the other party in writing via email or written letter.
3. The noticing parent shall arrange for the parties to seek advice on resolving the dispute via a mutually agreed counselor, preferably biblically-trained. This shall occur in a timely fashion, no later than ten days after the noticing parent provided the notice of dispute. The first $100 cost of this process per annum shall be born equally by the parties with the remainder born by the party initiating the noticing parent.
4. In the dispute resolution process, preference shall be given to carrying out this Parenting Plan. The recommendations of the mutually agreed counselor shall be non-binding.
5. If the dispute remains unresolved, the parties shall have the right to resolve the dispute by court action.

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VI. ORDER BY THE COURT

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

> Before signing the final parenting plan, the court consulted the judicial information system and databases, if available, to determine the existence of any information and proceedings that are relevant to the placement of the children.

Dated: October 27, 2008

HONORABLE JUDGE EDWIN POYFAIR

Presented by:

STEVE BOGDON, WSBA #12956
Attorney for Respondent

Approved for entry:

PATRICIA MC CARTHY, Pro se
Petitioner

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Marker, Clerk
Clark County

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** FINDINGS OF FACT AND CONCLUSIONS OF LAW (MARRIAGE) (FNFCL)

I. BASIS FOR FINDINGS

The findings are based on the agreement of the parties.

II. FINDINGS OF FACT

Upon the basis of the court records, the court ***Finds***:

2.1 Residency of Petitioner: Petitioner is a resident of the state of Washington.

2.2 Notice to Respondent: Respondent appeared in and responded to the petition.

2.3 Basis of Personal Jurisdiction Over Respondent: Respondent is currently residing in Washington. Petitioner and Respondent lived in Washington during their marriage and Petitioner continues to reside in Washington State.

2.4 Date and Place of Marriage: The parties were married in Ballston Spa, Saratoga County, New York on October 24, 1998.

2.5 Status of the Parties: The parties separated on June 3, 2005.

2.6 Status of Marriage: The marriage is irretrievably broken and more than 90 days have elapsed since the date the petition was filed and the date the summons was served.

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2.7 Separation Contract or Prenuptial Agreement: Written separation agreements were executed by the parties as follows; i) "Dissolution of Marriage Agreement Re Division of Household Furnishings" (**Exhibit 1**) executed on December 18, 2008; ii) "Dissolution of Marriage Agreement Re Health Insurance Coverage for the Children" (**Exhibit 2**) executed on January 10, 2009; and iii) "Dissolution of Marriage Agreement and Promissory Note" (**Exhibit 3**) executed on May 13, 2009; and are incorporated herein by reference as part of these Findings. The written separation agreements should be approved with the following amendments stipulated to by the parties:

a) 2005 Dell Inspiron Laptop shall be awarded to Respondent.
b) Credit due to Petitioner of $678 as set forth in **Exhibit 1** shall be waived.
c) Paragraph 7 of the "Dissolution of Marriage Agreement and Promissory Note" is hereby amended and replaced as follows: "Effective February 1st, 2010, on or before the last day of every month, Wife shall make minimum payments by direct deposit into Husband's bank account as follows: (the "Payment Schedule"): i) If Wife is unemployed and is not in receipt of any other income, the monthly payment shall be $100 per month; ii) If Wife becomes employed, self-employed or is otherwise in receipt of income from any other source, the monthly payment shall be equal to 25% of Wife's Disposable Earnings."

2.8 Community Property: The parties have real and personal community property as set forth in **Exhibit 4** which is incorporated herein by reference as part of these Findings.

2.9 Separate Property: Petitioner has real or personal separate property as set forth in **Exhibit 4** which is incorporated herein by reference as part of these Findings. Respondent has real or personal separate property as set forth in **Exhibit 4** which is incorporated herein by reference as part of these Findings.

2.10 Community & Joint Liabilities: The parties have incurred community and joint liabilities as set forth in **Exhibit 4** which is incorporated herein by reference as part of these Findings.

2.11 Separate Liabilities: Petitioner has incurred separate liabilities as set forth in **Exhibit 4** which is incorporated herein by reference as part of these Findings. Respondent has incurred separate liabilities as set forth in **Exhibit 4** which is incorporated herein by reference as part of these Findings.

2.12 Lis Pendens: On September 22, 2005, Petitioner purchased the real property located at 18404 NE 30th Street, Vancouver, WA 98682 (the "30th Street Property") as her separate property. On June 4th, 2007, Respondent filed a Lis Pendens notice in the land records maintained by the Recording Division of the County Auditor's Office with regard to the 30th Street Property. A copy of the recorded Lis Pendens was filed in this action on June 5, 2007 and is incorporated herein by reference as part of these Findings.

2.13 August 2005 Mortgage Payment: Petitioner failed to make the August 2005 mortgage payment on the marital home in the amount of $2,412.24 pursuant to a temporary order entered on August 31, 2005. Respondent paid the August 2005 mortgage payment plus late fees in the amount of $2,521.52 in order to keep the mortgage current. Petitioner owes Respondent $2,522 for the August 2005 mortgage payment paid by Respondent.

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2.14 Division of Marital Estate: The parties agree that the proposed disposition of their property and liabilities, both community and separate, as set forth in **Exhibit 4** is fair and equitable. Respondent resides in the marital home at 17508 NE 38th Way, Vancouver, WA 98682 since September 2005. The parties' children spend a majority of their residential time in the family home. Respondent incurred substantial legal fees and debts due to high conflict litigation in multiple courts (criminal, administrative, bankruptcy and family courts) arising from Petitioner's false allegations and unfounded statements based on the follow-on actions and decisions of third parties arising from those false allegations. Respondent is undergoing financial hardship as a result the financial harm suffered during the four and a half years since the parties June 2005 separation.

2.15 Maintenance: Maintenance is not being requested.

2.16 Continuing Restraining Order: Does not apply.

2.17 Protection Order: Does not apply.

2.18 Fees and Costs: Respondent estimates his attorneys' fees and legal costs in this action are approximately $225,000 (+/- $10,000). Respondent incurred excessive legal fees due to the high level of conflict arising from Petitioner's false allegations. Petitioner does not have the present ability to pay Respondent's attorneys' fees and costs. Accordingly, there is no award of fees and costs.

2.19 Pregnancy: Petitioner is not pregnant.

2.20 Dependent Children: Petitioner is the mother and Respondent is the father of the following dependent children.

Conor McCarthy	Age 10	Birth date: July 16, 1999
Cormac McCarthy	Age 6	Birth date: May 10, 2003

2.21 Jurisdiction Over the Children: This court has exclusive continuing jurisdiction. The court has previously made a parenting plan determination in this matter and retains jurisdiction under RCW 26.27.211.

2.22 Parenting Plan: The Stipulation to Findings of Fact In Support of the Final Parenting Plan adopted and entered by the court on October 27, 2008 is incorporated herein by reference as part of these Findings. The Final Parenting Plan signed and entered by the court on October 27, 2008 is reaffirmed and incorporated herein by reference as part of these Findings.

2.23 Child Support: There are children in need of support and child support should be set pursuant to the Washington State Child Support Schedule. The Final Order of Child Support signed and entered by the court on January 23, 2009 and the child support worksheet, which has been approved by the court, are incorporated herein by reference as part of these Findings.

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2.24 Prior Rulings: All other Findings of Fact detailed in orders and rulings (e.g. contempt orders and summary judgment orders) previously made and entered in this dissolution action are hereby reaffirmed and incorporated herein as part of these Findings.

III. CONCLUSIONS OF LAW

The court makes the following conclusions of law from the foregoing findings of fact:

3.1 Jurisdiction: The court has jurisdiction to enter a decree in this matter.

3.2 Granting a Decree: The parties should be granted a decree.

3.3 Pregnancy: Does not apply.

3.4 Disposition: The court should determine the marital status of the parties, make provision for a parenting plan for any minor children of the marriage, make provision for the support of any minor child of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.5 Continuing Restraining Order: Does not apply.

3.6 Protection Order: Does not apply.

3.7 Attorney Fees and Costs: Does not apply.

3.8 Other: Does not apply.

Dated: 1/29/10

Honorable Judge Edwin Poyfair

Presented by:

Fearghal Mc Carthy

Fearghal Mc Carthy,
Respondent, Pro Se

Approved for entry:
Notice of presentation waived:

Patricia Mc Carthy

Patricia Mc Carthy,
Petitioner, Pro Se

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SCOTT G. WEBER, CLERK
CLARK COUNTY

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** MOTION/DECLARATION FOR JUDGMENT

I. MOTION

Respondent moves the court for a Judgment in accordance with par 3.15 (iii) of the Decree of Dissolution entered on 1/29/10.

This motion is based upon the declaration hereunder.

Dated: April 3, 2013

Fearghal McCarthy
Fearghal McCarthy
Respondent, Pro Se

II. DECLARATION

1. Paragraph 3.1~~5~~6(iii) of the Decree of Dissolution provides

"Pursuant to a promissory note executed by the parties and filed as **Exhibit 3** to the Findings of Fact and Conclusions of Law entered with this Decree and incorporated herein, a money judgment for the promissory note shall be deferred and shall not be issued at this time. In the event that one of the conditions of paragraph 13 of the promissory note becomes fulfilled, the Court shall then enter a monetary judgment for the note balance upon Respondent's motion."

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2. A copy of the "Dissolution of Marriage Agreement and Promissory Note" filed as Exhibit 3 to the Exhibits to Findings of Fact and Conclusions of Law entered with this Decree of Dissolution entered on January 29, 2010 is attached. The promissory note is for an amount of $225,000. This agreement was entered into to resolve property and financial issues arising from a highly contested divorce action that began in June 2005 and was finally resolved with the Decree of Dissolution entered on January 29, 2010.

3. Petitioner and I agreed to defer entry of a judgment at the time of entry of the decree of dissolution agreeing to an initial nominal payment of $100 per month. We also agreed to conditions for entry of a judgment set forth in par 13 of the Dissolution of Marriage Agreement and Promissory Note which included:

> "A judgment shall <u>not</u> be entered in the court record pertaining to this Agreement; except that Husband may obtain a judgment against Wife, without any objection by Wife, for the full Principal Amount plus accrued interest plus all Recovery Costs as defined hereinbelow, if:
> a) Wife enters into a marriage or domestic partnership; or
> b) Wife's fails to make a monthly payment due in accordance with the Payment Schedule in paragraph 7 above within 15 days of the last day of the month; or.....

4. One or more of these conditions has been satisfied. Petitioner made a total of eight payments of $100 per month and then discontinued making payments. Petitioner also remarried and therefore I am seeking to reduce the debt to a judgment to be in accordance with RCW 26.16.200.

5. Even though the promissory note may not be collectible from Petitioner, I do wish to preserve my collection rights given that Petitioner has a high earnings capacity earning in excess of $150,000 in prior years and given that there is always the possibility her financial circumstances might change in the future. Accordingly, I move the Court for monetary judgment in the amount of $224,200.

I declare under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

Executed at Vancouver, Washington, this April 3rd 2013.

Fearghal Mc Carthy

FEARGHAL MC CARTHY

Fearghal Mc Carthy
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EXHIBIT M

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JAN 29 2010

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** EXHIBITS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW (COVER SHEET)

EXHIBIT 1: Dissolution of Marriage Agreement Re Division of Household Furnishings

EXHIBIT 2: Dissolution of Marriage Agreement Re Health Insurance Coverage for the Children

EXHIBIT 3: Dissolution of Marriage Agreement and Promissory Note

EXHIBIT 4: Division of Marital Estate Schedule

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DISSOLUTION OF MARRIAGE AGREEMENT AND PROMISSORY NOTE

1. Parties: This agreement and promissory note (the "Agreement") is entered into by Patricia McCarthy ("Wife") and Fearghal McCarthy ("Husband").

2. Purpose: This Agreement is made by the parties in connection with the dissolution of marriage action, Case No: 05-3-01349-1, filed by Wife in Clark County, Washington on August 9, 2005.

3. June 2000 Marital Agreement: Husband and Wife each hereby represent and acknowledge that they entered into a post-nuptial marital agreement on or about June 2000 setting forth that in the event of their divorce or martial separation, Wife would reimburse Husband for certain expenditures funded by Husband's separate funds including the amount of: i) the pay-off of Wife's separate debts including student loans, ii) the down-payment and closing costs on the purchase of the property at 11308 Fieldstone Lane, Reston Virginia, 20191; iii) the appraised value of a diamond engagement ring if Wife did not return the ring to Husband, and iv) accrued interest on those expenditures at the rate of 5% per annum.

4. Definitions:

   "Earnings" means compensation paid or payable to an individual for personal services, whether denominated as wages, salary, commission, bonus, contract pay, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

   "Disposable Earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld.

   "Household Earnings" means the Disposable Earnings of Wife plus the Disposable Earnings of any adult with whom Wife is in a meretricious or marital-type relationship or marriage (excluding current Husband).

   "Net Worth" means the total value of assets less liabilities of an individual, both community and separate, excluding for the purposes of this Agreement any amount owed by Wife under this Agreement.

5. Wife's Earning Capacity: Wife represents and agrees that she is highly educated and has a high earning capacity. In 2001-2002, Wife was compensated at a base salary of $150,000 plus bonus by her employer Com21. Wife represents that she has started a new business, is currently studying for a Doctorate in Business Administration, expects to earn in excess of $100,000 per year within 12-14 months, and is capable of earning in excess of $150,000 per annum.

6. Promise to Pay: In consideration for settling Wife's obligations under the June 2000 post-nuptial marital agreement, Wife promises to pay Husband $225,000 (the "Principal Amount") and agrees to all the terms and conditions of this Agreement. The Principal Amount shall bear an annual interest rate of 12% (1% monthly), commencing on June 1, 2009.

7. Minimum Payments and Schedule: On or before the last day of every month, Wife shall make minimum monthly payments by direct deposit into Husband's bank account as follows (the "Payment Schedule"):

   a) From June 1, 2009 to Aug 31, 2009 (months 1-3), the monthly payment shall be $100 per month. The first payment shall be due June 30, 2009.
   b) From September 1, 2009 to November 30, 2009 (months 4-6), the monthly payment shall be the higher of: i) 10% of Wife's Disposable Earnings, or ii) $500.
   c) From December 1, 2009 to February 28, 2010, (months 7-9) the monthly payment shall be the higher of: i) 20% of Wife's Disposable Earnings, or ii) $750.
   d) From March 1, 2010 to May 31, 2010, (months 10-12) the monthly payment shall be the higher of: i) 20% of Wife's Disposable Earnings, or ii) $1,000.
   e) From June 1, 2010 and thereafter, the monthly payment shall be the higher of: i) 25% of Wife's Disposable Earnings, ii) 15% of Wife's Household Earnings or iii) $1,500.

Estimation of Minimum Monthly Payment: For convenience sake, Wife may pay a fixed monthly amount representing her best estimate of the average minimum monthly amount payable for any quarter, provided that Wife's monthly payment is not less than the minimum monthly fixed amount due (i.e. $500, $750, $1,000 or $1,500); that at the quarter-end, Wife provides a summary of Disposable Earnings, Household Earnings and payments due for the quarter; and that Wife makes any corrective payment that may be necessary within 15 days of the last day of the quarter.

9. Net Worth Condition: In the event that Wife's Net Worth exceeds $50,000, Wife shall have 60 days to: i) pay Husband an amount equal to her Net Worth less $50,000, or ii) make an alternative arrangement acceptable to Husband, such arrangement to be agreed in writing in accordance with paragraph 19.

10. Discretionary Payments: Wife, at her sole discretion, may make payments supplemental to the minimum payments required by paragraphs 7-9 above to ensure the full payment of annual accrued interest and to reduce the Principal Amount. Wife represents that she has the earning capacity to pay the annual interest accruing on the Principal Amount. Accrued interest that remains unpaid at the end of each annual period commencing June 1, 2009 shall bear interest at the rate of 12% per annum.

11. Life Insurance: Wife shall obtain, or permit a Life Insurance Trust approved by Husband to obtain, life insurance policies naming either Husband or the Life Insurance Trust as the sole policy owner as follows:

    i) A $1,000,000 policy for a minimum term of twenty years commencing in July 2010 ("First Policy"); and
    ii) A $2,000,000 policy for a minimum term of thirty years commencing in July 2022 ("Second Policy").

    Wife shall timely pay the policy premiums or timely fund the Life Insurance Trust as necessary to ensure that such life insurance policies remain current and do not lapse; except that Wife's obligation to fund the First Policy shall terminate upon commencement of the Second Policy and Wife's obligations under this paragraph shall terminate upon Wife's full payment of the Principal Amount plus all accrued interest.

12. Wife's Household Earnings: Wife enjoys a dual income household. Wife represents that has been in a committed meretricious relationship with Mr. Shaun Martin since on or before March 2006, and that she expects this relationship to continue indefinitely either in its current status or as a marriage. Wife's Household Earnings currently includes the Earnings of Mr. Shaun Martin.

13. Conditions for Judgment: A judgment shall not be entered in the court record pertaining to this Agreement; except that Husband may obtain a judgment against Wife, without any objection by Wife, for the full Principal Amount plus accrued interest plus all Recovery Costs as defined hereinbelow, if:
    a) Wife enters into a marriage or domestic partnership; or
    b) Wife's fails to make a monthly payment due in accordance with the Payment Schedule in paragraph 7 above within 15 days of the last day of the month; or
    c) Wife fails to make any corrective payment due under paragraph 8 above within 15 days of the last day of the quarter for which the corrective payment is applicable; or
    d) Wife fails to make a payment or alternative arrangement as required by paragraph 9 above; or
    e) Wife fails to pay life insurance premiums as required by paragraph 11 hereinabove.

14. Provision of Information: Wife shall provide full disclosure on an ongoing basis of her Disposable Earnings, Household Earnings and her Net Worth; and within 30 days of Husband's written request, Wife shall provide all documentation necessary to verify her Disposable Earnings, her Household Earnings and her Net Worth.

15. Remedies: In the event that Wife fails to timely pay policy premiums due under paragraph 11 above, Husband shall be entitled to pay such premiums and obtain recovery from Wife. In the event that Husband successfully obtains a judgment against Wife pursuant to this Agreement or takes legal action to enforce this Agreement, Husband shall be entitled to recovery of all his attorneys' fees, legal expenses and recovery costs, including costs of any collection activities (collectively, "Recovery Costs"). All Recovery Costs incurred by and payable to Husband under this paragraph shall bear interest at the rate of 12% per annum.

16. Application of Payments: All payments made by Wife shall be applied; first, against any accrued interest on Recovery Costs; second, against any Recovery Costs; third, against accrued interest accumulating on the Principal Amount and on any unpaid annually accrued interest; and fourth against the Principal Amount.

17. Statement of Balance: Within 30 days of Wife's written request or otherwise at Husband's discretion, Husband shall provide Wife with a statement showing the balance outstanding under this Agreement together with a schedule detailing how all payments made by Wife have been applied. Upon receipt of such statement, Wife shall have 30 days to give Husband written notice and explanation of any dispute or such statement will be deemed accurate and agreed to by the parties, subject to any requests by Husband to verify information pursuant to paragraph 14.

18. Waivers: Any waiver or breach of this Agreement shall not be construed as a continuing waiver or consent to any subsequent breach on the part of either party.

19. Amendments: No amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be made or be effective except by a written addendum signed by both parties. Any addendum to this Agreement shall be considered an extension of this Agreement and shall enjoy any and all protections afforded to an agreement between spouses made in connection with a marital separation or dissolution of marriage action.

20. Cancellation: Either party has the right to cancel this Agreement within three days of execution of this Agreement by giving written notice to the other party. This Agreement shall become fully binding on the parties three days after the date of execution of this Agreement.

21. Severability: To the extent that any provision of this Agreement or portion thereof shall be invalid or unenforceable, it shall be considered deleted therefrom and the remainder of such provision and of this Agreement shall be unaffected and shall continue in full force and effect.

22. Counterparts: This Agreement and any addenda to this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

23. Governing Law: This Agreement shall be construed, interpreted and enforced in accordance with the laws of Washington State, without giving effect to the conflict of law principles thereof.

24. Entire Agreement: This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter herein and supersedes any and all prior discussions, agreements or understandings between them with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of May 13, 2009.

Patricia McCarthy

Patricia Mc Carthy, Wife

Fearghal McCarthy

Fearghal McCarthy, Husband

Exhibit B

Gmail

$100

Fearghal Mc Carthy <fearghalmccarthy001@gmail.com> Tue, Mar 1, 2011 at 8:15 AM
To: Trish <trishmaureen@q.com>

Trish:

I see $100 transferred into my bank account on 2/15. Is this from you? If so, thank you and please take this as a receipt for Feb 11. I think that last payment was for August 2010 - which means we are behind 5 months from Sept 2010 - Jan 11.

Can you tell me if you plan on continuing making the $100 payment and catching up on the missed payments If so, I will exclude this from the issues that need to be litigated.

Thanks
Fearghal

Trish McCarthy <trishmaureen@q.com> Tue, Mar 1, 2011 at 1:12 PM
To: Fearghal McCarthy gmail <fearghalmccarthy001@gmail.com>

Fearghal - Yes. The transfer came from me. If you recall, I set up my account so that the funds could be transferred directly into your account. Is this still your preferred method of receipt?

Also, yes. I plan on continuing with the monthly payments of $100 minimum per month and if possible an extra amount to catch up on the back payments. You should expect another payment to post soon (I don't know how long the transfer takes) - but I would expect you'd have it by this Friday.

If you would please continue to send a quick email after you receive each payment, so I know it went thru and so I can have it for my records. Thnx.

Trish

From: fearghalmccarthy001@gmail.com
Date: Tue, 1 Mar 2011 08:15:43 -0800
Subject: $100
To: trishmaureen@q.com
[Quoted text hidden]

Fearghal Mc Carthy <fearghalmccarthy001@gmail.com> Tue, Mar 1, 2011 at 1:21 PM
To: Trish McCarthy <trishmaureen@q.com>

Yes. Direct transfer is best. If you'd like to send me an email after each transfer I can keep an eye out for it; and send you back a receipt/confirmation. By my calculations, we have $500 in back-payments; so if you could so $200 per month until the back-payments are cleared, that would be appreciated.

Fearghal.

Superior Court of Washington
County of CLARK

In re: PATRICIA MAUREEN MARTIN-MCCARTHY **Petitioner,** **and** FEARGHAL ANTHONY MCCARTHY **Respondent.**	**No.** 05-3-01349-1 **Proposed Judgment (JD)** **Clerks Action Required**

I. Judgment Summary

Applies as follows:

A.	Judgment Creditor	Fearghal McCarthy	
B.	Judgment Debtor	Patricia M. Martin-McCarthy	
C.	Principal judgment amount		$ 224,200
D.	Interest to date of Judgment		$ 0
E.	Attorney fees		$ 0
F.	Costs		$ 0
G.	Other recovery amount		$ 0
H.	Principal judgment shall bear interest at 12 % per annum		
I.	Attorney fees, costs and other recovery amounts shall bear interest at 12 % per annum		
J.	Attorney for Judgment Creditor	Fearghal Mc Carthy	
K.	Attorney for Judgment Debtor	Patricia M. McCarthy	
L.	Other:		

Dated:_____

_____
Judge/Commissioner

Fearghal Mc Carthy
17508 NE 38th Way,
Vancouver WA 98682
360-944-8200

Presented by:

Fearghal Mc Carthy
Signature of Party or Lawyer/WSBA No.

Approved for entry:
Notice of presentation waived:

Patricia Martin-McCarthy
Signature of Party or Lawyer/WSBA No.

Fearghal Mc Carthy
17508 NE 38th Way,
Vancouver WA 98682
360-944-8200

2

FILED 423
APR 24 2013
Scott G. Weber, Clerk, Clark Co.

Superior Court of Washington
County of CLARK

In re:	
PATRICIA MAUREEN MARTIN-MCCARTHY **Petitioner,**	**No.** 05-3-01349-1 **Judgment (JD)**
and	
FEARGHAL ANTHONY MCCARTHY **Respondent.**	**Clerks Action Required** 10-9-00511-0

I. Judgment Summary

Applies as follows:

A.	Judgment Creditor	Fearghal McCarthy	
B.	Judgment Debtor	Patricia M. Martin-McCarthy	
C.	Principal judgment amount		$ 224,200
D.	Interest to date of Judgment		$ 0
E.	Attorney fees		$ 0
F.	Costs		$ 0
G.	Other recovery amount		$ 0
H.	Principal judgment shall bear interest at 12 % per annum		
I.	Attorney fees, costs and other recovery amounts shall bear interest at 12 % per annum		
J.	Attorney for Judgment Creditor	Fearghal Mc Carthy	
K.	Attorney for Judgment Debtor	Patricia M. McCarthy	
L.	~~Other: [illegible]~~		

Dated: 4/24/13

~~Judge~~/Commissioner

931

Fearghal Mc Carthy
17508 NE 38th Way,
Vancouver WA 98682
360-944-8200

B-35

Presented by:

Fearghal Mc Carthy

Fearghal McCarthy
Signature of Party or Lawyer/WSBA No.

Approved for entry:
Notice of presentation waived:

Patricia Martin-McCarthy
Signature of Party or Lawyer/WSBA No.

Fearghal Mc Carthy
17508 NE 38th Way,
Vancouver WA 98682
360-944-8200

COPY
ORIGINAL FILED
MAY 29 2013
Scott G. Weber, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** PROPOSED [ ] **Temporary (TMORS)** [ ] **~~Final Order~~ (ORS)** **Clerk's Action Required**

I. JUDGMENT SUMMARY

1.1 Judgment Summary for Non-Medical Expenses

Does not apply.

1.2 Judgment Summary for Medical Support

Does not apply.

II. BASIS

2.1 Type of Proceeding

This order is entered under a petition for dissolution of marriage or domestic partnership, legal separation, or declaration concerning validity:

[ ] decree of dissolution, legal separation or a declaration concerning validity.
[ ] order for modification of child support.
[ ] hearing for temporary child support.
[ ] order of adjustment.
[ ] order for modification of a custody decree or parenting plan.

2.2 Child Support Worksheet

The child support worksheet which has been approved by the court is attached to this order and is incorporated by reference or has been initialed and filed separately and is incorporated by reference.

2.3 Other

Does not apply.

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

#933 B-37

III. FINDINGS AND ORDER

It Is Ordered:

3.1 Children for Whom Support is Required

Name (first/last)	Age
Conor McCarthy	13
Cormac McCarthy	10

3.2 Person Paying Support (Obligor)

Name (first/last): Patricia M. McCarthy
Birth date: 8/10/1971
Service Address: 1510 SE 3rd Ave, Battleground, WA 98604

The Obligor Parent Must Immediately File With the Court and the Washington State Child Support Registry, and Update as Necessary, the Confidential Information Form Required by RCW 26.23.050.

The Obligor Parent Shall Update the Information Required by Paragraph 3.2 Promptly After any Change in the Information. The Duty to Update the Information Continues as long as any Support Debt Remains due Under This Order.

For purposes of this Order of Child Support, the support obligation is based upon the following income: Actual Monthly Net Income: $ 6,241

3.3 Person Receiving Support [Obligee]

Name (first/last): Fearghal A. McCarthy
Birth date: 12/1/1968
Service Address: 17508 NE 38th Way, Vancouver, WA 98682

The Obligee Must Immediately File With the Court and the Washington State Child Support Registry and Update as Necessary the Confidential Information Form Required by RCW 26.23.050.

The Obligee Shall Update the Information Required by Paragraph 3.3 Promptly After any Change in the Information. The Duty to Update the Information Continues as Long as any Monthly Support Remains Due or any Unpaid Support Debt Remains Due Under This Order.

For purposes of this Order of Child Support, the support obligation is based upon the following income: Actual Monthly Net Income: $ 1,552

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

3.4 Service of Process

Service of Process on the Obligor at the Address Required by Paragraph 3.2 or any Updated Address, or on the Obligee at the Address Required by Paragraph 3.3 or any Updated Address, may Be Allowed or Accepted as Adequate in any Proceeding to Establish, Enforce or Modify a Child Support Order Between the Parties by Delivery of Written Notice to the Obligor or Obligee at the Last Address Provided.

3.5 Transfer Payment

The obligor parent shall pay the following amounts per month for the following children:

Name	Amount
Conor McCarthy	$ 914
Cormac McCarthy	$ 757
Total Monthly Transfer Amount	$ 1,671

When Cormac changes age brackets (i.e. in May 2015), the transfer payment shall be:

Name	Amount
Conor McCarthy	$ 914
Cormac McCarthy	$ 914
Total Monthly Transfer Amount	$ 1,828

The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate, Registration, Permit, Approval, or Other Similar Document Issued by a Licensing Entity Evidencing Admission to or Granting Authority to Engage in a Profession, Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor Vehicle may Be Denied or may Be Suspended if the Obligor Parent is not in Compliance With This Support Order as Provided in Chapter 74.20A Revised Code of Washington.

3.6 Standard Calculation

$ 1,671 per month. (See Worksheet line 17.)

3.7 Reasons for Deviation From Standard Calculation

The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation.

3.8 Reasons why Request for Deviation Was Denied

A deviation was not requested.

3.9 Starting Date and Day to Be Paid

Starting Date:	June 1, 2013
Day(s) of the month support is due:	On the 1st of each month

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

3.10 Incremental Payments

Does not apply.

3.11 How Support Payments Shall Be Made

Enforcement and collection: The Division of Child Support (DCS) provides support enforcement services for this case because: [ ] this is a public assistance case, [x] this is a case in which a parent has requested services from DCS, [ ] a parent has **signed** the application for services from DCS **on the last page of this support order**. (Check all that apply.) Support payments shall be made to:

Washington State Support Registry
P. O. Box 45868
Olympia, WA 98504
Phone: 1-800-922-4306 or
1-800-442-5437

A party required to make payments to the Washington State Support Registry will not receive credit for a payment made to any other party or entity. The obligor parent shall keep the registry informed whether he or she has access to health insurance coverage at reasonable cost and, if so, to provide the health insurance policy information.

3.12 Wage Withholding Action

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order unless an alternative provision is made below:

The Obligor's current employer is: DM2 Software
7700 Greenwood Drive
Vancouver, WA 98662

3.13 Termination of Support

Support shall be paid:

[x] provided that this is a temporary order, until a subsequent child support order is entered by this court.

[x] until the child(ren) reach(es) the age of 18 or as long as the child(ren) remain(s) enrolled in high school or an accredited post secondary school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.

3.14 Post Secondary Educational Support

The parents expect both children to complete a post-secondary education. While a child has applied for or remains enrolled in an accredited post-secondary school, the Obligor shall pay the standard monthly transfer payment plus 80% of all costs related to the post-secondary educational support of that child – including tuition fees, books, residential costs, living expenses, transportation expenses and any other incidental expenses. Payments to educational institutions shall be made directly to the educational institution within 10 days of their due date. If a parent fails to make a timely payment to an educational institution, the other parent may make such

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

B-40

payment and recover the amount plus interest from the non-compliant parent. Obligor's share of all other post-secondary educational support expenses shall be paid to the Obligee within 15 days of being presented with bills, receipts (or copies thereof) or other documentation evidencing those expenses.

3.15 Payment for Expenses not Included in the Transfer Payment

The Obligor shall pay 80% (the Obligor's proportional share of income from the Worksheet, line 6) of the following expenses incurred on behalf of the children listed in Paragraph 3.1 in excess of the amounts specified in the attached Worksheet.

a. Daycare costs, but only in the event that Obligor does not exercise her right of first refusal to provide daycare; payment shall be made to the Obligee.
b. Educational expenses; payment shall be made to the Obligee.
c. Extra-curricular activity expenses; payment shall be made to the Obligee.

The Obligor shall pay the following amounts each month the expense is incurred on behalf of the children listed in Paragraph 3.1:

a. Any long distance transportation expenses incurred on residential transfer of the children (in the event the children need to travel 50 miles or more). Payment shall be made to the transportation provider.
b. Term life insurance premiums incurred in accordance with Paragraph 3.22.

3.16 Periodic Adjustment

Pursuant to paragraph 3.5, after Cormac changes age brackets, the transfer payment shall increase to $1,828 effective May 1, 2015. The transfer payment shall be adjusted upon the cost of health insurance coverage for the children exceeding $371.62 for Petitioner or $88.75 for Respondent (25 percent of that parent's basic child support obligation on Worksheet line 9).

3.17 Income Tax Exemptions

Tax exemptions for the children shall be allocated to the Respondent. The parents shall sign the federal income tax dependency exemption waiver if applicable.

3.18 Medical Insurance for the Children Listed in Paragraph 3.1

Each parent shall provide health insurance coverage for the child(ren) listed in paragraph 3.1, as follows:

3.18.1 Health Insurance (either check box A(1), or check box A(2) and complete sections B and C. ***Section D applies in all cases.***)

A. Evidence
There is sufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Fill in B and C below.

B. Findings about insurance:
The court makes the following findings:

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

Mother will have health insurance coverage for the children available through her employer commencing in June 2013. Father does not currently have health insurance coverage for the children available through his employer.

C. Parties' obligations:

Mother shall provide health insurance coverage for the child(ren) that is available through **employment or is union-related** as long as the cost of such coverage does not exceed 25% of mother's basic support obligation.

In the event that mother no longer has health insurance coverage available through her employment or is union related, the father shall provide health insurance coverage for the child(ren) that may be available through his **employment or is union-related** as long as the cost of such coverage does not exceed 25% of father's basic support obligation.

D. Both parties' obligation:

If the child(ren) are receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

The parent(s) shall maintain health insurance coverage, if available for the child(ren) listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer.

A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the other parent or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the parent seeking enforcement or the Department of Social and Health Services may seek direct enforcement of the coverage through the other parent's employer or union without further notice to the other parent as provided under Chapter 26.18 RCW.

3.18.2 Change of Circumstances and Enforcement

A parent required to provide health insurance coverage must notify both the Division of Child Support and the other parent when coverage terminates.

If the parents' circumstances change, or if the court has not specified how medical support shall be provided, the parents' medical support obligations will be enforced as provided in RCW 26.18.170. If a parent does not provide proof of accessible coverage for the child(ren) through private insurance, a parent may be required to satisfy his or her medical support obligation by doing one of the following, listed in order of priority:

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

1) Providing or maintaining health insurance coverage through the parent's employment or union at a cost not to exceed 25% of that parent's basic support obligation;
2) Contributing the parent's proportionate share of a monthly premium being paid by the other parent for health insurance coverage for the child(ren) listed in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic support obligation; or
3) Contributing the parent's proportionate share of a monthly premium paid by the state if the child(ren) receives state-financed medical coverage through DSHS under RCW 74.09 for which there is an assignment.

A parent seeking to enforce the obligation to provide health insurance coverage may apply for support enforcement services from the Division of Child Support; file a motion for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to Show Cause re Contempt); or file a petition.

3.19 Uninsured Medical Expenses

Petitioner shall pay 80% of uninsured medical expenses (unless stated otherwise, the petitioner's proportional share of income from the Worksheet, line 6) and Respondent shall pay 20% of uninsured medical expenses (unless stated otherwise, the respondent's proportional share of income from the Worksheet, line 6).

3.20 Back Child Support

Back child support that may be owed is not affected by this order.
Back interest that may be owed is not affected by this order.

3.21 Past Due Unpaid Medical Support

Unpaid medical support that may be owed is not affected by this order.
Back interest that may be owed is not affected by this order.

3.22 Other Unpaid Obligations

Other obligations that may be owed are not affected by this order.
Back interest that may be owed is not affected by this order.

3.23 Other: Life Insurance

The Obligor shall obtain a life insurance policy in an amount not less than $250,000 for a term of twenty years in which the children listed in Paragraph 3.1 will be listed as beneficiaries and the Obligee is named as a policy owner (either joint or sole). The Obligor shall pay insurance premiums for the policy on an annual basis when due and ensure that the policy does not lapse.

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

Dated: _____

_____
Judge/Commissioner

Presented by:

Approved for entry:
Notice of presentation waived:

_____
Fearghal Mc Carthy
Respondent, Pro-se

_____
Patricia M. McCarthy
Petitioner, appearing pro se

[ ] I apply for full support enforcement services from the DSHS' Division of Child Support (DCS). (Note: If you never received TANF, tribal TANF, or AFDC, an annual $25 fee applies if over $500 is disbursed on a case, unless the fee is waived by DCS.)

_____
Signature of Party

Fearghal McCarthy
17508 NE 38th Way
Vancouver, WA 98682

FILED

06-26-2013

Scott G. Weber, Clerk
Clark County

** PREPARED **
06-24-13 08:37

WEDNESDAY, JUNE 26, 2013
PRO SE COMM SCHIENBERG,1:30 FAM LAW ANNX
90 DAYS PRIOR DATE MARCH 28, 2013

Clerk: Pam C-F

05-3-01349-1 3.

MCCARTHY, PATRICIA MAUREEN	PRO SE TOMPKINS, CHRISTOPHER W.
AND MCCARTHY, FEARGHAL ANTHONY	MEYERS, MARTIN TOWNSEND, JOSEPHINE C
AND	SELL, JOLENE DIANE

REVIEW/ADJUST CHILD SUPPORT &

4:35 Both parties appeared, Resp to file & copy Pet by Wednesday (7-3-13) all tax returns for all companies & all bank statements from January 2012 through 6/30/13, S/O 7-24-2013 S1.

4

FILED
2013 SEP 17 PM 4:04
SCOTT G. WEBER, CLERK
CLARK COUNTY

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** NOTICE OF UNAVAILABILITY

TO: The clerk of the court and Petitioner.

Please take notice that I am unavailable for court hearings as follows:

From: September 18th, 2013 until October 4th 2013.

Dated: September 17th, 2013.

Feargal McCarthy
Respondent, Pro se

Fearghal McCarthy
17508 NE 38th Way
Vancouver WA 98682

8
E

FILED
2013 OCT 21 PM 3:39
SCOTT G. WEBER, CLERK
CLARK COUNTY

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re the Marriage of: PATRICIA MCCARTHY, Petitioner, and FEARGHAL MCCARTHY, Respondent	**CASE NO. 05-3-01349-1** **RESPONSE TO RESPONDENTS' MOTION TO FOR RECONSIDERATION**

I. DECLARATION

I, Patricia McCarthy-Martin, make the following declaration.

I ask the Court to deny Mr. McCarthy's Motion for Reconsideration on Child Support, as his petition falls short of the required criteria for reconsideration.

In addition, Mr. McCarthy is deliberately misleading the Court by manipulating the timeline of these matters as the basis for his demand and to excuse his disobedience to Court for:

1) Failing to comply with Court order to supply specific documents pertaining to his business income and the children's' extraordinary income/assets (Exhibit 1); and

2) His subsequent cancellation of the July 24th Child Support hearing by misrepresenting the timeline for the Child Support Review and Chapter 13 Bankruptcy proceedings.

Patricia McCarthy-M
1510 SE 3rd Ave., Battle Ground
98604 Ph. 360-907-5837

The actual timeline is as follows:

- April 29th, 2013 – filing date for Chapter 13 bankruptcy protection
- May 29th, 2013 – Mr. McCarthy's initial filing for a Child Support Adjustment
- June 5th, 2013 – Hearing cited by Mr. McCarthy for the Child Support Adjustment
- June 26th, 2013 – 2nd hearing for Child Support Adjustment cited by Mr. McCarthy at which time:
    - Commissioner Schienberg ordered *"Respondent (Fearghal McCarthy) to file and copy this party (Petitioner) by Wednesday July 3rd, 2013 all tax returns for all companies and all bank statements from January 2012 through June 30th 2013;"* and
    - Commissioner Schienberg set a Child Support Review Hearing for July, 24th 2013 at 1:30 pm.
- July 24th, 2013 Mr. McCarthy cancelled the hearing set by Court without explanation.

In Mr. McCarthy's October 16th, 2013 Motion/Declaration for Reconsideration he states,

> *"On May 29th I filed a Motion for Adjustment of Child Support based on changes in Petitioner's income. The Court set the hearing over until July 24th, 2013.* ***In the interim, Petitioner declared bankruptcy*** *to avoid making payments…I suggested postponing the July 24th hearing."*

Given that we filed for bankruptcy protection **a full month before** Mr. McCarthy's motion for Child Support Adjustment on was filed on May 29th, and resultant hearing citations which were held June 5th and June 26th, renders false his assertion that the April 29th Chapter 13 filing occurred **after** he initiated Child Support Adjustment proceedings – and undermines his basis as to: 1) why he failed to turn-over income documents, 2) cancelled the July 24th hearing; and 3) why the Court should reconsider its October 9th ruling on Child Support.

Patricia McCarthy-Martin
1510 SE 3rd Ave., Battle Ground, WA
98604 Ph. 360-907-5837

The Court should also be made aware that despite his unsupported claims of low income Mr. McCarthy retained an attorney last May to oppose our Chapter 13 bankruptcy to feed his prosecutorial interests towards me.

Not only has Mr. McCarthy succeeded in frustrating and delaying the Chapter 13 process with baseless assertions and unnecessary litigation, he **failed to disclose in his Child Support Financial Declarations that he has a minimum of $85,000 in income** from his judgment; as evidenced in an October 18th, 2013 declaration from the Trustee (Exhibit 2).

> *"COMES NOW, David M. Howe, Chapter 13 Trustee, by and through his attorney of record, Michael G. Malaier, and offers the following in anticipation of the evidentiary hearing set for November 6, 2013.*
>
> *Creditor Fearghal McCarthy (hereinafter "Fearghal" for sake of clarity) objects to Debtors' amended plan on the grounds that it 1) is filed in bad faith and 2) provides too small of a dividend to general unsecured creditors.* ***Trustee disagrees with both assertions and respectfully urges this Court to overrule the objection...***
>
> ***It strains reason to impute bad faith*** *to a family that replaces an exhausted vehicle with a new one, and then works to reduce the interest rate in a manner that favors their unsecured creditors...*
>
> ***Their proposed budget is also reasonable, if not modest****. Many of their expenses are lower than those permitted under IRS guidelines.*
>
> *In short, should Debtors successfully complete their proposed plan,* ***Fearghal will receive no less than $85,000.00*** *on his general unsecured claims.* ***His (Fearghal's) objection should be overruled****.*

I declare under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

Executed at Vancouver, Washington, this 21 day of October, 2013.

Patricia M. Martin

Patricia Martin McCarthy - Petitioner, Pro Se

Patricia McCarthy-Martin
1510 SE 3rd Ave., Battle Ground, WA
98604 Ph. 360-907-5837

FILED

06-26-2013

Scott G. Weber, Clerk
Clark County

STATE OF WASHINGTON IN AND FOR CLARK COUNTY PAGE 1

** PREPARED **
06-24-13 08:37

WEDNESDAY, JUNE 26, 2013
PRO SE COMM SCHIENBERG, 1:30 FAM LAW ANNX
90 DAYS PRIOR DATE MARCH 28, 2013

Clerk: Pam C-F

05-3-01349-1 3.

MCCARTHY, PATRICIA MAUREEN — PRO SE
TOMPKINS, CHRISTOPHER W.

AND
MCCARTHY, FEARGHAL ANTHONY — MEYERS, MARTIN
TOWNSEND, JOSEPHINE C

AND
SELL, JOLENE DIANE

REVIEW/ADJUST CHILD SUPPORT &

4:35 Both parties appeared, Resp to file & copy Pet by Wednesday (7-3-13) all tax returns for all companies & all bank statements from January 2012 through 6/30/13, S/O 7-24-2013 S1.

Exhibit 1-A

B-50

** PREPARED **
06-03-13 07:46

WEDNESDAY, JUNE 5, 2013
PRO SE COMM SCHIENBERG,1:30 FAM LAW ANNX
90 DAYS PRIOR DATE MARCH 7, 2013

Clerk: Pam C-F

01-3-00915-7 1.
MARINENKO, MICHAEL DAMON — FOSTER, TERESA LOUSTAUNAU
AND
KNISPEL-MARINENKO, TAMARA C

1 P-REST ORD/SHOW CAUSE 1:30 PM

2:27 Neither party appeared, Atty Thomas Foley appeared for Pet, Agreed orders g/sgd: PP & ORMDD.

02-3-01808-1 2.
FRONK, ELENA — PRO SE
AND
FRONK, WILLIAM JAMES

1 P-FINAL PP/BASED ON ORD DFLT 1:3

1:39 Pet appeared, Resp did not, Orders g/gsd: PP & ORMDD.

---

* 05-3-01349-1 3.
MCCARTHY, PATRICIA MAUREEN — PRO SE
TOMPKINS, CHRISTOPHER W.
AND
MCCARTHY, FEARGHAL ANTHONY — MEYERS, MARTIN
TOWNSEND, JOSEPHINE C
AND
SELL, JOLENE DIANE

DETERMINE ACTUAL BACK SUPPORT
R-MT F/ADJSTMNT CHLD SPPRT 1:30PM

2:29 Both parties appeared, Com. needs financial information to be filed, S/O 6-26-13 S1.

10-3-02743-0 4.
10-3-02746-4
SOULE, CRYSTAL NICHOLE — MATUSAK, MARGUERITE
PRO SE
AND
SOULE, RICHARD A — SELL, JOLENE DIANE

4 REVIEW/INCREASE VISITATION 1:30PM

2:32 Both parties appeared, Everything stays status quo, Cite on for agreed final orders or to change temp orders if not agreed.

Exhibit 1-B

THE HONORABLE BRIAN D. LYNCH
CHAPTER 13
HEARING DATE: November 6, 2013

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:	)	NO. 13-42847-BDL
	)	
MARTIN and McCARTHY,	)	AMENDED
	)	TRUSTEE'S PRE-HEARING STATEMENT
	)	
Debtor	)	
	)	

COMES NOW, David M. Howe, Chapter 13 Trustee, by and through his attorney of record, Michael G. Malaier, and offers the following in anticipation of the evidentiary hearing set for November 6, 2013.

I. TRUSTEE'S ANALYSIS

Creditor Fearghal McCarthy (hereinafter "Fearghal" for sake of clarity) objects to Debtors' amended plan on the grounds that it 1) is filed in bad faith and 2) provides too small of a dividend to general unsecured creditors. Trustee disagrees with both assertions and respectfully urges this Court to overrule the objection.

With respect to Fearghal's contention that the case was filed in bad faith, Trustee would note that Debtors' vehicle purchase—while close to their filing date—appears to be a necessary expense. The vehicle is a modest family minivan, and Debtors' counsel has already negotiated a reduced interest rate of 6% (from more than 21%). Whereas originally, more than $34,000.00 would go to this vehicle creditor, over the life of the plan, the current plan reduces this figure to some $24,000.00. It strains reason to impute bad faith to a family that replaces an exhausted vehicle with a new one, and then works to reduce the interest rate in a manner that favors their unsecured creditors.

Exhibit 2-A

Chapter 13 Trustee
1551 Broadway, Suite 600
Tacoma, WA 98402
(253) 572-6600

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Their proposed budget is also reasonable, if not modest. Many of their expenses are lower than those permitted under IRS guidelines. Over the life of the plan, Debtors will pay more than $95,000.00 to general unsecured creditors, a figure representing an approximate dividend of 34%. Fearghal voices concern that Debtors' orthodontia expenses are unreasonable in scope and in theory, given Mrs. McCarthy's 2004 examination testimony in which she denied any intent to incur such expenses. While the Court should flesh out whether such treatment constitutes an appropriate expense, the overall budget is not offensive to Trustee.

For sake of clarity, Debtors' payment history is as follows:

Period	Date (Month/Year)	Payment Due	Payment Received	Forgive Amount	Amount Due
1	5/2013	$923.08			$923.08
2	6/2013	$1,942.16	$923.08		$1,942.16
3	7/2013	$1,942.16			$3,884.32
4	8/2013	$2,913.24	$3,884.32		$2,913.24
5	9/2013	$2,307.70	$2,124.93		$3,096.01
6	10/2013	$1,153.85	$1,153.85		$3,096.01

As of October 18, 2013, Debtors have accrued a $3,096.01 plan payment delinquency, though this may be cleared by the hearing date. If this shortfall is not recouped, the anticipated dividend would fall to 33%.

In short, should Debtors successfully complete their proposed plan, Fearghal will receive no less than $85,000.00 on his general unsecured claims. His objection should be overruled.

Trustee will call no witnesses and will not seek to introduce documentary evidence.

RESPECTFULLY SUBMITTED this 18th day of October, 2013.

/s/Michael G. Malaier
Michael G. Malaier, WSBA# 34729
Attorney for David M. Howe,
Standing Chapter 13 Trustee

Exhibit 2-B

Chapter 13 Trustee
1551 Broadway, Suite 600
Tacoma, WA 98402
(253) 572-6600

CERTIFICATE OF MAILING

I declare under penalty of perjury under the laws of the State of Washington as follows: I mailed via regular mail a true and correct copy of the Trustee's Pre-Hearing Statement to the following:

Shaun Micheil Martin
Patricia Maureen McCarthy
1510 SE 3rd Ave
Battle Ground, WA 98604

Thomas McAvity
2225 NE Alberta, Ste A
Portland, OR 97211

Dunn & Sheldrick, P.S.
1014 Franklin Street, Suite 110
Vancouver, WA 98660

The following parties received Trustee's Pre-Hearing Statement via ECF:

Thomas McAvity, Debtor's Attorney,
Mark Ditton, Lisa M. McMahan-Myhran, Randall Steward and the US Trustee

Executed at Tacoma, Washington on the 18th day of October, 2013.

/s/Kristen Saddler
KRISTEN SADDLER

Exhibit 2-C

Chapter 13 Trustee
1551 Broadway, Suite 600
Tacoma, WA 98402
(253) 572-6600

NOT INC

COPY
ORIGINAL FILED
JUN 19 2013
Scott G. Weber, Clerk, Clark Co.

Washington State Child Support Schedule Worksheets

[X] Proposed by [X] (name)__ Patricia McCarthy- Martin_ [ ] State of WA [ ] Other _____.(CSWP)
Or, [ ] Signed by the Judicial/Reviewing Officer. (CSW)

Mother: Patricia McCarthy-Martin_____ Father: Fearghal McCarthy_____
County: Clark_____ Case No. 05-3-01349-1 _____

Child(ren) and Age(s): Cormac Cas McCarthy (10) and Conor Patrick McCarthy (13)		
Part I: Income (see Instructions, page 6)		
1. Gross Monthly Income	**Father**	**Mother**
a. Wages and Salaries	$	$ 7,028.86
b. Interest and Dividend Income	$	$
c. Business Income	$	$
d. Maintenance Received	$	$
e. Other Income	$	$
f. Imputed Income	$ 9,166.67	$
g. Total Gross Monthly Income (add lines 1a through 1f)	$ 9,166.67	$ 7,028.86
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State)	$ 2,566.67	$ 1,968.08
b. FICA (Soc.Sec.+Medicare)/Self-Employment Taxes	$	$
c. State Industrial Insurance Deductions	$	$
d. Mandatory Union/Professional Dues	$	$
e. Mandatory Pension Plan Payments	$	$
f. Voluntary Retirement Contributions	$	$
g. Maintenance Paid	$	$
h. Normal Business Expenses	$	$
i. Total Deductions from Gross Income (add lines 2a through 2h)	$	$
3. Monthly Net Income (line 1g minus 2i)	$6,600.00	$ 5,060.78
4. Combined Monthly Net Income (add father's and mother's monthly net incomes from line 3)	$ 11,660.78	
5. Basic Child Support Obligation (enter total amount in box →) Child #1 $1,158 Child #3 _____ Child #5 _____ Child #2 $1,431 Child #4 _____	$ 2,589.00	
6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)	56.60%	43.40%

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Part II: Basic Child Support Obligation (see Instructions, page 7)		
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations. (Multiply each number on line 6 by line 5.)	$ 1,465.37	$ 1,123.63
8. Calculating low income limitations: Fill in only those that apply.		
Self-Support Reserve: (125% of the Federal Poverty Guideline.)	$	
a. Is Combined Net Income Less Than $1,000? **If yes**, for each parent enter the presumptive $50 **per child**.	$	$
b. Is Monthly Net Income Less Than Self-Support Reserve? **If yes**, for that parent enter the presumptive $50 **per child**.	$	$
c. Is Monthly Net Income Greater Than Self-Support Reserve? **If yes**, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, then enter that amount or the presumptive $50 per child, whichever is greater.	$	$
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive $50 per child.	$	$

Part III: Health Care, Day Care, and Special Child Rearing Expenses (see Instructions, page 8)		
10. Health Care Expenses	**Father**	**Mother**
a. Monthly Health Insurance Premiums Paid for Child(ren)	$	~~$ 243.00~~
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	$	$ 50.00
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	$	$ 293.00
d. Combined Monthly Health Care Expenses (add father's and mother's totals from line 10c)	$	
11. Day Care and Special Expenses		
a. Day Care Expenses	$	$
b. Education Expenses	$	$
c. Long Distance Transportation Expenses	$	$
d. Other Special Expenses (describe)	$	$
	$	$
	$	$
	$	$
e. Total Day Care and Special Expenses (add lines 11a through 11d)	$	$
12. Combined Monthly Total Day Care and Special Expenses (add father's and mother's day care and special expenses from line 11e)	$	
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)	$ 293.00	
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	$ 165.84	$ 127.16

Part IV: Gross Child Support Obligation		
15. Gross Child Support Obligation (line 9 plus line 14)	$1631.21	$1,250.79

Part V: Child Support Credits (see Instructions, page 9)		
16. Child Support Credits		
a. Monthly Health Care Expenses Credit	$	$ 293.00
b. Day Care and Special Expenses Credit	$	$

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c. Other Ordinary Expenses Credit (describe)	$	$
d. Total Support Credits (add lines 16a through 16c)	$	$293.00
Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)		
17. Standard Calculation (line 15 minus line 16d or $50 per child whichever is greater)	$	$957.79
Part VII: Additional Informational Calculations		
18. 45 % of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	$	$
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	$	$
Part VIII: Additional Factors for Consideration (see Instructions, page 9)		
20. Household Assets (List the estimated present value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate	$	$
b. Investments	$	$
c. Vehicles and Boats	$	$
d. Bank Accounts and Cash	$10,000	$
e. Retirement Accounts	$100,000	$
f. Other (describe)	$	$
	$	$
21. Household Debt (List liens against household assets, extraordinary debt.)		
Judgment Marriage Dissolution (property) / March 2013	$	$224,000
Ch. 13 Bankruptcy	$	$178,324
	$	$
	$	$
22. Other Household Income		
a. Income Of Current Spouse or Domestic Partner (if not the other parent of this action) Name: Shaun Martin Name _____	$ $	$1674.10 $
b. Income Of Other Adults In Household Name _____ Name _____	$ $	$ $
c. Gross income from overtime or from second jobs the party is asking the court to exclude per Instructions, page 8 _____	$	$
d. Income Of Child(ren) (if considered extraordinary) Name: Castlethorne Capital, LLC Name _____	$ tbd $	$ $

#. July 24th

e. Income From Child Support Name _____ Name _____	$ $	$ $
f. Income From Assistance Programs Program _____ Program _____	$ $	$ $
g. Other Income (describe) _____ _____	$ $	$ $
23. Non-Recurring Income (describe) _____ _____	$ $	$ $
24. Child Support Owed, Monthly, for Biological or Legal Child(ren)	Father's Household	Mother's Household
Name/age: _____ Paid [ ] Yes [ ] No	$	$
Name/age: _____ Paid [ ] Yes [ ] No	$	$
Name/age: _____ Paid [ ] Yes [ ] No	$	$
25. Other Child(ren) Living In Each Household		
Emily – age 5: biological child of Patricia and Shaun Martin		
Josiah – age 12: biological child of Shaun Martin & Patricia's step-child		
Roselynn – age 10: biological child of Shaun Martin & Patricia's step-child		

26. Other Factors For Consideration

a) Mother has 1 biological child with spouse, Shaun Martin. (Birth/marriage certificates filed under Sealed Source)

b) Mother has 2 step-children. Mother's spouse is custodial parent. He does not receive Child support from ex-spouse. (Parenting Plan and DCD Cause No. 04-3-02098-8 file under Sealed Source)

c) Father: income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation: Castlethorne Capital and Venia Corporations

d) Extraordinary income of a child: Castlethorne Capital LLC. Father incorporated with children as registered owners. (For c and d, the Incorporation documents are filed under Sealed Source)

e) Healthcare premium of $234 per month starting July 1st 2013 provided through Mother's employer (email from Mother's employer filed under Sealed Source) $467.50

f) Mother: Extraordinary debt: Chapter 13 bankruptcy filed April 2013. Wage Garnishment: $2,104/ mo by U.S. Trustee (Bankruptcy documents filed under Sealed Source)