

66379-8

66379-8

No. 66379-8

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

COLLEEN A. CHRISTENSEN,

Appellant,

v.

PAUL N. PETERSON,

Respondent.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2012 JAN 30 PM 4:44

APPELLANT'S BRIEF

Colleen A. Christensen
4111 E. Madison St., #229
Seattle, WA 98112
206-499-2602
Appellant *Pro Se*
WSBA #19372

TABLE OF CONTENTS

A. INTRODUCTION	1
(1) Assignments of Error	2
(2) Issues Pertaining to Assignments of Error	3
C. STATEMENT OF THE CASE	5
E. ARGUMENT	11
1. Standards of Review	11
2. The Trial Court Exceeded Its Jurisdiction By Ordering a Forced Sale of the Real Property For the Benefit of Third-Party Creditors.	12
3. The Trial Court Erred When It Failed to Award the Real Property to Christensen.	14
a. The Trial Court Erred When It Made the Divorced Parties Involuntary Tenants In Common.	14
b. The Real Property was Indisputably Christensen’s Separate Property Because Peterson Voluntarily Quitclaimed the Property to Christensen in a 2004 Deed.	16
c. The Trial Court Failed to Determine What, if Any, Community Interest Existed in the Real Property.	18
4. The Trial Court’s Unquestioning Reliance Upon Peterson’s Proposals was an Abuse of Discretion and Resulted in an Unfair and Inequitable Division of IRS Debt.	20
a. A Miscalculation of Christensen’s Annual Income Became the Core of the Trial Court’s Division of Community Debt.	23
b. The 2007-2008 IRS Debt was a Community Liability.	24
c. Christensen’s Post-Separation and Post-Dissolution Earnings are Separate Property and Should Not Have Been Used to Support Peterson in the Court’s Rulings.	25
d. The Trial Court’s Unquestioning Reliance Upon Peterson’s Proposals was an Abuse of Discretion and Resulted in an Unfair and Inequitable Division of Personal Property.	26
5. The Trial Court Erred in Awarding Attorney Fees to Peterson for Christensen’s Alleged Intransigence.	27

a. The Trial Court Failed to Issue Sufficient Findings Showing that Christensen Was Intransigent.	28
b. The Trial Court Erred When It Failed To Determine What Amount of Attorney Fees Were Caused by Christensen’s Alleged Intransigence.	30
c. The Trial Court Inexplicably Awarded Peterson \$10,000 that Peterson Admitted He Had Concealed from the IRS.	31
d. The Trial Court Erred When It Awarded Peterson Fees That He Never Incurred.	33
F. CONCLUSION.	35

A. INTRODUCTION

In dissolving the short-term marriage of Colleen Christensen and Paul Peterson, the trial court had no net community assets to divide. Instead, the trial court's main task was to divide community liabilities, in particular back taxes owed to the IRS. In performing this division, the trial court made a series of reversible errors.

First and foremost, the trial court acted without jurisdiction by ordering a forced sale of real property for the benefit of the IRS, a third-party creditor. In ordering the liquidation of the real property, the trial court failed to identify its character as separate or community, a finding required under RCW 26.09.080. The undisputed evidence – in particular, a quitclaim deed from Peterson to Christensen - showed that the real property was Christensen's separate property. See Trial Exhibit ("Ex") 13; RCW 26.16.050.

The trial court also abused its discretion when it adopted verbatim Peterson's proposed findings of fact, conclusions of law, and dissolution decree. The proposed findings of fact, conclusions of law, and decree were essentially Peterson's "wish list," and included many items not based on the evidence or supported by law. These errors produced an improper division of the parties' liabilities for the IRS debt without an evidentiary record to support the equities of the trial court's decision.¹

¹ The proposals contained numerous errors, including calculation of Christensen's income that was used to calculate the proportion of each party's annual income and to divide the IRS debt. Other errors including the failure to divide community debt, the disposition of property for which there was no

Six weeks before the entry of the findings of fact, conclusions of law, and decree, the Clerk of the King County Superior Court erroneously destroyed all the trial exhibits. The exhibits have been reconstructed for this appeal. The wholesale adoption of Peterson's proposed orders cannot be reconciled with the undisputed evidence contained in those trial exhibits, such as the parties' tax returns or the quitclaim deed. The order requiring the forced sale should be vacated for lack of jurisdiction, and the rest of the case should be reversed and remanded due to the numerous irregularities present in the Findings of Fact, Conclusions of Law, and Decree of Dissolution.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred when it ordered the forced sale of the real property for the benefit of third-party creditors.
2. The trial court erred when it adopted verbatim Peterson's proposed findings of fact, conclusions of law, and decree of dissolution and determined and divided the parties' liability to the IRS.
3. The trial court erred when it adopted verbatim Peterson's proposed findings of fact, conclusions of law, and decree of dissolution and determined and divided the parties' personal property.
4. The trial court erred when it found that Christensen had been intransigent and then awarded Peterson attorney fees in the net

evidence, and the lack of a basis for concluding that Peterson was entitled to attorney fees of over \$27,000.

amount of \$27,296.70.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court exceed its jurisdiction by ordering the sale of the real property for the benefit of the parties' third-party creditors, which would have resulted in a liquidation and was outside the scope of trial court's authority under of the divorce act?

2. Did the trial court err when it failed first to characterize the real property as Christensen's separate property before making further rulings concerning the real property, where the undisputed evidence showed that in 2004 Peterson had quitclaimed any and all interest in the real property to Christensen? See Ex. 13.

3. Did the trial court err when it failed to award the real property to Christensen as her separate property and instead determined, contrary to well-settled authority, that the divorced parties should hold the real property as tenants in common following the dissolution?

4. Did the trial court err when it failed to require that Peterson establish by clear evidence a community interest in Christensen's separate property and failed to offset from any such interest the benefit to the community from the use of Christensen's separate property?

5. Whether the trial court erred in dividing the IRS liabilities based on the proportionate annual income of the parties, where the trial miscalculated "the relative earning capacities of each party"?

6. Whether the trial court erred in dividing the IRS liabilities

by failing to consider the fact that Christensen's income had decreased and she was unable to work for the period prior to the dissolution, while Peterson had been working and not paying for community expenses or paying down community debt?

7. Whether the trial court erred in disposing of personal property in its orders, including property for which there was no evidence presented at trial?

8. Did the trial court err when it found that "any property acquired by husband post-separation" was Peterson's separate property, while simultaneously ruling that property acquired by Christensen post-separation and post-dissolution should be used to benefit the community?

9. Did the trial court err when it entered its Findings of Fact, Conclusions of Law, and a Dissolution Decree that contained numerous inconsistencies and errors, over Christensen's timely objection and six weeks after all the trial exhibits had been improperly destroyed by the Clerk of the King County Superior Court?

10. Did the trial court err in ordering Christensen to pay attorney fees to Peterson, where the court failed to explain why the conduct identified in its findings constituted intransigence?

11. Did the trial court err in awarding Peterson attorney fees for filing a motion to compel, where the trial court erroneously issued an order compelling discovery that was immediately vacated by Peterson's counsel when Christensen learned that order had been entered?

12. Whether the trial court erred in awarding an amount of attorney fees without determining that the amount had been due to Christensen's alleged intransigence and where the amount of fees exceeded the fees that Peterson had spent during the time in which the alleged intransigence occurred?

13. Did the trial court err in awarding Peterson \$10,000 in community funds as attorney fees, community funds which Peterson admitted concealing from Christensen and the IRS and then transferring to his counsel as a trial retainer?

14. Did the trial court err in ordering Christensen to pay attorney fees that Peterson never incurred and without legal basis, including fees incurred by his counsel to move to quash subpoenas directed to Peterson's counsel, who had been identified as witnesses by Christensen approximately nine months before the subpoenas were issued?

C. STATEMENT OF THE CASE

Christensen and Peterson married in September 2000 and were separated in October 2008. During the entire period of their marriage, Christensen was the owner of her own law firm. For most of the marriage, Christensen was the sole wage earner. Christensen's earnings were used to pay all community expenses, as well as to support Peterson while he attended Seattle Central Community College and the University of Washington to complete his bachelor's degree. Peterson used Christensen's earnings as he saw fit. For example, in 2006, the first year

that the Christensen's bank account was separate from Peterson's, Christensen provided Peterson \$30,000 that he requested, and none of this money was spent on community expenses or to pay down community debt. Ex. 10. In 2006, Christensen's total earnings (including the \$30,000 paid to Peterson) were \$144,000. Ex. 106.

Even after Peterson graduated in 2007 and began working at the Department of Veterans Affairs, Christensen's earnings alone were still used to pay all community expenses. Peterson never used his earnings to pay community expenses or to pay any debt. The undisputed evidence showed that the earning capacities of Peterson to Christensen were not 20%/80%, as the trial court concluded. See Exs. 100-109, 111 (Apparently Peterson never filed an income tax return for 2007.)

The undisputed evidence was that Christensen suffered enormous personal and professional tragedies during the period from 2004 through the time of the dissolution. In December 2004, Christensen's mother was diagnosed with terminal colon cancer. RP 177. This was only two years after both Christensen's mother and sister were simultaneously diagnosed with colon cancer. Id. Christensen's mother died in May 2005. Christensen testified that it was an incredibly stressful period for her, for which Peterson provided no emotional or other support. RP 177-78.

Christensen is a sole practitioner, and her practice was extremely busy and her life was torn to pieces during the period of her mother's illness. Following her mother's death and in an effort to ensure that – in

the event that any other similar tragedy occurred – Christensen wanted to make sure she was never without access to her law firm’s documents and that she and others could run her practice remotely. Christensen set about trying to develop secure “cloud computing” for her firm. Christensen wanted to ensure that she, her clients, her co-counsel, and her employees or contractors could access the firm’s materials if for some reason Christensen should be unavailable. RP 178-79. It is an understatement to say that Christensen chose the wrong vendor to perform the work. The vendor ended up stealing Christensen’s domain names, shutting down the law firm’s email, and converting Christensen’s firm’s client confidential work product, resulting initially in a Temporary Restraining Order. See RP 179; Ex. 20. Judge Prochnau commented that what the vendor had done was to “take the lifeblood” of Christensen’s law firm. The dispute with the vendor was a multi-year nightmare for Christensen and for her business.

In the fall of 2008, Christensen became ill and unable to work. By then, her relationship with Peterson had deteriorated. Christensen was continuing to pay all the community expenses and to pay off Peterson’s debts, while Peterson was contributing nothing from the income he was earning in the job he obtained after acquiring his bachelor’s degree. Christensen asked Peterson to move out, so that she could try to recover and begin working again. Peterson refused, and Christensen filed for divorce in October 2008. From the fall of 2008 through the end of 2009,

Christensen was unable to work. In addition, she was unable to pay for an attorney to represent her in the dissolution, so that when she was ready to work again, she had to devote her efforts to the dissolution instead of earning money to pay debts. See RP 169.

Christensen has the intention and has expressed her intention to the IRS of paying her share of the IRS debts, and has told the IRS that she will agree to extend the limitations period. Christensen has never objected to any assertion of any IRS enforcement against any of her property; the IRS has taken liens on her residence. This same approach cannot be said of Peterson's dealings with IRS. Peterson admitted under oath that – after Christensen asked him to move out of the house in the summer of 2008 - he had withdrawn community funds from his bank account to conceal those funds from the IRS. Peterson testified that he gave the funds to his mother to hold until he provided the money to his counsel as a retainer to proceed to trial.

The court signed the Findings of Facts and Conclusions of Law, and the Dissolution Decree,² with unquestioning reliance upon what Peterson had proposed. Unfortunately, Peterson's proposals were unsupported by the evidence and contrary to the law.

D. SUMMARY OF ARGUMENT

On September 3, 2010, the trial court issued its oral ruling. On September 17, 2010, all of the trial exhibits were destroyed by the Clerk of

² Throughout this brief, Christensen refers to what were actually Amended Findings and an Amended Decree as the Findings and Decree because the amendments were what contained the actual decisions of the trial court.

the King County Superior Court. CP 67. Peterson filed his proposed findings of fact, conclusions of law, and dissolution decree on November 12, 2010. CP 68. Peterson calendared his Notice of Presentation of Final Orders for November 22, 2010. CP 68. Pursuant to Local Rule 7, Christensen's response to the proposed documents was due at noon on November 18, 2010. Christensen filed "Petitioner's Objections to Entry to Proposed Amended Findings of Fact and Conclusion of Law and to Amended Decree of Dissolution" prior to noon on November 18, 2010. See CP 70 (hereinafter "Christensen's Objections"). The objections were timely.³ In her objections, Christensen addresses most of the same errors raised on appeal. Id.

Once the trial court entered the erroneous findings and decree, the trial court became responsible for their correctness. Nevertheless, at any time through the presentation of the proposed orders and through the pendency of this appeal, Peterson and his counsel could have corrected the misstatements that informed the trial court's decisions.

The trial court ordered the forced sale of Christensen's real property,⁴ and in doing so it exceeded its own authority. Even if the court had the jurisdiction to force a sale of the real property for the benefit of

³ What Christensen could not provide by noon, due to Peterson's counsel's failure to provide a Word version of the complete proposals, was her redlined version of the proposed findings. As she indicated to the trial court in her Objections, as of 11:30 a.m. on the date she filed her Objections, Peterson's counsel had still failed to provide the documents Christensen had requested. CP 71. What is clear is that Christensen's fulsome objections were submitted on time and should have been considered by the trial court.

⁴ Once the Court ordered the remedy, Peterson fully promoted it, without indicating to the Court that there were both significant legal and factual problems with the proposals.

third-party creditors, the court's forced sale ruling ignored a number of important issues. First, the undisputed evidence showed that Peterson had quitclaimed the real property to Christensen at the time of the purchase, thereby divesting the marital community of any interest in the property. Second, the undisputed evidence also showed that the IRS had issued liens on the real property as security for Christensen's portion of the IRS debt, and those liens would preclude any sale of the property. Finally, the court never found a crucial fact – it failed to find that there was any equity in the home before ordering a sale of the home. The trial court ruled that “any residual” from the sale should go to the IRS, but it failed to determine that there would actually be residual that could be used for the parties' community debts.

Indeed, the evidence at trial showed that the IRS had liens on the real property, which would have made a forced sale of the property impossible. The court lacked jurisdiction to order the sale of the real property for the benefit of the parties' creditors. See Arneson v. Arneson, 38 Wn.2d 99, 227 P.2d 1016 (1951).

This case raises the important question of whether a trial court abuses its discretion when it appears that the trial judge has failed to scrutinize the factual findings and legal conclusions in the documents proposed by the prevailing party before signing the documents. Here, the trial court adopted nearly verbatim⁵ the proposed findings of fact,

⁵ The trial court made only ministerial changes to the proposals, including changing the amount of post-judgment interest.

conclusions of law, and decree of Peterson without considering Christensen's timely objections.

E. ARGUMENT

1. Standards of Review.

Lack of Jurisdiction Whether the trial court had jurisdiction to force the sale of real property for the benefit of third-party creditors is a legal question that this Court reviews *de novo*.

Characterization of Property and Liabilities The trial court's characterization of property and liabilities as community or separate is a question of law that this Court reviews *de novo*. In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). The factual findings regarding the characterization require substantial evidence. *Id.* "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002) (quoting Bering v. SHARE, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)).

Division of Assets and Liabilities

This Court reviews a division of a marital community for an abuse of discretion. In re Marriage of Brewer, 137 Wn.2d 756, 976 P.2d 102 (1999). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. In re Marriage of Littlefield, 133 Wn.2d 39, 46-47 940 P.2d 1362 (1997). Discretion "is based on untenable grounds if the

factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” Id. at 47.

Decision Regarding Award of Attorney Fees

A trial court’s award of attorney fees is reviewed for an abuse of discretion. Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632 (1998).

2. The Trial Court Exceeded Its Jurisdiction By Ordering a Forced Sale of the Real Property For the Benefit of Third-Party Creditors.

On appeal, Christensen is permitted to challenge for the first time “the fundamental power of the court to assume jurisdiction of the cause.” See State v. Howard, 33 Wash. 250, 253, 74 P. 382 (1903); RAP 2.5(a).

“Dissolution is a statutory proceeding, and the jurisdiction and authority of the courts is prescribed by the applicable statute, the dissolution of marriage act, RCW 26.09.” Marriage of Moody, 137 Wn.2d 979, 987, 976 P.2d 1240 (1999). It is well-settled that where, as here, a trial court forces the sale of property for the benefit of third parties, it exceeds its authority under the dissolution statute. See, e.g., Arneson v. Arneson, 38 Wn.2d 99, 227 P.2d 1016 (1951); In re Marriage of Barrett, 33 Wn. App. 420, 655 P.2d 257 (1982)(the trial court issued an oral ruling that would have forced a sale of real property, but then correctly recognized before entering the dissolution decree that under Arneson “it did not have the power to compel a sale for benefit of creditors”).

In the dissolution decree entered in Arneson, one of the spouses was required to sell real property and then use the proceeds to pay joint creditors. The Arneson trial court ordered the proceeds of the sale to be used to satisfy a mortgage and tax liens and for the costs of the sale, and then ruled that “the balance of the proceeds of the sale is to be pro-rated and applied on the payment of the claims of the creditors of the plaintiff and the defendant according to the amount of their respective claims.” Arneson, 38 Wn. 2d at 100. After the “forced liquidation for the benefit for creditors,” nothing would be left to be divided between the spouses. Id.

The Supreme Court in Arneson observed that the effect of the decree, “with no balance left for division [between the divorcing parties], is compatible only with a liquidation proceeding and is not incident to any purpose within the scope of the divorce act.” Id. at 101. The court in Arneson held that the trial court had exceeded its jurisdiction: “Since the divorce act nowhere provides for it, the court has no power to compel a liquidation for the benefit of creditors as an incident to a divorce decree.” Id.

Here, the trial court likewise had no power to compel a liquidation for the benefit of third parties. Nevertheless, the trial court specifically ordered a sale and ruled that if there were “any residual” from the forced sale, such residual should be distributed to community creditors. The decree described the distribution from any proceeds as follows:

[F]irst to the bank loans (Chase Bank mortgage and Banner Bank mortgage), then to the cost of the sale, and **any residual to the**

IRS debt. Any residual sale proceeds paid to the IRS shall represent a shared (50/50) contribution to said debt by each party.

CP 163 (emphasis added). But see Arneson, 38 Wn.2d at 101 (in a dissolution, the “judgment can neither conclusively determine [creditors’] rights nor be made available on their behalf as a basis for any of the provisional remedies”).

Besides the lack of jurisdiction for forcing a sale of the property, there was no practical justification for the remedy. The IRS had already asserted liens on the real property, and thus any debt owed by Christensen was already subject to IRS liens on her separate property. See RP 201.

The dissolution decree was directly contrary to the holding in Arneson. The trial court’s ruling, forcing the sale of the real property, is therefore void for lack of subject matter jurisdiction and should be reversed.⁶

3. The Trial Court Erred When It Failed to Award the Real Property to Christensen.

In addition to lacking jurisdiction to force the sale of the real property, the trial court erred in its other rulings concerning the real property.

a. The Trial Court Erred When It Made the Divorced Parties Involuntary Tenants In Common.

As a preliminary matter, the trial court erred in making the divorced parties involuntary tenants in common in the real property. CP 146. “Courts have a duty not to award property to parties in a dissolution

⁶ The Decree contained rulings that were incident to its decision to force a sale of the real property, and these rulings should also be reversed.

action as tenants in common.” Stokes v. Polley, 145 Wn.2d 341, 347, 37 P.3d 1211 (2001) (citing Bernier v. Bernier, 44 Wn.2d 447, 449-50, 267 P.2d 1066 (1954)). To avoid this situation, “courts should award the property itself to one spouse and an offsetting monetary award to the other spouse.” Stokes, 125 Wn.2d at 347-48. Compare In re Marriage of Sedlock, 69 Wn. App. 484, 849 P.2d 1243 (1993)(upholding dissolution decree containing forced sale and short-term ownership as tenants in common as appropriate because, unlike the facts in Arneson, there would be assets remaining for division between the spouses following a forced sale of community real property and the sale was directed to occur within a short time period).⁷

Here, if the trial court had found a community interest in the real property, it should have used the amount of that community interest to offset the parties’ community debt and then allocated the remaining debt between the parties, instead of forcing a sale of the property. But see CP 163 (which would appear inexplicably to credit Peterson’s share of the IRS for 50% of the proceeds from any forced sale); with CP 160 (allocating the IRS debt 20% to Peterson and 80% to Christensen). As discussed below, however, the trial court erred when it failed to find the real property was Christensen’s separate property. Importantly, the trial

⁷ Even after ruling that the parties should be involuntary tenants in common, the trial court issued rulings that were inconsistent with giving the parties the legal status of tenants in common. The trial court ruled – without any offset from Peterson - that Christensen would have to do the following pending the forced sale: 1) maintain the mortgage payments, property tax, and insurance; and 2) maintain the property in a saleable condition. CP at 161. This finding provided an inexplicable advantage to Peterson, and is one of many instances indicating that the trial court improperly adopted the proposed rulings without applying its own independent judicial analysis.

court also failed to find that there was an actual community interest in the real property that could be allocated toward the community debt. See, e.g., CP at 163 (not concluding that there would be a residual from the forced sale, but instead acknowledging the possibility of no residual from the forced sale by stating that “any residual” should be provided to the IRS).

b. The Real Property was Indisputably Christensen’s Separate Property Because Peterson Voluntarily Quitclaimed the Property to Christensen in a 2004 Deed.

Besides exceeding its jurisdiction and improperly ruling that the parties should hold the real property as tenants in common, the trial court skipped the steps necessary to dispose of the real property in accord with the dissolution act. Under RCW 26.09.080, the trial court was required to consider a set of factors, including the nature and extent of the property it was dividing. “In applying these factors, the court first must characterize the marital property as either separate or community.” In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002)(emphasis added). See also Baker v. Baker, 80 Wn.2d 736, 745, 498 P.2d 315 (1972); Pollock v. Pollock, 7 Wn. App. 394, 399, 499 P.2d 231 (1972). The trial court erred as a matter of law when it failed to characterize the nature of the real property. See CP 146 (the trial court found that “the family home . . . need not be characterized, as it must be sold without delay to pay community liabilities”)(emphasis added). See also CP 144; CP 154 (real property is omitted from lists of community and separate property). Compare Ex.13 . This Court cannot determine whether the division of

liabilities is fair and equitable without proper characterization of the real property.

Peterson insisted that the real property be in Christensen's name, and he executed a quitclaim deed to Christensen, which was undisputed evidence that the real property was Christensen's separate property.⁸ See Ex. 13. By operation of law and at Peterson's insistence, the property became Christensen's separate property upon the execution and recording of the quitclaim deed. See Exs. 13, 14. RCW 26.16.050. Any community property interest that existed became Christensen's separate property.

A spouse or domestic partner may give, grant, sell or convey directly to the other spouse or other domestic partner his or her community right, title, interest or estate in all or any portion of their community real property: **And every deed made from one spouse to the other or one domestic partner to the other, shall operate to divest the real estate therein recited from any or every claim or demand as community property and shall vest the same in the grantee as separate property.**

RCW 26.16.050 (emphasis added). "[T]he property in question is what the recorded instrument shows it to be, namely the separate property of" Christensen. Johnson v. Wheeler, 41 Wn.2d 246, 249, 248 P.2d 558 (1952).

Once Christensen proved the existence of the quitclaim deed, Peterson then had the duty to prove by clear and convincing evidence that it was not the intention of the parties to convey all interests to Christensen.

⁸ The following evidence was undisputed: 1) Peterson insisted that his name not be associated with the real property or the mortgages associated with the real property; 2) Peterson consulted with an independent attorney prior to the purchase of the real property; 3) Peterson executed a quit claim deed in favor of Christensen, relinquishing all interest in the real property. Ex. 13.

See In re Estate of Ford, 31 Wn. App. 136, 139, 639 P.2d 848 (1982). Peterson never even tried to make such a showing. The parties' intent was clear. As a matter of law, the real property was Christensen's separate property. The trial court erred in not finding the real property to be Christensen's separate property. See CP 146 (the trial court concluded that it did not need to characterize the property).

c. The Trial Court Failed to Determine What, if Any, Community Interest Existed in the Real Property.

"Once established, separate property retains its separate character unless changed by deed, agreement of the parties, operation of law, or some other direct and positive evidence to the contrary." In re Marriage of Skarbek, 100 Wn. App. 444, 447, 967 P.2d 447 (2000). See also RCW 26.16.010. Christensen's separate real property remained her separate property through the conclusion of the marriage.

"[T]he right of the spouses in their separate property is as sacred as is the right in their community property, and when it is once made to appear that property was once of a separate character, it will be presumed that it maintains that character until some direct and positive evidence to the contrary is made to appear." In re Dewey's Estate, 13 Wn.2d 220, 226-27, 124 P.2d 805 (1942)(quoting Guye v. Guye, 63 Wash. 340, 352, 115 P. 731 (1911))."

In re Marriage of Chumbley, 150 Wn.2d 1, 6, 74 P.3d 129 (2003).

Once Christensen established that the real property was her separate property, Peterson first had to establish that there was an increase in the value of the property during the marriage. Peterson then had the burden of overcoming, with direct and positive evidence, the presumption

that any increase in value of the real property was Christensen's separate property.

[W]e hold that any increase in the value of separate property is presumed to be separate property. This presumption may be rebutted by direct and positive evidence that the increase is attributable to community funds or labors. This rule entitles each spouse to the increase in value during the marriage of his or her separately owned property, except to the extent which the other spouse can show that the increase was attributable to community contributions. Moreover, the community should be entitled to a share of the increase in value due to inflation in proportion to the value of community contributions to the property.

Marriage of Elam, 97 Wn.2d 811, 816-17, 650 P.2d 213 (1982) (citation omitted).

Peterson failed to meet his burden of proof under Marriage of Elam. The real property was purchased in 2004 for \$1,412,000 and its fair market value at the time of the dissolution was – at most - \$1,400,000.⁹ Christensen's separate real property decreased in value during the marriage.

The trial court failed to place a value on any alleged community interest in the real property that Peterson had quitclaimed to Christensen. This failure to find a community interest value should be accepted on appeal. In the alternative, the trial court's failure to find or place value on a putative community interest should be the basis for reversing and

⁹ In its oral ruling, the trial court declined to find the current market value of the real property, even after Ms. Christensen questioned the trial court its decision. Then, without any additional argument, Peterson's proposed orders simply included a statement that the trial court had found that the market value at the time of the trial was "worth approximately \$1.4 million at the time of trial." The trial court signed that finding without further argument. CP 146. It should not simply have adopted Peterson's proposed findings regarding the issue, especially where the value was "approximate" and the trial court had failed to make any findings concerning the actual value.

remanding the case to determine what, if any, community interest existed in the real property.

If there is a remand for this purpose, then the trial court should be directed to determine whether any potential community interest Peterson proves should be offset by the value of the use of the real property by the community. See Miracle, 101 Wn.2d at 139, 675 P.2d 1229; Pearson-Maines, 70 Wn. App. at 870, 855 P.2d 1210. (holding that it was appropriate to offset the community right of reimbursement against the benefit received by the community for the use and enjoyment of the property).

4. The Trial Court's Unquestioning Reliance Upon Peterson's Proposals was an Abuse of Discretion and Resulted in an Unfair and Inequitable Division of IRS Debt.

It is not an abuse of discretion per se for a trial court to adopt verbatim a party's proposals following a bench trial. Washington rules permit a trial court to request proposed findings of fact and conclusions of law from the prevailing party, and for the trial court to adopt those proposals as its own. CR 52(a). The use of proposed findings of fact and conclusions of law is a widely-used and necessary part of Washington court procedure.

While no Washington case appears to have discussed a challenge to a trial court's adoption verbatim of one party's proposed findings and conclusions, other state courts applying similar rules have analyzed the issue. In reversing various findings in a dissolution action, the Minnesota

Court of Appeals highlighted the precise problems associated with what occurred here:

This case presents a second matter of concern, one which arises not only in family law cases but in court-tried cases generally. The trial court here adopted nearly verbatim respondent's proposed findings and conclusions of law. We have held previously that the verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se. While we continue to recognize the acceptability of this practice, we strongly caution that wholesale adoption of one party's findings and conclusions raises the question of whether the trial court independently evaluated each party's testimony and the evidence.

The trial court must scrupulously assure that findings and conclusions – whether they be the court's alone, one or the other party's, or a combination – are always detailed, specific, and sufficient enough to enable meaningful review by this court. Remands occasioned by insufficient findings . . . serve the best interests of neither the parties nor their children; and they disproportionately and often needlessly drain the limited resources of both trial and appellate courts. The energies of attorneys and the courts and certainly the financial and emotional resources of the parties can all be more productively employed elsewhere than in remanded cases.

Bliss v. Bliss, 439 N.W.2d 583, 590 (Minn.App.1993)(citations and footnote omitted).

In a 2005 dissolution case, the Indiana Court of Appeals urged trial courts to scrutinize parties' proposals for "mischaracterized testimony and legal argument." In re Marriage of Nickels, 834 N.E.2d 1091, 1096 (Ind. Ct. App. 2005).

We encourage such scrutiny for good reason. As our supreme court has observed, the practice of accepting verbatim a party's proposed findings of fact "weakens our confidence as an appellate court that the findings are the result of considered judgment by the trial court." Cook v. Whitsell-Sherman, 796 N.E.2d 271, 273 n.1 (Ind. 2003)(citing Prowell v. State, 741 N.E.2d 704, 708-09 (Ind. 2001)).

Id.

In a case that is similar to what occurred here, the Supreme Court of Maine vacated a dissolution decree where the trial court adopted the husband's proposed findings of fact and conclusions of law verbatim and there were a number of errors and inconsistencies. See Weeks v. Weeks, 650 A.2d 945 (1994). The court in Weeks anticipated a problem that is also likely true in this case, namely, "that the errors we have identified may not be exclusive and that further proceedings may affect the court's disposition of other economic issues." Id. at 948. The Weeks court concluded that its findings of clear error compelled it to vacate the judgment. Id.

The Supreme Court of Maine reasoned as follows:

It is not automatic error for a trial court to adopt verbatim the findings proposed by one party. Estate of Record, 534 A.2d 1319, 1323 (Me. 1987). We have recognized, however, that problems may arise when a trial court adopts proposed findings verbatim without any change to reflect its own opinion, In re Sabrina M., 460 A.2d 1009, 1013 (Me. 1983), because such findings are "not the original product of a disinterested mind." Andre v. Bendix Corp., 774 F.2d 786, 800 (7th Cir. 1985) (quoting Flowers v. Crouch-Walker Corp., 552 F.2d 1277, 1284 (7th Cir. 1977)). Further, we have several times expressed disapproval of the practice of adopting verbatim the proposed findings of the party. Estate of Record, 534 A.2d at 1323; Perrault v. Parker, 490 A.2d 203, 205-06 (Me. 1985); Clifford v. Klein, 463 A.2d 712-13; In re Sabrina M., 460 A.2d at 1013.

When a trial court adopts verbatim the proposed findings of a party, we must scrutinize the findings closely to determine whether the court has adequately performed its judicial function. In re Sabrina M., 460 A.2d at 1013. If after close scrutiny of such findings we are uncertain whether that function has been performed adequately, we will vacate the judgment. Clifford v. Klein, 463 A.2d at 713.

Id. at 946.

Many of the errors here could have been avoided if Peterson, in the first instance, had proposed findings of fact and conclusions of law that were based on the evidence and applicable law. While the Bliss court noted that “the trial court bears the ultimate responsibility to assure that the findings and conclusions meet the standards necessary to enable meaningful review,” the court also observed that the party making the proposals can avoid reversal by carefully drafting the documents to be presented to the trial court. Bliss, 439 N.W.2d at 590, n.6.

[A] party who submits proposed findings and conclusions should also conscientiously review and revise this document prior to submission to the trial court to assure that [case law] requirements are met. In so doing, a potential respondent on appeal (and generally the party whose findings and conclusions are accepted by the trial court will be respondent on appeal) will have presented a case which, if not meriting outright affirmance, at least will not compel a remand.

Id. (emphasis in original; citations omitted).

Here, Christensen filed a timely objection more than two weeks before the trial court adopted the proposals, highlighting serious errors contained in the documents. See CP 70. Peterson had ample opportunity to amend the proposed drafts before they were adopted by the trial court, but chose not to correct the errors.

a. A Miscalculation of Christensen’s Annual Income Became the Core of the Trial Court’s Division of Community Debt.

The trial court made a mathematical error in calculating that

Christensen was 80% liable for the IRS debt and that Peterson was 20% liable. Peterson was making over \$50,000 at the time of the dissolution, and thus, according to the trial court's calculation, Christensen would have an average annual income of \$250,000 to justify the split of liability. The evidence showed that Christensen's average annual income was not \$250,000. It was not close, even if one fails to include the fact that Christensen had no earnings in 2009, and was slated to make considerably less than \$50,000 in 2010. The parties' income tax returns were admitted into evidence without objection. See Exs. 100-109, 111.¹⁰

When the trial court ruled that "the IRS debt is apportioned 80 percent petitioner and 20 percent to respondent. That is in keeping, essentially, with the relative earning capacity," (CP 147), the trial court erred in its mathematical equation. In dividing the debt, the trial court should have, at a minimum, based the proportionate share on the average annual income of the parties through 2009.

The trial court erred when it failed to consider the fourth factor of the dissolution statute, how its disposition would affect the parties post-dissolution, "the economic circumstances of each spouse upon dissolution [are] of 'paramount concern'." Olivares, 69 Wn. App. at 330 (quoting DeRuwe v. DeRuwe, 72 Wn.2d 404, 408, 433 P.2d 209 (1967)).

b. The 2007-2008 IRS Debt was a Community Liability.

¹⁰ The parties filed separate tax returns in 2007 and 2008. Respondent apparently never filed a tax return for 2007.

The trial court erred when it failed to find that the debts to the IRS for Christensen's 2007 and 2008 income were community debts. See, e.g., CP 163 ("Each party shall be fully liable for his or her taxes commencing January 1, 2007 and all subsequent years thereafter"). There was no factual or legal basis for not dividing the debt to the IRS for these tax years. Debts incurred by either spouse during the marriage are presumed to be community obligations unless overcome by clear, cogent, and convincing evidence. Sunkidd Venture, Inc. v. Snyder-Entel, 87 Wn. App. 211, 215, 941 P.2d 16 (1997); Oil Heat Co. of Port Angeles, Inc. v. Sweeney, 26 Wn. App. 351, 353, 613 P.2d 169 (1980). Christensen presented evidence of community debts to the IRS for the years 2007 and 2008. See Exs. 108 & 109. Peterson provided no evidence that these debts were separate, and the finding omitting those debts was proposed and then erroneously entered by the trial court.

The trial court erred when it adopted those findings without any showing that the debts for those two tax years were separate debts.

c. Christensen's Post-Separation and Post-Dissolution Earnings are Separate Property and Should Not Have Been Used to Support Peterson in the Court's Rulings.

It is well established that, "[w]hen the parties are separated, their earnings . . . are separate property. RCW 26.16.140." Marriage of Brewer, 137 Wn.2d at 774. Similarly, "post-dissolution earnings, whether received from employment, business ventures, investment or disability benefits, are not 'assets which are the court for disposition in a dissolution action.'" Id.

Thus, it was clearly error for the trial court to rule that any payments Christensen made on loans or for the upkeep of the real property were not her separate property and instead made Christensen solely responsible for such payments, without any offset. The trial court therefore clearly erred when it found, for instance, that “any property acquired by husband post-separation” was Peterson’s separate property, while simultaneously ruling that property acquired by Christensen post-separation and post-dissolution should be used to benefit the community. CP 154. See also CP 162 (“The wife shall remain in the home and have the sole responsibility of maintaining the home in saleable condition”). Since the real property is held as Christensen’s separate property and the mortgages are solely in Christensen’s name, Christensen is solely liable for all payments she makes towards the real property without any offset from the community. Because the trial court’s decision means that Christensen is contributing her separate earnings, this is reversible error.

d. The Trial Court’s Unquestioning Reliance Upon Peterson’s Proposals was an Abuse of Discretion and Resulted in an Unfair and Inequitable Division of Personal Property.

The trial court also entered findings about property for which there had been no evidence at trial. For example, Peterson inserted into his proposed findings reference to a box that “contains rock climbing equipment.” CP 154. There was no testimony concerning the rock climbing equipment, and thus Christensen cite to the record on appeal why the rock climbing equipment should not have been awarded to Peterson.

Other items of personal property were awarded to Peterson and described in CP 154, yet they were never at issue at trial. For example, “the couch in the den” was awarded to Peterson and – just like the rock climbing equipment - was never the subject of any testimony; yet it was inserted into the Findings of Fact and Conclusions of Law. CP 154. If Christensen disposed of any of this property prior to even knowing that the property was at issue, she could potentially be held in contempt of the trial court’s rulings. It was reversible error for the trial court to include reference to property that had not been put at issue in the dissolution.

5. The Trial Court Erred in Awarding Attorney Fees to Peterson for Christensen’s Alleged Intransigence.

A trial court’s award of attorney fees is reviewed for an abuse of discretion. Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). Trial courts must exercise their discretion on articulable grounds, making an adequate record for review by an appellate court. Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). See also In re Bobbitt, 135 Wn. App. 8, 144 P.2d 306 (2006) (“The trial court must provide sufficient findings of fact and conclusions of law to develop an adequate record for appellate review of a fee award.”) The “absence of an adequate record upon which to review a fee award will result in a remand of the award to the trial court to develop such a record.” Mahler, 135 Wn.2d at 435.

The trial court found that Christensen had been intransigent and awarded Peterson \$17,296.70 in attorney fees on that basis. CP 145.¹¹

¹¹ As discussed infra the net amount of the attorney fee award was \$27,296.70, because

First, the court erred when it found that Christensen was intransigent. Second, assuming arguendo that its finding of intransigence was correct, the trial court erred when it failed to determine whether there was any increase in the amount of Peterson's attorney fees caused by Christensen's alleged intransigence. Third, the trial court failed to find that the attorney fees to be awarded were reasonable or, in one instance, even incurred by Peterson.

a. The Trial Court Failed to Issue Sufficient Findings Showing that Christensen Was Intransigent.

In its Findings of Fact, the trial court found that this conduct constituted intransigence:

Petitioner's failure to produce discovery documents, requiring Respondent to file a motion to compel, and due to Petitioner taking unnecessary depositions. The remaining \$2,296.70 is attributable to Petitioner subpoenaing Respondent's attorneys, requiring Respondent to file motions to quash said subpoenas and for his attorney to retain outside counsel. *See Exhibit C.*

CP at 145. The trial court awarded Peterson \$17,296.70 in attorney fees for this alleged intransigence.¹²

In sum, the trial court stated that it was finding Christensen intransigent because: 1) Christensen took unspecified depositions, 2) Peterson filed a motion to compel, and 3) Peterson's counsel had to move to quash a subpoena. The trial court did not provide any detail regarding this conduct nor did it explain why this conduct constituted intransigence.

the trial court awarded Peterson the \$10,000 he had concealed from the IRS and then paid to his attorneys. CP 145.

¹² The attorney fees award actually granted Peterson an additional \$10,000, which was money that the undisputed facts showed that Peterson had fraudulently concealed from both the IRS and Christensen. See CP 145, RP 65-66. Exs. 2 & 3.

According to the findings here, intransigence is established if a party to a dissolution merely takes depositions, without regard to the number of depositions, the length of the depositions, the reasons for the depositions, or how the depositions constituted in any way obstructionism, delay, or foot-dragging. Compare Gamache v. Gamache, 66 Wn.2d 822, 409 P.2d 859 (1965)(husband failed to appear as a witness in his own trial and created an unnecessary appeal); In re of Marriage of Foley, 84 Wn. App. 839, 846, 930 P.2d 929(1997)(“Mr. Foley filed numerous frivolous motions, refused to show up for his own deposition, and refused to read correspondence from Mrs. Foley's attorney”); In re Marriage of Morrow, 53 Wn. App. 579, 770 P.2d 197 (1989)(13 days of trial needed to unravel husband’s financial affairs was deemed intransigence).; Eide v. Eide, 1 Wn. App. 440, 462 P.2d 562 (1969)(husband ordered to pay attorney fees where court found he had tampered with the exhibits).

With regard to the motion to compel referenced in the findings, the record shows that Peterson improperly obtained an order to compel discovery. As soon as Christensen discovered that the trial court had entered the erroneous order, the order was immediately vacated by Peterson’s counsel. Nevertheless, in its findings the trial court ruled that Christensen was intransigent for “her failure to produce discovery documents, requiring Respondent to file a motion to compel.” CP 145.

Finally, the findings state that Christensen was intransigent when she subpoenaed Peterson’s counsel, and counsel moved to quash the

subpoenas. CP 145. There was no finding that the subpoenas were improperly issued or any other legal reason why Peterson's counsel should have been awarded attorney fees for move to quash the subpoenas.

It was Peterson's "duty as the prevailing party to procure formal written findings supporting [his] position, and [he] must 'abide the consequences' of [his] failure to fulfill that duty." Just Dirt, Inc. v. Knight Excavating, Inc., 138 Wn. App. 409, 416, 157 P.3d 431 (2007)(quoting People's Nat's Bank of Wash. v. Birney's Enters., Inc., 54 Wn. App. 668. 670, 775 P.2d 466 (1989)). There is no adequate record upon which this Court can meaningfully review the finding of intransigence, and the trial court's decision should be reversed and remanded for instructions to the trial court to determine how (or whether) the conduct described in the findings constitutes intransigence.

b. The Trial Court Erred When It Failed to Determine What Amount of Attorney Fees Were Caused by Christensen's Alleged Intransigence.

Assuming arguendo that the conduct described in the Findings can constitute intransigence, the trial court failed to find a key fact: It failed to determine what amount of additional attorney fees was caused by the alleged intransigence. Here, Peterson sought and obtained **more** than the record reflects that he had spent on attorney fees during the entire case through discovery, including the period of the allegedly intransigent conduct.

The trial court awarded \$15,000 in attorney fees “due to Petitioner’s failure to produce discovery documents, requiring Respondent to file a motion to compel, and due to Petitioner taking unnecessary depositions.” CP 145. In his financial declaration, Peterson stated under oath that his attorney fees as of March 31, 2010, shortly before trial, were \$13,423. CP 142. By awarding Peterson \$15,000 in attorney fees for alleged intransigent conduct relating to discovery, the trial court awarded Peterson more than Peterson had actually incurred in total.

The trial court’s failure to specify how Christensen’s alleged intransigence caused an increase in Peterson’s attorney fees and the trial court’s failure even to specify what attorney work or invoices comprised the \$15,000 award is reversible error. See, e.g., In re Marriage of Crosetto, 82 Wn. App. 545, 564, 918 P.2d 954 (1996)(once intransigence found, trial court must determine the extent to which the intransigence increased the other party’s attorney fees). The amount of the award of attorney fees should be reversed and remanded for a determination of whether any of the described conduct (assuming it constitute intransigence) created an increase in attorney fees, and the amount by which Peterson’s legal fees were increased.

c. The Trial Court Inexplicably Awarded Peterson \$10,000 that Peterson Admitted He Had Concealed from the IRS.

Not only did the trial court award Peterson more in attorney fees than he had expended, allegedly due to Christensen’s intransigence, but

the trial court simultaneously awarded Peterson an additional \$10,000 in attorney fees that constituted community funds Peterson admitted concealing from the IRS and Christensen. The finding awarding this amount is unclear on its face, but its impact and meaning are abundantly clear from the evidence presented at trial. The Finding provides as follows:

\$17,296.70 in fees and costs have been incurred unnecessarily by the Respondent due to the Petitioner's intransigence and should be paid by Petitioner. This payment should be in addition to any community funds Respondent used toward his attorney fees prior to the entry of the Amended Decree of Dissolution.

CP 145 (emphasis added).

Peterson testified to withdrawing \$10,000 as cash, in two \$5,000 transactions, and then providing the cash to his mother to hold. See Exs. 2 and 3. This same \$10,000 in cash was then provided to his attorneys 18 months later as a trial retainer.

Christensen discovered what Peterson had done in March 2010, and requested that the funds be paid to the IRS or held in constructive trust for the IRS. Instead, the trial court made those same funds part of Peterson's attorney fee award against Christensen, with the only apparent legal basis being Christensen's alleged intransigence.

Thus, without any explanation, and as part of an attorney fees award for intransigence, the trial court also awarded Peterson the \$10,000 that Peterson admitted deliberately concealing from the IRS and from Christensen for 18 months. Peterson obviously failed to demonstrate – because he could never have demonstrated - how this additional \$10,000

was part of any increase in costs due to Christensen's alleged intransigence for "Petitioner's failure to produce discovery documents, requiring Respondent to file a motion to compel, and due to Petitioner taking unnecessary depositions." CP 145. This money should have been deemed a fraudulent transfer and not, as the trial court found, awarded to Peterson in a fee award. This finding should be reversed and the amount added to what Peterson is obligated to pay the IRS.

d. The Trial Court Erred When It Awarded Peterson Fees That He Never Incurred.

The trial court must state the method it used to calculate the amount of the attorney fee award. In re Marriage of Knight, 75 Wn. App. 721, 729, 880 P.2d 71 (1994), review denied, 126 Wn.2d 1011 (1995). As already discussed, the trial court erred when it awarded Peterson \$15,000 in attorney fees without any findings regarding how it had obtained that figure, and in direct conflict with Peterson's sworn statement that as of the close of discovery, he had incurred approximately \$13,000 in attorney fees. Additionally, besides failing to identify the legal basis for awarding Peterson the \$10,000 he had concealed from the IRS, the trial court failed to indicate how it calculated the \$10,000 as attorney fees. This amount – similar to the \$15,000 award – lacks any factual findings concerning the source or reasonableness of the awarded amount.

The trial court awarded attorney fees in connection with Christensen's subpoena of Peterson's counsel. Peterson's counsel had

been identified as witnesses since June 22, 2009. CP 23. Between June 2009 and when they were subpoenaed, counsel never objected to being identified as witnesses nor did they move the trial court for a protective order prior to trial. Initially they were identified as witnesses because Peterson waived the attorney-client privilege by failing to object to discovery requests. The additional basis for calling counsel as witnesses was the fact that Peterson had, in his deposition, testified to concealing funds from the IRS and then providing those funds directly to his counsel 18 months later. (At trial, Peterson changed his testimony and stated that he had given the funds to his mother before giving the funds to his attorneys. The \$10,000 in withdrawals of community funds had been the subject of repeated requests for explanations to Mr. Peterson's counsel throughout discovery, and Christensen only learned what had occurred after deposing Peterson.

When counsel were subpoenaed, they moved to quash. The motion was never reduced to an order. The court never stated the basis for awarding attorney fees for the motion to quash the subpoenas against Peterson's attorneys, an award which presumably would have had to have been issued pursuant to the requirements of Rule 45. In addition, the trial court failed to explain why attorney fees incurred by Peterson's attorneys were awarded to Peterson. See CP 157 (identifying fees Peterson's counsel paid to retain their own outside counsel). Finally, the trial court never explained why it ordered more in attorney fees than Peterson's

counsel had requested in their initial motion to quash. The difference in amounts suggests that, even if the award was appropriately made, the amount awarded for quashing the subpoenas was unreasonable.

6. Christensen Should Be Awarded Her Attorney Fees on Appeal.

Christensen seeks attorney fees on appeal for Peterson's intransigence, including his failure to propose orders that were consistent with the law and the facts.

F. CONCLUSION

For the foregoing reasons, Christensen respectfully requests that the trial court's order forcing the sale of the real property be vacated, and that the Findings of Fact, Conclusions of Law, and Dissolution Decree be reversed and remanded.

RESPECTFULLY SUBMITTED this 30th day of January, 2012.



Colleen A. Christensen, *Pro Se*
Appellant, WSBA #19372

APPENDIX

1
2
3
4
5
6
7 **Superior Court of Washington**
8 **County of King**

9 In re the Marriage of:

No. 08-3-07774-1 SEA

10 COLLEEN A. CHRISTENSEN

Petitioner,

**AMENDED
Findings of Fact and
Conclusions of Law
(Marriage)
(FNFCL)**

11 and

12 PAUL A. PETERSON

Respondent.

13
14 **I. Basis for Findings**

15 The findings are based on trial held on April 20, 2010 and concluded on April 23, 2010. The
16 following people attended: Petitioner, Respondent, Respondent's lawyer, and Respondent's
17 witnesses. The court scheduled an oral ruling for April 26, 2010. Several hours prior to the oral
18 ruling, Petitioner filed for bankruptcy. The Respondent and Respondent's counsel appeared for
the oral ruling on April 26, 2010. Petitioner did not appear, despite the court's attempt to contact
her by email and phone prior to the ruling.

19 At the oral ruling on April 26, 2010, the court entered a Decree of Dissolution of Marriage,
20 which included Findings of Fact and Conclusions of Law, attached as *Exhibit A*. The court
21 stayed division of community property and debts/liabilities pending resolution of the bankruptcy
22 action. *See Exhibit A*. After the Petitioner's bankruptcy petition was denied, the court provided
an oral ruling regarding division of community property and debt/liabilities on September 3,
2010, at which the Petitioner, Respondent and Respondent's counsel appeared.

23 **II. Findings of Fact**

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

25 **2.1 Residency of Petitioner**

26 The Petitioner is a resident of the state of Washington.

27
28 *Fndngs of Fact and Concl of Law (FNFCL) – Page 1 of 6*
WPF DR 04.0300 Mandatory (6/2008) – CR 52; RCW 26.09.030; .070(3).

**STELLA L. PITTS
& ASSOCIATES, PLLC**
1411 Fourth Avenue, Suite 1405
Seattle, WA 98101
(206) 447-7745
Fax (206) 447-7746

1 **2.2 Notice to the Respondent**

2 The respondent appeared, responded or joined in the petition.

3 **2.3 Basis of Personal Jurisdiction Over the Respondent**

4 The facts below establish personal jurisdiction over the respondent.

5 The respondent is currently residing in Washington.

6 **2.4 Date and Place of Marriage**

7 The parties were married on September 11, 2000 at Winthrop, Washington.

8 **2.5 Status of the Parties**

9 Husband and wife separated on October 22, 2008.

10 **2.6 Status of Marriage**

11 The marriage is irretrievably broken and at least 90 days have elapsed since the date the
12 petition was filed and since the date the summons was served or the respondent joined.

13 **2.7 Separation Contract or Prenuptial Agreement**

14 There is no written separation contract or prenuptial agreement.

15 **2.8 Community Property**

16 The parties have real or personal community property as set forth in *Exhibit B*. This
17 exhibit is attached or filed and incorporated by reference as part of these findings.

18 **2.9 Separate Property**

19 The parties have real or personal separate property as set forth in *Exhibit B*. This exhibit
20 is attached or filed and incorporated by reference as part of these findings.

21 **2.10 Community Liabilities**

22 The parties have incurred community liabilities as set forth in *Exhibit B*. This exhibit is
23 attached or filed and incorporated by reference as part of these findings.

1 **2.11 Separate Liabilities**

2 The parties have separate liabilities as set forth in *Exhibit B*. This exhibit is attached or
3 filed and incorporated by reference as part of these findings.

4 **2.12 Maintenance**

5 Maintenance was not requested.

6 **2.13 Continuing Restraining Order**

7 Does not apply.

8 **2.14 Protection Order**

9 Does not apply.

10 **2.15 Fees and Costs**

11 Attorney fees, other professional fees and costs should be paid as follows:

12
13 Petitioner and respondent should pay his or her own attorneys fees, except that \$17,296.70
14 should be payable from petitioner to respondent. Respondent should have judgment
15 against Petitioner for said amount, to bear interest at ~~12%~~^{6%} per annum. (SQ)

16 \$17,296.70 in fees and costs have been incurred unnecessarily by the Respondent due to
17 the Petitioner's intransigence and should be paid by Petitioner. This payment should be
18 in addition to any community funds Respondent used toward his attorney fees prior to
entry of the Amended Decree of Dissolution.

19 Of the \$17,296.70 in fees and costs indicated above, \$15,000 is due to Petitioner's failure
20 to produce discovery documents, requiring Respondent to file a motion to compel, and
21 due to Petitioner taking unnecessary depositions. The remaining \$2,296.70 is attributable
22 to Petitioner subpoenaing Respondent's attorneys, requiring Respondent to file motions
to quash said subpoenas and for his attorney to retain outside counsel. See *Exhibit C*.

23 **2.16 Pregnancy**

24 The wife is not pregnant.

25 **2.17 Dependent Children**

26 The parties have no dependent children of this marriage.
27

1 **2.18 Jurisdiction Over the Children**

2 Does not apply because there are no dependent children.

3 **2.19 Parenting Plan**

4 Does not apply.

5 **2.20 Child Support**

6 Does not apply.

7 **2.21 Other**

- 8
- 9 1. The parties' marriage was a short-term marriage. During the marriage, Petitioner was the
10 sole income earner. Neither party was financially responsible during the marriage.
- 11 2. During marriage, the Petitioner bought a house the parties could not afford, worth
12 approximately \$1.4 million at the time of trial. Respondent agreed to the purchase of a
13 \$1 million home, but not to a \$1.4 million home. This 40% difference is significant.
- 14 3. The family home, identified by tax parcel ID #502690-0185-07, need not be
15 characterized, as it must be sold without delay to pay community liabilities, in particular
16 the IRS debt incurred for tax years 2003 through 2006. Pending sale, the home should be
17 held by the parties as tenants-in-common (and not joint tenants with right of
18 survivorship). The parties should agree on a listing agent, the listing agent's
19 recommendations, listing price, adjustments to said listing price, and acceptance or
20 rejection of purchase offers. If the parties cannot agree on any of the above, the issue(s)
21 should be submitted to binding arbitration.
- 22 4. Petitioner did not pay taxes on her income, did not retain enough funds from her
23 extensive income to pay those taxes, and had a pattern of delay in paying the penalties on
24 those taxes in previous years. Petitioner had control of funds and the ability to pay the
25 taxes as they came due, but did not. The resulting community debt owed the IRS is at
26 least \$358,671, and may be greater depending on interest and penalties assessed.
- 27 5. Petitioner chose the house over the IRS during the marriage, earning a million and a half
dollars with nothing really left to show for it. This required paying from community
income the expense of some \$7,000 plus per month towards the family home, which she
claimed was her separate asset, plus repaying considerable loans to relatives, which loans
were used to purchase the house.
- 28 6. The Petitioner is more responsible than the Respondent for the parties' community
liabilities incurred during marriage. Allocation of the community IRS debt and of the

Fndngs of Fact and Concl of Law (FNFLC) – Page 4 of 6
WPF DR 04.0300 Mandatory (6/2008) – CR 52; RCW 26.09.030; .070(3)

STELLA L. PITTS
& ASSOCIATES, PLLC
1411 Fourth Avenue, Suite 1405
Seattle, WA 98101
(206) 447-7745
Fax (206) 447-7746

1 community credit card debt as reflected in Paragraphs III(2) and IV(2) is also based upon
2 the relative earning capacities of each party and is consistent with each party's
responsibility for this debt during marriage.

3 7. Neither party was able to show at trial exactly what the credit card expenses during
4 marriage were for.

5 III. Conclusions of Law

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

7 3.1 Jurisdiction

8 The court has jurisdiction to enter a decree in this matter.

9 3.2 Granting a Decree

10 The parties should be granted a decree.

11 3.3 Pregnancy

12 Does not apply.

13 3.4 Disposition

14 The court should determine the marital status of the parties and make provision for the
15 disposition of property and liabilities of the parties. The distribution of property and
16 liabilities as set forth in the decree is fair and equitable.

17 3.5 Continuing Restraining Order

18 Does not apply.

19 3.6 Protection Order

20 Does not apply.

21 3.7 Attorney Fees and Costs

22 Attorney fees, other professional fees and costs should be paid.

23 3.8 Other

24 Does not apply.

25 *Findings of Fact and Concl of Law (FNFL) – Page 5 of 6*
26 *WPF DR 04.0300 Mandatory (6/2008) – CR 52; RCW 26.09.030; .070(3)*

27
28 **STELLA L. PITTS**
& ASSOCIATES, PLLC
1411 Fourth Avenue, Suite 1405
Seattle, WA 98101
(206) 447-7145
Fax (206) 447-7146

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 11/30/10



Judge/Commissioner
Steven Gonzalez

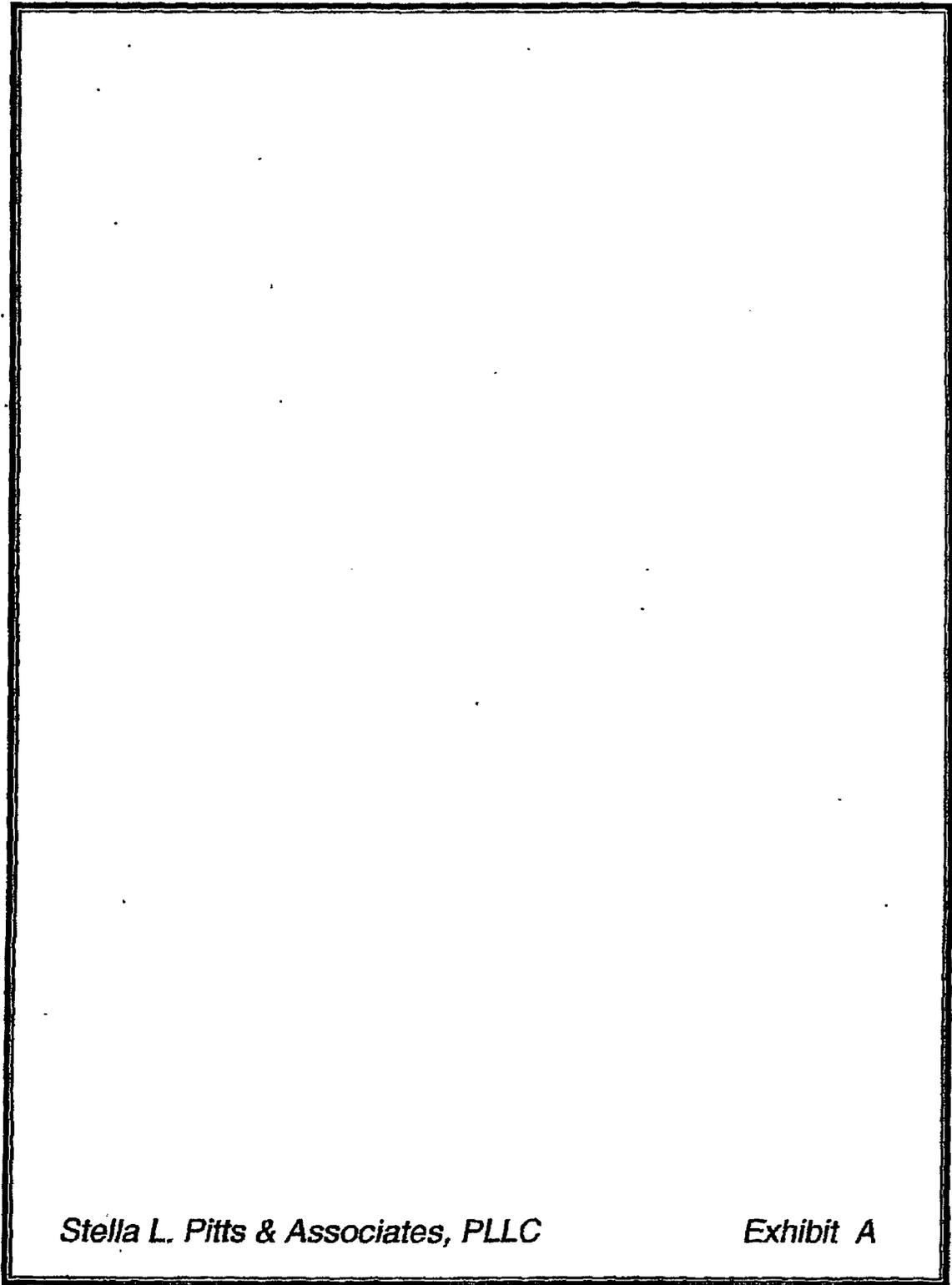
Presented by:
STELLA L. PITTS & ASSOCIATES, PLLC

Approved for entry:

Stella L. Pitts, WSBA #16412
Attorney for Respondent

Colleen A. Christensen
Petitioner, Pro Se

Petitioner's Response to Respondent's proposed 
Amended Decree and Amended Findings of Fact
and Conclusions of Law was filed late. The
Court did not consider it.



Stella L. Pitts & Associates, PLLC

Exhibit A

FILED

2010 APR 26 PM 3:39

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Superior Court of Washington
County of King**

In re the Marriage of:

No. 08-3-07774-1 SEA

COLLEEN A. CHRISTENSEN,
Petitioner,

Decree of Dissolution (DCD)
(Findings of Fact / Conclusions of Law)

and

PAUL N. PETERSON,
Respondent.

Clerk's action required

I. Judgment/Order Summaries

1.1 Restraining Order Summary:

Does not apply.

1.2 Real Property Judgment Summary:

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: Reserved in light of the automatic stay due to
Petitioner's bankruptcy filing

1.3 Money Judgment Summary:

Reserved in light of the automatic stay due to Petitioner's bankruptcy filing

End of Summaries

II. Basis

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

The filing of petitioner's bankruptcy does not stay except for division of community property & debt/lien. 11US Code sect 362
Decree (DCD) (DCLGSP) (DCINMG) - Page 1 of 3
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)

STELLA L. PITTS (8) (10)
& ASSOCIATES, PLLC
1411 Fourth Avenue, Suite 1405
Seattle, WA 98101
(206) 447-7745
Fax (206) 447-7746

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. Decree

It is Decreed that:

3.1 Status of the Marriage

The marriage of the parties is dissolved.

3.2 Property to be Awarded the Husband

Reserved in light of the automatic stay due to Petitioner's bankruptcy filing.

3.3 Property to be Awarded to the Wife

Reserved in light of the automatic stay due to Petitioner's bankruptcy filing.

3.4 Liabilities to be Paid by the Husband

Reserved in light of the automatic stay due to Petitioner's bankruptcy filing.

3.5 Liabilities to be Paid by the Wife

Reserved in light of the automatic stay due to Petitioner's bankruptcy filing.

3.6 Hold Harmless Provision

Reserved in light of the automatic stay due to Petitioner's bankruptcy filing.

3.7 Maintenance

Does not apply.

3.8 Continuing Restraining Order

Does not apply.

3.9 Protection Order

Does not apply.

3.10 Jurisdiction Over the Children

Does not apply because there are no dependent children.

*Decree (DCD) (DCLGSP) (DCINMG) - Page 2 of 3
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)*

**STELLA L. PITTS
& ASSOCIATES, PLLC**
1411 Fourth Avenue, Suite 1405
Seattle, WA 98101
(206) 447-7745
Fax (206) 447-7746

1 **3.11 Parenting Plan**

2 Does not apply.

3 **3.12 Child Support**

4 Does not apply.

5 **3.13 Attorney Fees, Other Professional Fees and Costs**

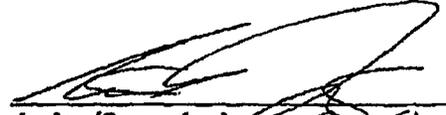
6 Reserved in light of the automatic stay due to Petitioner's bankruptcy filing

7 **3.14 Name Changes**

8 Does not apply.

9 **3.15 Other:** Respondant's separate property: the name boxes
10 Located in the home at 3917 E. Olive Street, Seattle.
11 ~~Reserved~~ maybe removed within one week.

12 Dated: 4/26/10


13 _____
14 Judge/Commissioner Gonzalez

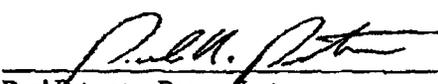
15 A signature below is actual notice of this order.
16 Presented by:

A signature below is actual notice of this order.
Approved for entry:

17 STELLA L. PITTS & ASSOCIATES, PLLC

18 
19 _____
20 Stella L. Pitts, WSBA #16412
21 Attorney for Respondent

Colleen Peterson
Petitioner, Pro Se

22 
23 _____
24 Paul Peterson, Respondent

Stella L. Pitts & Associates, PLLC

Exhibit B

AMENDED EXHIBIT B

I. Property to be Awarded to the Respondent/Husband

The husband should be awarded as his separate property the following property:

1. Except as otherwise specified herein, husband's clothing, jewelry, personal effects, furniture, furnishings and household items currently in his possession.
2. All bank accounts in husband's sole name.
3. Except as provided in Paragraph II (3) below, Husband's Thrift Saving Plan;
4. Any and all interest in Husband's Nicholas IRA;
5. Except as otherwise specified herein, any and all employment benefits from husband's employment whether past, present, or future.
6. Any property acquired by husband post-separation.
7. Any term life insurance policy in husband's name.
8. The following items currently located in the family home are awarded to husband:
 - a. Husband's 6-9 boxes of personal belongings including boxes of CDs, photographs, and other miscellaneous personal effects. As of the date of this filing, all but one box has been retrieved. The remaining box contains rock climbing equipment.
 - b. Husband's bed he used until separation; desk that was in the same room Husband slept prior to separation, the couch in the den; and IKEA metal rolling cart stored in family home kitchen during marriage

II. Property to be Awarded to the Petitioner/Wife

The wife should be awarded as her separate property the following property:

1. Except as otherwise specified herein, wife's clothing, jewelry and personal effects currently in her possession;
2. All bank accounts in wife's sole name;
3. The amount of \$1,000 from husband's Thrift Savings Plan subject to any withdrawal penalties subsequent to transfer to Wife;
4. Any and all interest in retirement and investment accounts in wife's sole name;
5. Except as otherwise specified herein, any and all interest and benefits, including accounts receivable, from wife's law practice whether past, present, or future.
6. Except as otherwise specified herein, any property acquired by wife post-separation.
7. Any term life insurance policy in wife's name;
8. The Saab automobile currently in her possession;
9. The table and chairs currently located in the family home; and
10. Except as otherwise provided in Paragraph I (8) above, the furniture, furnishings and household items currently in her possession.

III. Liabilities to be Paid by the Respondent/Husband

The husband shall pay the following community or separate liabilities:

1. 20% of the parties' IRS debt for tax years 2003 through 2006;
2. 40% of the parties' credit card debt, in each and/or both parties' names, incurred during marriage, including but not limited to the following:

Discover
Portfolio Recovery Associates
Asset Acceptance
Bank of America

Husband shall not make purchases or otherwise use the Discover or Bank of America credit cards or accounts listed above except to make payments toward the balance(s) thereon.

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

IV. Liabilities to be Paid by the Petitioner/Wife

The wife shall pay the following community or separate liabilities:

1. 80% of the parties' IRS debt for tax years 2003 through 2006;
2. 60% of the parties' credit card debts in Respondent's name incurred during marriage, including but not limited to the following:

Discover
Portfolio Recovery Associates
Asset Acceptance
Bank of America

3. Any and all credit card liabilities in her sole name.
4. Any outstanding obligations on the family home pending and subsequent to sale of the family home pursuant to Paragraph 3.15 of the Decree of Dissolution, including but not limited to the Chase Mortgage and Banner Bank mortgage on the family home, and any and all obligations to wife's family members or others regarding the family home.
5. Any and all claims against, and debts and liabilities associated with, wife's law practice.

Wife shall not make purchases or otherwise use the Discover or Bank of America cards or accounts listed above except to make payments toward the balance(s) thereon.

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

Stella L. Pitts & Associates, PLLC

Exhibit C

EXHIBIT C

Accounting of fees and costs incurred by Respondent attributable to the quashing of trial subpoenas to Kevin C. Rowles and Stella L. Pitts, attorneys for Respondent, and retention of outside counsel, Jerry R. Kimball, in connection with said subpoenas.

Date	Description	Hrs/Rate	Amount
4/12/10	Review subpoenas to SLP and KR received from opposing party; legal research regarding same; draft motions to quash	2.5 200/hr	\$500.00
4/13/10	Draft motions to quash subpoenas to counsel, cont'd; draft proposed orders re quashing counsel subpoenas	1.5 200/hr	\$300.00
4/13/10	Review motions to quash	.1 300/hr	\$30.00
4/13/10	Revise motion to quash SLP subpoena	.5 200/hr	\$100.00
4/19/10	Email J. Kimball motions to quash subpoenas to counsel and opposing party's response arguments regarding same	.3 120/hr	\$36.00
4/19/10	Review response to motions to quash; conference and email with Jerry Kimball, SLP and KR	.2 200/hr	\$40.00
-	Invoice from Law Office of Jerry R. Kimball	-	\$684.95
-	Invoice from Law Office of Jerry R. Kimball	-	\$605.75
TOTAL:			\$2,296.70

1
2
3
4
5
6 **Superior Court of Washington**
7 **County of King**

8 In re the Marriage of:

9 COLLEEN A. CHRISTENSEN,
10 and Petitioner,

11 PAUL A. PETERSON,
12 Respondent.

No. 08-3-07774-1 SEA

AMENDED
Decree of Dissolution (DCD)

Clerk's action required

13 **I. Judgment/Order Summaries**

14 **1.1 Restraining Order Summary:**

15 Does not apply.

16 **1.2 Real Property Judgment Summary:**

17 Real Property Judgment Summary is set forth below:

18 Assessor's property tax parcel or account number: 502690-018507
19 3917 E. Olive St., Seattle, WA 98122

20 **1.3 Money Judgment Summary:**

21 Judgment Summary is set forth below.

22
23 A. Judgment creditor Paul Peterson
24 B. Judgment debtor Colleen Christensen
25 C. Principal judgment amount \$ _____
26 D. Interest to date of judgment \$ _____
27 E. Attorney fees \$ 17,296.70
28 F. Costs \$ _____
G. Other recovery amount \$ _____

Decree (DCD) (DCLGSP) (DCINMG) - Page 1 of 6
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)

STELLA L. PITTS
& ASSOCIATES, PLLC
1411 Fourth Avenue, Suite 1405
Seattle, WA 98101
(206) 447-7745
Fax (206) 447-7746

1 H. Principal judgment shall bear interest at 6 % per annum

SR

2 I. Attorney fees, costs and other recovery amounts shall bear interest at ~~7~~⁶ % per annum

3 J. Attorney for judgment creditor Stella L. Pitts & Associates, PLLC

4 K. Attorney for judgment debtor _____

5 L. Other: Does not apply.

6 **End of Summaries**

7 **II. Basis**

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

9 **III. Decree**

10 **It Is Decreed that:**

11 **3.1 Status of the Marriage**

12 The marriage of the parties is dissolved.

13 **3.2 Property to be Awarded the Husband**

14 The husband is awarded as his separate property the following property:

- 15 1. Except as otherwise specified herein, husband's clothing, jewelry, personal effects,
16 furniture, furnishings and household items currently in his possession.
- 17 2. All bank accounts in husband's sole name.
- 18 3. Except as provided in Paragraph 3.3 (3) below, Husband's Thrift Saving Plan;
- 19 4. Any and all interest in Husband's Nicholas IRA;
- 20 5. Except as otherwise specified herein, any and all employment benefits from husband's
21 employment whether past, present, or future.
- 22 6. Any property acquired by husband post-separation.
- 23 7. Any term life insurance policy in husband's name.
- 24 8. The following items currently located in the family home are awarded to husband:
- 25 a. Husband's 6-9 boxes of personal belongings including boxes of CDs,
26 photographs, and other miscellaneous personal effects. As of the date of this
27 filing, all but one box has been retrieved. The remaining box contains rock
28 climbing equipment.
- b. Husband's bed he used until separation; desk that was in the same room
Husband slept prior to separation, the couch in the den; and IKEA metal rolling
cart stored in family home kitchen during marriage

1 **3.3 Property to be Awarded to the Wife**

2 The wife is awarded as her separate property the following property:

- 3 1. Except as otherwise specified herein, wife's clothing, jewelry and personal effects
- 4 currently in her possession;
- 5 2. All bank accounts in wife's sole name;
- 6 3. The amount of \$1,000 from husband's Thrift Savings Plan subject to any withdrawal
- 7 penalties subsequent to transfer to Wife;
- 8 4. Any and all interest in retirement and investment accounts in wife's sole name;
- 9 5. Except as otherwise specified herein, any and all interest and benefits, including
- 10 accounts receivable, from wife's law practice whether past, present, or future.
- 11 6. Except as otherwise specified herein, any property acquired by wife post-separation.
- 12 7. Any term life insurance policy in wife's name;
- 13 8. The Saab automobile currently in her possession;
- 14 9. The table and chairs currently located in the family home; and
- 15 10. Except as otherwise provided in Paragraph 3.2 (8), the furniture, furnishings and
- 16 household items currently in her possession.

12 **3.4 Liabilities to be Paid by the Husband**

13 The husband shall pay the following community or separate liabilities:

- 14 1. 20% of the parties' IRS debt for tax years 2003 through ²⁰⁰⁶~~2008~~; (S)
- 15 2. 40% of the parties' credit card debt in Respondent's name incurred during
- 16 marriage, including but not limited to the following:

17 Discover
 18 Portfolio Recovery Associates
 19 Asset Acceptance
 20 Bank of America

21 Husband shall not make purchases or otherwise use the Discover or Bank of America credit cards or accounts listed above except to make payments toward the balance(s) thereon.

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

24 **3.5 Liabilities to be Paid by the Wife**

25 The wife shall pay the following community or separate liabilities:

- 26 1. 80% of the parties' IRS debt for tax years 2003 through ²⁰⁰⁶~~2008~~; (S)

1 2. 60% of the parties' credit card debts in Respondent's name incurred during
2 marriage, including but not limited to the following:

3 Discover
4 Portfolio Recovery Associates
5 Asset Acceptance
6 Bank of America

- 7 3. Any and all credit card liabilities in her sole name.
8 4. Any outstanding obligations on the family home pending and subsequent to sale of
9 the family home pursuant to Paragraph 3.15 below, including but not limited to the
10 Chase Mortgage and Banner Bank mortgage on the family home, and any and all
11 obligations to wife's family members or others regarding the family home.
12 5. Any and all claims against, and debts and liabilities associated with, wife's law
13 practice.

14 Wife shall not make purchases or otherwise use the Discover or Bank of America cards or
15 accounts listed above except to make payments toward the balance(s) thereon.

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

18 **3.6 Hold Harmless Provision**

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

22 **3.7 Maintenance**

23 Does not apply.

24 **3.8 Continuing Restraining Order**

25 Does not apply.

26 **3.9 Protection Order**

27 Does not apply.

28 **3.10 Jurisdiction Over the Children**

Does not apply because there are no dependent children.

3.11 Parenting Plan

Does not apply.

Decree (DCD) (DCLGSP) (DCINMG) - Page 4 of 6
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)

STELLA L. PITTS
& ASSOCIATES, PLLC
1411 Fourth Avenue, Suite 1405
Seattle, WA 98101
(206) 447-7745
Fax (206) 447-7746

1 **3.12 Child Support**

2 Does not apply.

3 **3.13 Attorney Fees, Other Professional Fees and Costs**

4 Attorney fees, other professional fees and costs shall be paid as follows:

5 Petitioner and respondent shall pay his or her own attorneys fees, except that (1) \$15,000
6 will be payable from petitioner to respondent for the motion to compel and the unnecessary
7 depositions and (2) the attorney fees and costs of \$2,296.70 attributable to the quashing of
8 subpoenas and retention of outside counsel shall be paid by petitioner to respondent. The
9 total amount petitioner shall pay to the respondent under this Paragraph 3.13 is \$17,296.70. Respondent shall have judgment against Petitioner for said amount, to bear interest at ~~12%~~ 6%
per annum.

10 **3.14 Name Changes**

11 Does not apply.

12 **3.15 Other**

13 Family Home: The family home, identified by tax parcel ID #502690-0185-07, shall be
14 sold without delay. Pending sale, the home shall be held by the parties as tenants-in-
common without right of survivorship.

15 The wife shall remain in the home until it is sold and have the sole responsibility of
16 maintaining the home in saleable condition. Both parties shall work cooperatively to sell
17 the home as soon as possible and agree to follow the listing agent's recommendations in
this regard.

18 The home will be listed for sale with a mutually agreed upon listing agent no later than
19 January 1, 2011. Any offers to purchase the home will be responded to within 24 hours of
20 receipt of the offer. The parties agree that they will execute all necessary listing
21 agreements, earnest money receipts, documents, escrow instructions and documents, and
deeds to permit the sale of the home.

22 In the event the parties alone cannot resolve a conflict concerning sale of the family home,
23 including but not limited to an acceptable sales price or acceptable sales terms, they hereby
24 agree to submit the matter to binding arbitration by the first available partner at Bartlett,
Pollock & Besk, PLLC. The parties shall pay the costs of arbitration per the division of
their IRS debt—Petitioner 80% and Respondent 20%.

25 Neither party shall encumber the property during the pendency of the sale or use the
26 property as collateral for any purpose.

1 The proceeds of the sale of the family home shall be distributed as follows: first to the bank
2 loans (Chase Bank mortgage and Banner Bank mortgage), then to the cost of the sale, and
3 any residual to the IRS debt. Any residual sale proceeds paid to the IRS shall represent a
4 shared (50/50) contribution to said debt by each party.

5 Taxes: Each party shall be fully liable for his or her taxes commencing January 1, 2007
6 and all subsequent years thereafter.

7 Dated:

11/30/10


8 Judge/Commissioner

Steven Gonzalez

9 Presented by:

Approved for entry:

10 STELLA L. PITTS & ASSOCIATES, PLLC

11
12
13 Stella L. Pitts, WSBA #16412
Attorney for Respondent

14 Colleen A. Christensen
Petitioner, *Pro Se*

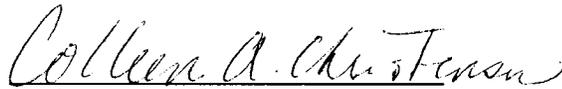
CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and now am a citizen of the United States of America and a resident of the State of Washington, and over the age of eighteen years. My business address is 4111 E. Madison St., #229, Seattle, WA 98112.

I hand-delivered to respondent's counsel identified below copies of the foregoing APPELLANT'S BRIEF:

Stella Pitts
Stella L. Pitts & Associates, PLLC
1411 4th Avenue, Suite 1405
Seattle, WA 98104

Counsel for Respondent



Colleen A. Christensen, *Pro Se*
Appellant
Signed at Seattle, WA on January 30,
2012

Court of Appeals: Original and Copy

CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and now am a citizen of the United States of America and a resident of the State of Washington, and over the age of eighteen years. My business address is 4111 E. Madison St., #229, Seattle, WA 98112.

I hand-delivered to respondent's counsel identified below copies of the foregoing APPELLANT'S BRIEF:

Stella Pitts
Stella L. Pitts & Associates, PLLC
1411 4th Avenue, Suite 1405
Seattle, WA 98104

Counsel for Respondent



Colleen A. Christensen, *Pro Se*
Appellant
Signed at Seattle, WA on January 30,
2012

Court of Appeals: Original and Copy

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 JAN 30 PM 4:44