

No. 67918-0-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

FORREST M. BURNARD, Respondent

v.

PATRICIA ANN BURNARD, Appellant

REPLY BRIEF OF APPELLANT

H. Michael Finesilver (fka
Fields)
Attorney for Appellant

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I. Argument:

A. The Representations As To Intransigence Contained In Respondent's Brief Are Not Supported By Its References To The Evidence In The Record

The failure of Ms. Burnard's opening brief to observe that Mr. Burnard's trial brief did contain an argument on attorneys fees near the end of the brief was an oversight for which Counsel for Ms. Burnard apologizes to the court and to counsel. Hereinafter references in this brief to "Mr. Burnard's brief or Respondent's brief" means his appellate brief not his trial brief.

Mr. Burnard's brief argues that Ms. Burnard's intransigence permeated the entire proceeding (Respondent's Brief page 1). That representation is without any citation to the record contrary to the requirements of RAP 10.3(a)(5) "Reference to the record must be included for each factual statement." In fact the record is entirely devoid of any such evidence. The trial court made no finding to that effect.

There are no findings as to specific acts of Ms. Burnard that Mr. Burnard argues constitute intransigence. The specific allegations contained in Mr. Burnard's brief that are not supported by the record that it cites are as follows:

1. Ms. Burnard Did Not Fail To Disclose Two Bank Accounts A First Mutual Account Linked With Their Charles Schwab Account And A Savings/Checking Account At U.S. Bank.

Mr. Burnard's brief relies upon CP 57-58 in support of his argument that she failed to disclose the bank accounts she set up before she filed for dissolution (see Respondent's brief page 5). CP 57 and 58 however are merely two pages of Mr. Burnard's trial brief. The trial brief merely sets forth Mr. Burnard's theory of the case. It is not itself evidence.

Related to that argument is a companion allegation: That she "continued" to try to hide assets ... citing RP 62, 65, 75, 79, 83-88 (see Respondent's brief page 5); and that she "concealed" financial accounts relying on RP 56, 62, 63, 74-75, 78-81; 83 (see Respondent's brief page 13). None of those RP references support the representations in his brief that she failed to disclose, hid, or concealed the accounts. Here is in fact what the record reflects.

At RP 56 she discussed removing funds at separation to equalize the total liquid funds as between what she controlled and what he controlled. There is no testimony as to hiding, concealing, or failing to disclose.

At RP 62-63 she states that some funds came from her mother, brother, and unemployment checks; that two deposits of \$5,000 each came from her mother (RP 63). She does not discuss hiding or concealing any bank accounts.

RP 74-75 and RP 83-84 contain evidence that in fact she disclosed the accounts. "I came and told Mr. Burnard. I said 'This is what I did today. I took this amount out... that represents the \$40,000 in the safe... I also took out another \$150,000 to offset what your half is in Charles Schwab... I will make sure that... you know, when I petition it will be accounted for...'" (RP 74-75). That is why she told the court at RP 65 in reference to trial exhibits 32 and 33 (the US Bank account records referenced at RP 62 and 63) that she thought division of value would be as of separation but acknowledged the current balance (RP 64).

At RP 83-84 she states she left the deposit slips of the accounts on the counter for Mr. Burnard to see. She emphasized: "I mean I don't hide stuff." (RP 84). Indeed, in his testimony, Mr Burnard admitted that he found out about her accounts from looking at the deposit slips that she had left on the counter (RP 162). These citations to the record confirm she disclosed rather than hid them. There is no other place in the record of

evidence that she was asked for the records and that refused to provide them. There is no record of concealment.

2. There Is No Proof That Subpoenas Were Necessary To Obtain The Bank Statements Of The Accounts, Or That Ms. Burnard Concealed The Account Records (Respondent's brief page 13).

There is no trial testimony or trial exhibits that there was any effort to obtain information about the existence of the accounts or the records from Ms. Burnard. There is no record that a motion to compel or to enforce was necessary or that any such motions occurred (see **Addendum 1**, the King County Superior Court docket).

Under the rules of discovery, Mr. Burnard had a choice: either to seek the records from Ms. Burnard directly, or by subpoenas to the two banks pursuant to CR 30 and CR 45. He chose the latter. That choice does not equate to intransigence on her part.

3. Ms. Burnard Did Not Admit That Her Motion For Restraining Orders Was Frivolous; There Was No Proof That It Was Frivolous.

Mr. Burnard argues that Ms. Burnard admitted during trial that she intentionally filed more than one frivolous motion. Mr. Burnard's brief provides no citation to the record to support this representation of fact in violation of RAP 10.3(a)(5). The record, in fact, does not support this

representation. Neither CP 72 nor RP 26-27 have any connection with her initial motion for restraining orders. They pertain instead to her motion in limine.

This court is asked to take judicial notice of the following pursuant to ER 201(b) and (d):

That on November 12, 2010, acting pro se, Ms. Burnard sought an order that restrained respondent from: “restrains or enjoins the respondent from transferring, removing, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life and requiring each party to notify the other of any extraordinary expenditures made after the order is issued.” (see page 1) and “Other: Please restrain Forrest M. Burnard from withdrawing any additional monetary funds from community property until the estate has been ruled on and decided upon under the direction of the court (2) Husband to account for all funds removed, and any and all unspent funds replaced in trust account (3) that HELOC is not accessed except by agreement of parties or court order.” (page 2). (See **Addendum 2**).

That on December 1, 2010 with attorney David Kontos representing her, an agreed order was entered that granted her request subject to the restraint being mutually binding on both parties and to

which she agreed they would additionally restrained in numerous other ways requested by Mr. Burnard (see **Addendum 3**).

Thus there is no evidence of her motion being at all frivolous. There is no evidence of any intransigent behavior pertaining to obtaining the agreed order. The agreed order by its nature reflects the opposite: full cooperation on her part.

4. There Is No Evidence That Mediation Was A Waste Of Time And Money

This was argued in the trial brief (CP 57). There was no evidence presented through which the trial court could conclude that Ms. Burnard participated in mediation in bad faith. In fact attempts to testify about mediation were cut off by the trial judge (RP 65).

5. Ms. Burnard Did Not Admit That Her Motion In Limine Was Mere Retaliation

Respondent's brief argues that Ms. Burnard admitted that she filed her motion in limine to retaliate against his motion in limine citing CP 72 and RP 26-27. The record cited does not support these representations.

In CP 72, the last page of her response to their motion and strict reply as to her motion (CP 70), she did not admit retaliation. She stated she filed a similar motion in response to his motion in limine on the

premise that the trial judge “would like each side to present all exhibits so as a just determination – an equitable divorce can happen.” (CP 72).

At RP 26 and 27 she testified that based upon a lawyer’s advice she concluded that due process would dictate that if her exhibits were going to get struck from the record, then the judge would not get “the full picture of both sides” (RP 26) to make the process “equitable” (RP 27), his should be as well. Retaliation was never stated nor inferred. Her motion was a misguided but well intentioned attempt to have the trial judge deal with the issues consistent with what Ms. Burnard perceived to be fairness to both parties. She did not understand the rules dictate procedural fairness. She was wrong but did not retaliate in bad faith.

B. Unchallenged Finding Of Fact 2.15: That Ms. Burnard Engaged In Intransigent Behavior And That Work Done By His Attorney Benefited Ms. Burnard.

This finding is unchallenged on this appeal for two reasons.

The first is that while her motion in limine may have been well intended it was without legal justification. It had no basis in law or established principles of equity. His lawyer’s fee declaration reveals that the cost to him of having to respond to her motion was \$1,125 (CP 69) (5 hours at \$225 per hour (CP 68-69); not \$10,000. This was the only evidence of intransigent behavior on her part. It is acknowledged here.

The second reason is that work performed by one party's attorney that benefits the other does not per se constitute intransigence. There must be a finding that his lawyer would not have had to do the work from which she benefitted but for specific behavior of Ms. Burnard that caused his lawyer to have to perform it. His trial brief argued that as petitioner it was her responsibility to prepare a confirmation of issues and a joint statement of evidence. Neither his trial brief nor his appellate brief cite any authority to support those arguments.

1. The Confirmation Of Issues: Identify 'Yes' Or 'No' And Send It On

King County has a local rule that requires the petitioner to prepare the form called a "confirmation of issues" (See KCLFLR 4(c)(1)(B)). But the confirmation of issues is a county prepared form merely requiring a party to mark 'yes' or 'no' to certain basic questions contained on the form (see **Addendum 4**). For example, whether all necessary pleadings have been filed; whether all necessary parties have been joined?

The time his lawyer took to indicate 'yes' or 'no' on the form is presumably the same time that she would have taken to read it over if Ms. Burnard had initially filled out the form. The record is devoid of any

evidence of what Mr. Burnard's attorney charged to answer 'yes' or 'no' on the form.

2. Both Parties Prepare A Joint Statement Of Evidence If Both Call Witnesses, Submit Exhibits, Or Object To Witnesses Or Exhibits

There is no requirement that the petitioner prepare the joint statement of evidence. Each side participates in creating the document by identifying witnesses and exhibits and their objections. **Addendum 5** is the joint statement. It shows that Mr. Burnard's attorney prepared his side of the statement, reflecting objections to Ms. Burnard's witnesses and exhibits and revealing the witness Mr. Burnard intended to call and exhibits he intended to submit. This is the same work in creating the joint statement that his attorney would have performed had Ms. Burnard prepared one reflecting her position.

C. Conclusion: Fees Must Be Segregated

This is not a case like *In re the Marriage of Crosetto*, 82 Wn. App. 545, 918 P. 2d 954 (1996) in which intransigence pervaded the proceeding: avoidance of service; the failure to file a response to the petition forcing what should have been an unnecessary motion for default; making false allegations of sexual abuse from the beginning; the refusing to cooperate with a GAL investigation; the refusing to allow court ordered

visitation which resulted in numerous contempt hearings; the outright flaunting of court orders, etc. (Supra, see *In re the Marriage of Crosetto*, 82 Wn. App. 545 at 565 (1996)). Thus a segregation of fees was not required.

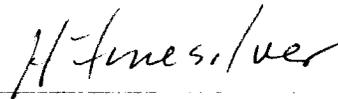
This is not a case such as *In re the Marriage of Sievers*, 78 Wn. App. 287, 897 P. 2d 388 (1995) in which Mr. Sievers' "bad acts" pervaded the entire proceedings after a certain date (see *In re the Marriage of Sievers*, supra at 312 (1995)). These numerous examples of bad faith and violations of his fiduciary responsibilities to the marital community pervaded the proceeding, including providing false tax information and misrepresenting a CR2A stipulation, failing to disclose accurate income for child support purposes, both in arbitration and trial. (See *Sievers*, supra at 310-312). Thus a segregation of fees was unnecessary.

Here there is no evidence that Ms. Burnard's initial motion that led to the agreed order was frivolous. There is no evidence that she engaged in any intransigent behavior while represented by attorney David Kontos from December 2010 through mid-July 2011. There was no evidence of repeated obstructionist tactics or indolent behavior or bad faith throughout the process. The only evidence of intransigence was her frivolous motion in limine motivated not by bad faith but rather as a pro se litigant

out of a misguided sense of fairness and equity. Therefore segregation of fees is required and has occurred. Her counter motion in limine cost him \$1,125. That should have been the limit of the fee award. The trial court decision should be reversed and judgment entered accordingly.

DATED this 28 day of March, 2012.

Respectfully submitted, .



II. Michael Finesilver (fka Fields)
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W.S.B.A. #5495

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Superior Court Case Summary

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Court: King Co Superior Ct
Case Number: 10-3-07186-9

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| Sub | Docket Date | Docket Code | Docket Description | Misc Info |
|-----|-------------|-----------------------------------|---|--------------|
| 1 | 09-30-2010 | SUMMONS & PET FOR DISSOLUTION | Summons & Pet For Dissolution | |
| 2 | 09-30-2010 | SET CASE SCHEDULE JDG0022 | Set Case Schedule Judge Hollis R. Hill, Dept 22 | 09-06-2011ST |
| 3 | 09-30-2010 | CASE INFORMATION COVER SHEET LOCK | Case Information Cover Sheet Original Location - Kent | |
| 4 | 09-30-2010 | CONFIDENTIAL INFORMATION FORM | Confidential Information Form | |
| 5 | 09-30-2010 | APPEARANCE PRO SE | Appearance Pro Se /pet | |
| 6 | 09-30-2010 | SEALED FINANCIAL DOCUMENT(S) | Sealed Financial Document (s) | |
| 7 | 10-12-2010 | RETURN OF SERVICE | Return Of Service | |
| 8 | 10-15-2010 | RESPONSE | Response To Petition | |
| 9 | 10-18-2010 | NOTICE OF APPEARANCE | Notice Of Appearance /respondent | |
| 10 | 11-12-2010 | MOTION AND AFFIDAVIT/DECLARATION | Motion And Affidavit/declaration | |
| 11 | 11-12-2010 | NOTE FOR MOTION DOCKET ACTION | Note For Motion Docket Temp Restraining Order | 12-03-2010MF |
| 12 | 11-12-2010 | SEALED FINANCIAL DOCUMENT(S) | Sealed Financial Document (s) | |
| 13 | 11-12-2010 | DECLARATION | Declaration Of Patricia Burnarrd | |
| 14 | 11-16-2010 | RETURN OF SERVICE | Return Of Service | |
| 15 | 11-29-2010 | DECLARATION | Declaration Michael Burnard | |
| 16 | 11-29-2010 | SEALED FINANCIAL DOCUMENT(S) | Sealed Financial Document (s) | |
| 17 | 11-29-2010 | NOTICE OF APPEARANCE | Notice Of Appearance /pet | |
| 18 | 12-01-2010 | NOTICE OF PRESENTATION | Notice Of Presentation To Exparte | |
| 19 | 12-01-2010 | TEMP RESTRAINING ORDER EXP0006 | Temp Restraining Order /agreed Ex-parte, Dept. Kent - Clerk | |
| 20 | 12-06-2010 | NOTICE OF ABSENCE/UNAVAILABILITY | Notice Of Absence/unavailability | |
| 21 | 12-07-2010 | RETURN OF SERVICE | Return Of Service | |
| 22 | 12-07-2010 | RETURN OF SERVICE | Return Of Service | |
| 23 | 01-20-2011 | CONFIRM ISSUES: NO STATUS CONFER. | Confirm Issues: No Status Confer. | |

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|-----|------------|-------------------------------------|---|------------|--|
| 24 | 03-28-2011 | NOTICE OF ABSENCE/UNAVAILABILITY | Notice Of Absence/unavailability | | index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record. |
| 25 | 06-27-2011 | NOTICE OF INTENT TO WITHDRAW | Notice Of Intent To Withdraw | | |
| 26 | 06-27-2011 | DECLARATION OF MAILING | Declaration Of Mailing | | |
| 27 | 08-05-2011 | DISCLOSURE | Disclosure | | |
| 28 | 08-15-2011 | CORRESPONDENCE | Correspondence W/attachments | | |
| 29 | 08-23-2011 | NOTICE OF HEARING ACTION | Notice Of Hearing Motion In Limine | 09-06-2011 | |
| 30 | 08-23-2011 | MOTION IN LIMINE | Motion In Limine / Rsp | | |
| 31 | 08-26-2011 | MOTION IN LIMINE | Motion In Limine /pet | | |
| 32 | 08-29-2011 | JOINT STATEMENT OF EVIDENCE | Joint Statement Of Evidence | | |
| 33 | 08-29-2011 | MOTION IN LIMINE | Motion In Limine /petn | | |
| 34 | 08-30-2011 | TRIAL BRIEF | Trial Brief /rsp | | <p>How can I obtain the complete court record? You can contact the court in which the case was filed to view the court record or to order copies of court records.</p> |
| 35 | 08-31-2011 | RESPONSE | Response To Pet Mt In Limine | | |
| 36 | 08-31-2011 | AFFIDAVIT | Affidavit Re Attny Fees | | <p>How can I contact the court? Click here for a court directory with information on how to contact every court in the state.</p> |
| 37 | 09-01-2011 | RESPONSE | Response To Mot In Limine/pet | | |
| 38 | 09-02-2011 | ORDER ON ASSIGNMENT/REASSIGNMENT | Order On Assignment/reassignment Judge Monica Benton, Dept 49 | | <p>Can I find the outcome of a case on this website? No. You must consult the local or appeals court record.</p> |
| 39 | 09-06-2011 | NON-JURY TRIAL | Non-jury Trial Judge Monica Benton, Dept 49 | | |
| - | 09-06-2011 | AUDIO LOG | Audio Log Dr 3b | | <p>How do I verify the information contained in the index? You must consult the court record to verify all information.</p> |
| 40 | 09-07-2011 | WITNESS RECORD | Witness Record | | |
| 41 | 09-07-2011 | FINDINGS OF FACT&CONCLUSIONS OF LAW | Findings Of Fact&conclusions Of Law | | |
| 42 | 09-07-2011 | DECREE OF DISSOLUTION | Decree Of Dissolution Judge Monica Benton, Dept 49 | | |
| 42A | 09-07-2011 | STIP&OR RET EXHBTS UNOPND DEPOSTNS | Stip&or Ret Exhbts Unopnd Depostns | | |
| 42B | 09-07-2011 | EXHIBIT LIST | Exhibit List | | |
| 43 | 09-09-2011 | FINDINGS OF FACT&CONCLUSIONS OF LAW | Findings Of Fact&conclusions Of Law /amended | | |
| 44 | 09-12-2011 | RETURN OF SERVICE | Return Of Service | | |
| 45 | 09-16-2011 | NOTICE OF APPEARANCE | Notice Of Appearance /pet | | |
| 46 | 09-16-2011 | NOTICE OF HEARING ACTION | Notice Of Hearing Reconsideration/clarification | 09-27-2011 | |
| 47 | 09-16-2011 | MOTION FOR RECONSIDERATION | Mt Reconsideration/clarification | | <p>Can I use the index to find out someone's criminal record? No. The Washington State Patrol (WSP) maintains state criminal history record information. Click here to order criminal history information.</p> |
| 48 | 09-16-2011 | DECLARATION | Declaration Of H.micheael Finesil | | |
| 49 | 09-16-2011 | MEMORANDUM | Memorandum Of Points And Authoritie | | <p>Where does the information in the index come from? Clerks at the municipal, district, superior, and appellate courts</p> |
| 50 | 09-19-2011 | RETURN OF SERVICE | Return Of Service | | |
| 51 | 10-11-2011 | ORDER ON MTN FOR RECONSIDERATION | Order On Mtn For Reconsideration | | |

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|-----|------------|-------------------------------------|--|------------|---|
| - | 10-17-2011 | CERTIFICATE MAILED TO OLYMPIA | Certificate Mailed To Olympia | | across the state enter information on the cases filed in their courts. The index is maintained by the Administrative Office of the Court for the State of Washington. Do the government agencies that provide the information for this site and maintain this site: |
| 52 | 10-18-2011 | NOTICE OF HEARING ACTION | Notice Of Hearing Reconsideration | 10-27-2011 | |
| 53 | 10-18-2011 | MOTION FOR RECONSIDERATION | Motion For Reconsideration /rsp | | |
| 54 | 10-18-2011 | DECLARATION | Declaration Of Virginia M Amis | | |
| 55 | 10-19-2011 | DECLARATION | Declaration Of Virginia M Amis | | |
| 56 | 10-21-2011 | NOTICE OF ABSENCE/UNAVAILABILITY | Notice Of Absence/unavailability | | |
| 57 | 10-25-2011 | DECLARATION | Declaration Of Virginia Amis | | |
| 58 | 10-26-2011 | AFFIDAVIT/DCLR/CERT OF SERVICE | Affidavit/dclr/cert Of Service | | |
| 59 | 10-27-2011 | AFFIDAVIT/DCLR/CERT OF SERVICE | Affidavit/dclr/cert Of Service | | |
| 60 | 11-08-2011 | NOTICE OF ABSENCE/UNAVAILABILITY | Notice Of Absence/unavailability | | |
| 61 | 11-09-2011 | MEMORANDUM | Memorandum In Response /rsp | | † Guarantee that the information is accurate or complete? NO |
| 62 | 11-10-2011 | NOTICE OF APPEAL TO COURT OF APPEAL | Notice Of Appeal To Court Of Appeal | | † Guarantee that the information is in its most current form? NO |
| - | 11-10-2011 | APPELLATE FILING FEE | Appellate Filing Fee | 280.00 | † Guarantee the identity of any person whose name appears on these pages? NO |
| 63 | 11-10-2011 | REPLY | Reply Of Forrest Burnard | | † Assume any liability resulting from the release or use of the information? NO |
| 64 | 11-10-2011 | DECLARATION | Declaration Of Delivery | | |
| 65 | 11-15-2011 | ORDER ON MTN FOR RECONSIDERATION | Order On Mtn For Reconsideration | | |
| 66 | 12-06-2011 | NOTICE OF ASSOCIATION OF COUNSEL | Notice Of Association Of Counsel | | |
| 67 | 12-06-2011 | PERFECTION NOTICE FROM CT OF APPLS | Perfection Notice From Ct Of Appls #67918-0-1 | | |
| - | 12-12-2011 | VERBATIM RPT TRANSMITTED | Verbatim Rpt Transmitted 12/14/2011 Hrg Of 9/6/2011 | | |
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| 70 | 02-22-2012 | COMMENT ENTRY | Cks Pprs Pgs 1-105 | | |
| 71 | 02-29-2012 | LTR OF TRNSMTTAL/XHIBTS TO APP CRT | Ltr Of Trnsmttal/xhibts To App Crt | | |
| 71A | 03-21-2012 | TRANSMITTAL LETTER - COPY FILED | Transmittal Letter - Copy Filed | | |
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**Superior Court of Washington
County of**

In re the Marriage of:
 In re the Domestic Partnership of:

Patricia A. Burnard

Petitioner,

and

Forrest Michael Burnard

Respondent.

No. 10-3-07186-9 KNT

**Motion and Declaration for
Temporary Order
(MTAF)**

I. Motion

Based on the declaration below, the undersigned moves the court for a temporary order which:

- orders temporary maintenance.
- orders child support as determined pursuant to the Washington State child support statutes.
- approves the parenting plan which is proposed by the petitioner respondent.
- approves the Temporary Residential Time re Military Parents proposed by the petitioner respondent pursuant to RCW 26.09.260(11), (12).
- restrains or enjoins the petitioner respondent from transferring, removing, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life and requiring each party to notify the other of any extraordinary expenditures made after the order is issued.
- restrains or enjoins the petitioner respondent from disturbing the peace of the other party or of any child.
- restrains or enjoins the petitioner respondent from going onto the grounds of or entering the home, work place or school of the other party or the day care or school of the following named children:

- restrains or enjoins the petitioner respondent from knowingly coming within or knowingly remaining within (distance) _____ of the home, work place or school of the other party or the day care or school of the following children:

- restrains or enjoins (name) _____ from molesting, assaulting, harassing, or stalking (name) _____. (If the court orders this relief and the parties are intimate partners as defined under federal law, the restrained person will be prohibited from possessing a firearm or ammunition under federal law for the duration of the order. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)
- restrains or enjoins the petitioner respondent from removing any of the children from the state of Washington.
- restrains or enjoins the petitioner respondent from assigning, transferring, borrowing, lapsing, surrendering or changing entitlement of any insurance policies of either or both parties whether medical, health, life or auto insurance.
- (If this box is checked clear and convincing reasons for this request must be presented in the declaration below.)**
requires the petitioner respondent to surrender any deadly weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of this proceeding, to his or her lawyer or to a person designated by the court.
- makes each party immediately responsible for their own future debts whether incurred by credit card or loan, security interest or mortgage.
- divides responsibility for the debts of the parties.
- authorizes the family home to be occupied by the petitioner respondent.
- orders the use of property.
- requires the petitioner respondent to vacate the family home.
- requires the petitioner respondent to pay temporary attorney fees, other professional fees and costs in the amount of \$ _____ to:

appoints a guardian ad litem on behalf of the minor children.

other: ⁽¹⁾ Please restrain Forrest M. Burnard from withdrawing any additional monetary funds from community property until the estate has been ruled on and decided upon under the direction of the court. ⁽²⁾ Husband to account for all funds removed, and any and all unspent funds replaced in trust account ⁽³⁾ That #EHO is not accessed except by agreement of parties or court order.

Dated: November 11, 2010 _____

Patricia A. Burnard
Signature of Requesting Party or Lawyer/WSBA No.

Patricia A. Burnard
Print or Type Name

II. Declaration

Temporary relief is required because:

I plea to the court to restrain Forrest M. Burnard from withdrawing, tampering with, or performing any resale activity thereto of the community property set forth in the Dissolution of Marriage Document dated September 30, 2010, No. 10-3-07186-9 KNT. This includes selling, giving away, putting any liens or mortgaging any of the community property assets.

I plea to the court that our estate be left in tact (with no debts as is/was) until such time the property division is settled for this divorce.

In the meantime I would ask that ALL the funds that Forrest removed, be replaced back into their respective brokerage accounts.

Thank you.

If a Temporary Residential Time re Military Parents is requested, and I request delegation of residential time or visitation rights to a nonparty, to the best of my knowledge, that person would would not be subject to limitations on residential time under RCW 26.09.191. (See paragraph 2.1 and 2.2 of the parenting plan.)

If the surrender of deadly weapons is requested, list reasons:

If the other party is not present and:
a) is on active duty and is a National Guard member or Reservist residing in Washington, or
b) is a dependent of a National Guard member or Reservist residing in Washington on active duty,
list the reasons why this temporary order should be granted despite the absence of the other party:

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

Signed at (city) Fall City, (state) WA on (date) November 11, 2010.

Patricia A. Burnard
Signature of Requesting Party

Patricia A. Burnard
Print or Type Name

Do not attach financial records, personal health care records or confidential reports to this declaration. Such records should be served on the other party and filed with the court using one of these cover sheets:

- 1) Sealed Financial Source Documents (WPF DRPSCU 09.0220) for financial records**
- 2) Sealed Personal Health Care Records (WPF DRPSCU 09.0260) for health records**
- 3) Sealed Confidential Report (WPF DRPSCU 09.270) for confidential reports**

If filed separately using a cover sheet, the records will be sealed to protect your privacy (although they will be available to all parties in the case, their attorneys, court personnel and certain state agencies and boards.) See GR 22(C)(2).

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FILED
KING COUNTY, WASHINGTON
DEC 01 2010
SUPERIOR COURT CLERK
BY: NANCY L. SLYE
DEPUTY

Superior Court of Washington
County of KING

| | |
|--------------------------------|--------------------------------------|
| PATRICIA BURNARD | No. 10-3-07186-9 KNT |
| and Petitioner, | Agreed Temporary Order (TMO/TMRO) |
| FORREST BURNARD Respondent. | |

I. Judgment/Order Summaries

- 1.1 **Restraining Order Summary**
Does not apply.
- 1.2 **Money Judgment Summary**
Does not apply.

II. Basis

A motion for a temporary order was presented to this court and the court finds reasonable cause to issue the order.

III. Order

It is Ordered:

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3.1 Restraining Order

Both the petitioner and the respondent are restrained and enjoined from disturbing the peace of the other party.

3.2 Temporary Relief

Both the petitioner and the respondent are restrained and enjoined from transferring, removing, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life and requiring each party to notify the other of any extraordinary expenditures made after the order is issued.

Both the petitioner and the respondent is restrained and enjoined from assigning, transferring, borrowing, lapsing, surrendering or changing entitlement of any insurance policies of either or both parties whether medical, health, life or auto insurance.

Each party shall be immediately responsible for their own future debts whether incurred by credit card or loan, security interest or mortgage.

Each party shall make a full disclosure and accounting of all funds which were removed from the parties' Charles Schwab accounts from June 1, 2010.

Each party shall make a full disclosure of all accounts of any nature and/or accounts and/or funds removed from family safe held in that party's name or for the benefit of that party since January 1, 2010.

3.3 Bond or Security

The filing of a bond or the posting of security is waived.

Dated: _____

12/1/10

N. Bradburn-Johns
Judge/Commissioner

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Petitioner or petitioner's attorney:
A signature below is actual notice of this order.
 Presented by:
 Approved for Entry:
 Notice for presentation waived:

Respondent or respondent's attorney:
A signature below is actual notice of this order.
 Presented by:
 Approved for Entry:
 Notice for presentation waived:

David Kontos

David Kontos, WSBA#
Attorney for Petitioner

Virginia Amis

VIRGINIA AMIS, WSBA#
Attorney for Respondent

Telephonic approval
by Mike (Forrest)
Bernard 11/30/10
VMA

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

NO.

**CONFIRMATION OF ISSUES AND
CERTIFICATE REGARDING
MEDIATION**

(Clerk's Action Required)

The parties make the following joint representations:

[A CASE STATUS CONFERENCE AS NOTED IN THE CASE SCHEDULING ORDER WILL BE CANCELED ONLY IF THIS BOX IS CHECKED AND ALL PARTIES HAVE SIGNED THIS FORM OR GIVEN THEIR TELEPHONIC AUTHORITY FOR SIGNATURE]

1. All parties have been served or have waived service.
2. All mandatory pleadings have been filed.
3. No additional issues will be raised.
4. The parties anticipate no problems in meeting the deadlines for disclosing possible witnesses and other, subsequent deadlines in the Case Schedule.
5. All parties have cooperated in completing this report.

CONFIRMATION OF ISSUES AND CERTIFICATE REGARDING MEDIATION

(L:\IRS\FORMS\COPYCTR\MISC FORMS\CICRM.DOC\8/2008)

[] The parties do not join in making the foregoing representations, as explained below (if appropriate, check both the box at left and every applicable box below):

[IF THE BOX ADJACENT TO THE PRECEDING SENTENCE IS CHECKED, THERE WILL BE A STATUS CONFERENCE, AS NOTED IN THE CASE SCHEDULING ORDER, AT WHICH ALL PARTIES OR THEIR ATTORNEYS MUST APPEAR.]

- [] A party remains to be served.
- [] A mandatory pleading remains to be filed.
- [] An additional issue will be raised.
- [] One or more parties anticipate a problem in meeting the deadlines for disclosing possible witnesses or other subsequent deadlines in the Case Schedule.
- [] A party has refused to cooperate in drafting this report.
- [] Other explanation:

In order to obtain the Court's direction in the matters described above, the parties will appear at an Initial Status Conference, the date of which (as stated in the notices on the Case Schedule) is:

CERTIFICATE REGARDING MEDIATION

| | | | |
|-----------------------------|-------|-----------------------------|-------|
| Petitioner: | _____ | Respondent: | _____ |
| Address: | _____ | Address: | _____ |
| | _____ | | _____ |
| Telephone: | _____ | Telephone: | _____ |
| Attorney for Petitioner: | _____ | Attorney for Respondent: | _____ |
| Address: | _____ | Address: | _____ |
| | _____ | | _____ |
| Telephone: | _____ | Telephone: | _____ |

CONFIRMATION OF ISSUES AND CERTIFICATE REGARDING MEDIATION

(L:\IRS\FORMS\COPYCTR\MISC FORMS\CICRM.DOC\8/2008)

1. Is there a court order or other action regarding mediation? Yes ___ No ___
If yes, check the appropriate box below:

This matter has been referred to mediation by court order dated:

_____.

Mediation was waived by court order dated: _____.

The parties are presently engaged in private mediation with (name, address & phone number):

If any of the above boxes are checked, the case will not be referred to mediation per KCLCR 4.2(b).

2. Is parenting of minor children contested in this case? Yes ___ No ___ [Check "yes" unless the same parenting plan has been signed by both parties.]

If the answer is "Yes" and none of the boxes is checked regarding mediation, the Court Clerk will administratively refer the case to mediation at Family Court Services unless parties have filed an order waiving mediation. Please complete the items on the following page if parenting is contested and none of the above boxes regarding mediation is checked.

3. Is there an allegation of domestic violence in this case? Yes ___ No ___
4. Is there an allegation of child abuse? Yes ___ No ___
5. Is there an allegation of sexual abuse? Yes ___ No ___
6. Is there a GAL or CASA appointed? Yes ___ No ___

If the answer is yes, provide the name, address & phone number of the appointed individual.

7. Is there a private parenting plan evaluator or Family Court Services evaluator previously ordered in this matter? Yes ___ No ___

If the answer is yes, provide the name, address, & phone number of the appointed individual.

8. Is an interpreter needed for either party? Yes ____ No ____
If the answer is yes, provide the name of the party(s) and language(s) needed.

Notice to parties: This matter will be referred to mediation at Family Court Services whenever the parenting of the children is contested and you do not obtain a court order waiving mediation.

DATED: _____ SIGNED: _____

Petitioner/Attorney

(If attorney, WSBA #: _____):

Typed Name:

Address:

Phone:

Attorney(s) For:

DATED: _____ SIGNED: _____

Respondent/Opposing Counsel

(If attorney, WSBA #: _____)

Typed Name:

Address:

Phone:

Attorney(s) For:

CONFIRMATION OF ISSUES AND CERTIFICATE REGARDING MEDIATION

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FILED

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Judge Hollis Hill KING COUNTY
Trial: September 6, 2011 SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 10-3-07186-9 KNT

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re the Marriage of:

NO. 10-3-07186-9

PATRICIA A. BURNARD,

Petitioner,

JOINT STATEMENT OF EVIDENCE

and

FORREST M. BURNARD,

Respondent.

COMES NOW the parties, PARTICIA A. BURNARD, Petitioner, and FORREST M. BURNARD, Respondent by and through Respondent's attorney of record, Virginia M. Amis, and submit the following as the Joint Statement of Evidence.

PETITIONER'S LAY WITNESSES

Patricia A. Burnard
31402 SE Issaquah-Fall City Road
Fall City, WA 98024
(425) 246-8926

Witness is Petitioner and has knowledge of all issues.

Forrest M. Burnard
c/o Virginia M. Amis
20819 72nd Ave S. Suite 650
Kent, WA 98032
(253) 395-5552

Witness is Respondent and has knowledge of all issues.

JOINT STATEMENT OF EVIDENCE



1 Raymond "Bud" Fleek
3208 300th Ave SE
2 Fall city, WA 98024
3 (425) 443-7298

4 Witness is Petitioner's friend and can testify to the Petitioner's character and the gift of a horse
he gave to her.

5 **Respondent objects to the testimony of this witness at trial pursuant to Respondent's**
6 **Motion in Limine filed herein.**

7 Lynn Cassell
1930 324th Ave NE
8 Carnation, WA 98014
9 (425) 440-8709

10 Witness is Peitioner's friend and can testify to Petitioner's character and Respondent's
behaviors.

11 **Respondent objects to the testimony of this witness at trial pursuant to Respondent's**
12 **Motion in Limine filed herein.**

13 Kathy Chavers
P.O. Box 864
14 Preston, WA 98050
15 (425) 222-5969

16 Witness is Petitioner's friend and can testify to the Petitioner's character and the gift of another
horse that she gave to her.

17 **Respondent objects to the testimony of this witness at trial pursuant to Respondent's**
18 **Motion in Limine filed herein.**

19 **PETITIONER'S EXPERT WITNESSES**

20
21 Not applicable.
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25 **JOINT STATEMENT OF EVIDENCE**



1 **RESPONDENT'S LAY WITNESSES**

2 Forrest M. Burnard
3 C/O Virginia Amis
4 20819 72nd Ave S, Ste 650
5 Kent, WA 98032
6 253-395-5552

7 Witness is Respondent and has personal knowledge of all issues in this matter.

8 Patricia A. Burnard
9 31402 SE Issaquah-Fall City Road
10 Fall City, WA 98024
11 (425) 246-8926

12 Witness is Petitioner and has personal knowledge of all issues in this matter.

13 Dennis C. Smith
14 P.O. Box 959
15 Carnation, WA 98014
16 (425) 463-5780

17 Witness is Respondent's friend and may testify to the Respondent's character and Petitioner's behaviors.

18 **Petitioner objects to the testimony of this witness at trial pursuant to Petitioner's Motion in Limine filed herein.**

19 Arthur J. Burnard
20 19421 SE 171st Street
21 Renton, WA 98055
22 (425) 432-4504

23 Witness is the Respondent's father and may testify to the Respondent's character and property issues.

24 **Petitioner objects to the testimony of this witness at trial pursuant to Petitioner's Motion in Limine filed herein.**

25 **JOINT STATEMENT OF EVIDENCE**



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2 **RESPONDENT'S EXPERT WITNESSES**

3 Thomas Gregory Reynolds
4 TGR Services Incorporated
5 4329- 210th Place NE
6 Sammamish, WA 98074
7 (425) 868-5144

8 Witness performed the appraisal on the family home. He may testify regarding the value of the
9 family home.

10 **Petitioner objects to the testimony of this witness at trial pursuant to Petitioner's Motion in
11 Limine filed herein.**

12 Duncan Wilk
13 Charles Schwab
14 8862 161st Avenue NE, Suite 106
15 Redmond, WA 98052
16 (425) 558-3434

17 Witness is the parties Financial Advisor. He may testify regarding the parties' financial holdings.

18 **Petitioner objects to the testimony of this witness at trial pursuant to Petitioner's Motion in
19 Limine filed herein.**

20 **EXHIBITS**

21

| No. | Exhibit | Party Offering Exhibit | No Objection | Authenticity Admitted but Otherwise Objectionable | Objectionable |
|---------|---------------------------------|------------------------|--------------|---|---------------|
| 1 | Letter of address to Judge Hill | Petitioner | | | X |
| 1 (sic) | Property Proposal | Petitioner | | | X |
| 2 | Inventory of Assets | Petitioner | | | X |

22 **JOINT STATEMENT OF EVIDENCE**



GOURAS & AMIS P.L.L.C.
FAMILY LAW ATTORNEYS
Centerpoint, Cascade East Bldg.
20819 72nd Ave. S.
Suite 650
Kent, WA 98032
(253) 395-5552
(253) 395-1022 fax

| No. | Exhibit | Party Offering Exhibit | No Objection | Authenticity Admitted but Otherwise Objectionable | Objectionable |
|-----|--|------------------------|--------------|---|---------------|
| 3 | Picture inventory of assets | Petitioner | | | X |
| 4 | Financial Explanation | Petitioner | | | X |
| 5 | DRS Statement 3/8/11 | Petitioner | | | X |
| 6 | Charles Schwab *8434 3/1/10 | Petitioner | | | X |
| 7 | Washington Federal 1807 Account History 7/28/10- 9/30/10 | Petitioner | | | X |
| 8 | U.S. Bank 0886 Account 7/29/10- 8/4/10 | Petitioner | | | X |
| 9 | Washington Federal 2177 Account 6/7/10- 8/26/12 | Petitioner | | | X |
| 10 | Charles Schwab Account Withdrawals: 4/15/10- 11/4/10 | Petitioner | | | X |
| 11 | Invoice from Law Office of David G. Kontos: 6/20/11 | Petitioner | | | X |
| 12 | Check No. 333 dated 6/15/11 payable to IRS | Petitioner | | | X |
| 13 | Record of household expenses paid by Patty Burnard | Petitioner | | | X |
| 14 | Appraisal of Marital Home by Larry Wedhoff on 6/9/11 | Petitioner | | | X |
| 15 | Dr. Bolte letter on behalf of Patricia 8/25/11 | Petitioner | | | X |

JOINT STATEMENT OF EVIDENCE



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 (253) 395-1022 fax

| No. | Exhibit | Party Offering Exhibit | No Objection | Authenticity Admitted but Otherwise Objectionable | Objectionable |
|-----|---|------------------------|--------------|---|------------------|
| 16 | Ms. Amis Proposal letter 8/12/11 | Petitioner | | | X- ER 408 |
| 17 | Sealed Financial Docs 9/3/10 | Petitioner | | | X |
| 18 | Letter to Address for Settlement 8/24/11 | Petitioner | | | X |
| 13 | Record of Household Expenses paid by Patty Burnard | Petitioner | | | X |
| 14 | Unemployment Stubs for Petitioner 1/09 & 10/09 | Petitioner | | | X |
| 15 | Wife's Social Security Disability Notice of Decision and Benefit Letter | Respondent | | | |
| 16 | 2004 Joint Income Tax Return | Respondent | | | X |
| 17 | 2005 Joint Income Tax Return | Respondent | | | X |
| 18 | 2006 Joint Income Tax Return | Respondent | | | X |
| 19 | 2009 Form 1040 Schedules | Respondent | | | X |
| 20 | 2010 Joint Income Tax Return | Respondent | | | X |
| 21 | Washington Federal Account*351 Statements (W) 2/3/2010-12/3/2010 | Respondent | | | X |

JOINT STATEMENT OF EVIDENCE



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 Kent, WA 98032
 (253) 395-5552
 (253) 395-1022 fax

| No. | Exhibit | Party Offering Exhibit | No Objection | Authenticity Admitted but Otherwise Objectionable | Objectionable |
|-----|--|------------------------|--------------|---|---------------|
| 22 | Washington Federal Account *133 Statements (H) 5/20/11-7/22/11 | Respondent | | | X |
| 23 | Washington Federal Line of Credit *6702 Statements 12/27/2005; 12/2010-5/9/2011 | Respondent | | | |
| 24 | Washington Federal Burnard Enterp. *17-7 Statements 3/31/2011-4/29/2011 | Respondent | | | |
| 25 | US Bank Account*595 Statements (W); 7/29/2010-12/31/2010 | Respondent | | | X- ER 904 |
| 26 | US Bank Account Statements *886 (W); 7/29/2010 – 12/31/2010 | Respondent | | | X- ER 904 |
| 27 | Charles Schwab Money Link Notice 7/30/2010 | Respondent | | | X- ER 904 |
| 28 | Charles Schwab Investment account *046 Statements (W); 7/29/10 – 11/30/2010 and 6/1/2011-6/30/2011 | Respondent | | | X- ER 904 |
| 29 | Charles Schwab Investment Account Statements *443 (Jt); 1/1/2009-11/30/2010 | Respondent | | | X- ER 904 |
| 30 | Charles Schwab Investment account *056(W); 1/1/2009-3/31/2010 | Respondent | | | X- ER 904 |

JOINT STATEMENT OF EVIDENCE



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 (253) 395-5552
 (253) 395-1022 fax

| No. | Exhibit | Party Offering Exhibit | No Objection | Authenticity Admitted but Otherwise Objectionable | Objectionable |
|-----|--|------------------------|--------------|---|---------------|
| 31 | Charles Schwab Investment Account *434 Statements; 1/1/2009-11/30/2010 | Respondent | | | X- ER 904 |
| 32 | Charles Schwab Account *057 Statements (H); 7/31/2011 | Respondent | | | |
| 33 | Charles Schwab Account Summary for various accounts | Respondent | | | X- ER904 |
| 34 | Wife's TRS Plan 2 Statement 3/28/2011 | Respondent | | | X- ER904 |
| 35 | Appraisal of Marital Home; TG Reynolds; 8/28/2010 | Respondent | | | X- ER904 |
| 36 | Appraisal of Marital Home; TG Reynolds; 7/27/2011 | Respondent | | | X- ER904 |
| 37 | Accounting of Money by Petitioner 1/17/2011 | Respondent | | | X- ER904 |
| 38 | Inventory/Value of Tools by FM Burnard; 4/12/2011 | Respondent | | | X- ER904 |
| 39 | Washington Federal VISA (H) *068; June 21, 2011 Statement | Respondent | | | |
| 40 | Mike Burnard Vehicle Values List; 4/12/2011 | Respondent | | | |
| 41 | Financial Declaration of Forrest Burnard; 8/12/2011 | Respondent | | | |
| 42 | Asset/Liability Spreadsheet of Forrest M. Burnard | Respondent | | | |

JOINT STATEMENT OF EVIDENCE



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| No. | Exhibit | Party Offering Exhibit | No Objection | Authenticity Admitted but Otherwise Objectionable | Objectionable |
|-----|--|------------------------|--------------|---|---------------|
| 43 | Attorney Fees Detail Transaction File List for Forrest M. Burnard; 8/16/11 | Respondent | | | |
| 44 | Respondent Discovery Responses | Respondent | | | |

Each party reserves the right to call the other's witnesses in rebuttal or impeachment.

RESPECTFULLY SUBMITTED this 26th day of August, 2011.

Patricia A. Burnard

Patricia A. Burnard, Pro se
Petitioner

Virginia M. Amis

Virginia M. Amis, WSBA 31396
Attorney for Respondent
Forrest M. Burnard

JOINT STATEMENT OF EVIDENCE



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FAMILY LAW ATTORNEYS
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Kent, WA 98032
(253) 395-5552
(253) 395-1022 fax

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

| | | |
|-----------------------|---|----------------|
| PATRICIA ANN BURNARD, |) | |
| |) | |
| Appellant, |) | DECLARATION OF |
| |) | SERVICE |
| v. |) | |
| |) | |
| FORREST M. BURNARD, |) | |
| |) | |
| Respondent, |) | |
| _____ |) | |

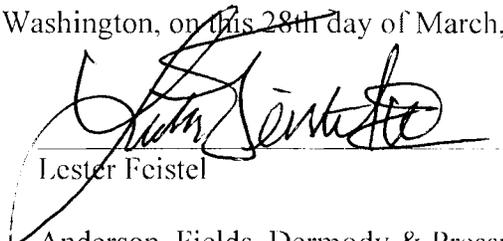
I, Lester Feistel, state and declare as follows:

I am a Paralegal in the Law Offices of Anderson, Fields, Dermody & Pressnall, Inc., P.S. On the 28th day of March, 2012, I placed true and correct copies of the Reply Brief of Appellant with Seattle Legal Messengers for delivery on March 28, 2012 to:

Emmelyn Hart
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
206-574-6661

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED at Seattle, Washington, on this 28th day of March, 2012.

A handwritten signature in black ink, appearing to read "Lester Feistel", written over a horizontal line.

Lester Feistel

Anderson, Fields, Dermody & Pressnall
207 E. Edgar Street
Seattle, Washington 98102
(206) 322-2060