

No. 69616-5-I

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION ONE

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STATE OF WASHINGTON
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In Re the Marriage of:

MASON C. BAILEY,

Respondent,

and

JACKIE E. BAILEY,

Appellant.

BRIEF OF APPELLANT

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I. INTRODUCTION

The initial relationship of the parties is described by several different names in the case law. This type of a relationship has been described as a Meretricious Relationship, an Equity Relationship and a Committed Intimate Relationship. The trial court found the existence of a marriage-like relationship between the parties. (Finding 2.21, Appendix 1-E) The trial court found that Jackie's conduct constituted bad faith. (RP 281, 287) As a result, the trial Court awarded Mason all of the parties' marriage-like property, all of the parties' community property and also awarded Mason a judgment against Jackie in the amount of \$41,065. (CP 150, 151, 153) It is Jackie's position that the trial court did not make a just and equitable division of the parties' property. Jackie appeals the trial court's property division on the basis she did not conduct herself in

bad faith; the trial court decision was based upon impermissible “marital misconduct”. In addition, the trial court erred in its property division because the award was disparate and ignored the RCW 26.09.080 mandate of the economic condition in which the decree left the parties.

Mason transferred three vehicles to Jackie during the marriage portion of their relationship. (RP 84,86,88) (Exhibits 35,36 &37) The trial court determined that Jackie had impermissibly taken Mason’s separate property, the vehicles Mason transferred them to Jackie. The trial court entered a judgment against Jackie for \$41,065 because the trial court erroneously found that Jackie had taken Mason’s separate property. (CP 149-150, 153) The trial court also erred because it entered a judgment against Jackie that she had no means to pay.

The trial court acknowledged the parties’ improvement of Mason’s separate, real property, (RP 290) but refused to allow Jackie’s expert real estate appraiser to testify as to the increased value of Mason’s separate property as a result of the several community-like and community improvements made to Mason’s real property. (RP 278) The trial court erred when it determined that Jackie was not entitled to any compensation for the improvements to the real property.

Mason has substantially more property (CP 150 -152) and income than Jackie. (Exhibits 5, 29, 48 & 76) The trial Court erred by not awarding her attorney fees for the dissolution of marriage portion of the action. Jackie seeks attorney fees on appeal.

II. ASSIGNMENTS OF ERROR

The trial court entered its Findings of Fact and Conclusions of Law and the Decree of Dissolution, entered on October 24, 2012. Jackie assigns error to the Findings of Fact, the Conclusions of Law and the Decree of Dissolution. Specifically, the trial court erred:

1. The trial court erred when it failed to make a just and equitable distribution of the parties' community-like, community and separate property, considering the overall circumstances of this case. (Findings of Fact 2.8, 2.9, 2.10, 2.11, 2.12 and that portion of 2.21, not concerned with the marriage-like relationship; Conclusions of Law 3.4 and 3.8.)
2. The trial court erred when it failed to allow testimony of Jackie's expert witness, a certified real estate appraiser, as to the increased value of Mason's separate real property. (Findings of Fact 2.8, 2.9, 2.10, 2.11, 2.12 and that portion of 2.21, not

concerned with the marriage-like relationship; Conclusions of Law 3.4 and 3.8).

3. The trial court erred when it failed to award Jackie her costs and attorney fees in the dissolution of marriage portion of the case.
(Finding of Fact 2.15 and Conclusion of Law 3.7)

III. ISSUES PERTAINING TO THE ASSIGNMENT OF ERRORS

1. The trial court erred when it failed to make a just and equitable division of the parties' assets when it awarded all of the community-like property and all of the community property, while also awarding Mason a judgment against Jackie in the amount of \$41,065. (A of E # 1)
2. The trial court abused its discretion when it improperly used unclean hands/bad faith to deprive Jackie of all of the community-like assets, all of the community assets, while also awarding a judgment against Jackie in the amount of \$41,065. (A of E #1)
3. The trial court erred when it gave a judgment of \$41,065 to Mason for two vehicles that had been properly transferred to Jackie. (A of E #1)

4. The trial court erred by making a disparate distribution of property by awarding all of the community-like property and all of the community property, while also awarding Mason a judgment against Jackie in the amount of \$41,065. (A of E #1)
5. The trial court erred when it entered its property distribution because it was not based upon the economic condition in which the decree left the parties. (A of E #1)
6. The trial court erred when it ordered Jackie to pay Mason a judgment of \$41,064 when the trial court did not leave Jackie with the means to pay that judgment. (A of E #1)
7. The trial court erred when it acknowledged the improvements made to Mason's separate real property, but denied any compensation to Jackie. (A of E #1)
8. The trial court erred when it refused to allow Jackie's expert witness, a real estate appraiser, to testify as to the increased value of Mason's separate real property, as a result of the improvements to the real property. (A of E #1 & 2)
9. The trial court erred when it denied Jackie's request for costs and attorney fees for the dissolution of marriage portion of the case. (A of E #3)

IV. STATEMENT OF THE FACTS

In general, the Committed Intimate Relationship started in March of 2004. (RP 141) The Committed Intimate Relationship ended when the parties married on August of 2008. (RP 142) The facts of the Committed Intimate Relationship and the Marriage are extensive. Jackie thought it more efficient and less confusing to state the facts appropriate to each issue with that particular issue. As such, the statement of facts has been incorporated into the various issues presented to this Court.

V. ARGUMENT

VI. STANDARD OF REVIEW FOR A MERETRICIOUS RELATIONSHIP

This issue before the Court is the distribution of property and debt that was acquired during the relationship. Upon determination of the existence of a meretricious relationship, the trial court evaluates the interest each party has in the property acquired during the relationship and makes a just and equitable division of the assets. In Re Pennington, 142 Wn. 2d 592, 602, 14 P. 3d 752 (2002). “The proper standard is whether discretion is exercised on untenable grounds or for untenable reasons, considering the purposes of the trial court’s discretion.” Coggle v. Snow, 56 Wn. App. 499, 507, 784 P. 2d 554 (1990).

Finding of Fact 2.21: The trial court found that the parties lived together in a marriage-like relationship. (Finding 2.21, Appendix 1-E) The Guardian did not appeal the trial court decision. Therefore, it is Jackie's position that the Guardian is bound by the finding that the parties lived in a marriage-like relationship. "It is well-established law that an unchallenged finding of fact will be accepted as a verity on appeal." State v. Hill, 123 Wn 2d 641, 644, 870 P. 2d 313 (1994).

VII. ISSUE NUMBER ONE

The trial court erred it when it failed to make a just and equitable division of the parties' assets when it awarded all of the community-like property acquired during the Committed Intimate Relationship to Mason, all of the community property acquired during the marriage to Mason, and while also awarding Mason a judgment against Jackie in the amount of \$41,065.00.

ARGUMENT

In analyzing Connell v Francisco, 127 Wn. 2d 339, 898 P. 2d 831 (1995), the Supreme Court restated the procedure of disposing of property when a Committed Intimate Relationship is terminated: 1) Determine whether a meretricious relationships exists, 2) the trial court evaluates the interest each party has in the property acquired during the

relationship, and 3) court makes a just and equitable division of the assets. Pennington, supra, 602.

Jackie testified that Mason asked her to move into his home. (RP 138) Jackie moved into Mason's home in March of 2004. (RP 139) The parties' Committed Intimate Relationship ended with their marriage, August 11, 2008. (Finding of Fact 2.4, Appendix 1-B) All property acquired during the Committed Intimate Relationship is presumed to be owned by both parties. "We hold income and property acquired during a meretricious relationship should be characterized in a similar manner as income and property acquired during marriage. Therefore, all property acquired during a meretricious relationship is presumed to be owned by both parties." Connell, supra, 351. The presumption of joint ownership can be overcome. "While property acquired during the meretricious relationship is presumed to belong to both parties, this presumption may be rebutted." Pennington, supra, 602.

The Guardian admitted that he did not know where the parties' money was spent before he became the guardian. (RP 117-118) The Guardian also admitted that his knowledge of the purchases made by the parties was based upon the documents he found in the house. (RP 118)

The trial court accepted Jackie's exhibit 79; Jackie's proposed property distribution. (RP 288 – 290) Exhibit 79 was attached to the Findings of Fact and Conclusions of Law as Exhibit A. Part of page 1 of exhibit A, "Items purchased during our relationship" is a partial list of the community-like property. The two other items of community-like property were the Jeep and Dodge Ram. (RP 191) Other than the trial court's confusion over the character of the Jeep and Dodge Ram, no evidence was provided to overcome the presumption that all of the property acquired during the Committed Intimate Relationship was owned by both parties.

The local court rules require the parties to provide a proposed property distribution. (RP 236) Jackie's proposed property division is exhibit 79. Exhibit 79 starts out with the property Jackie brought into the relationship. (RP 236) It continues with the property acquired during the relationship (RP 237) and ends with the property that Mason brought into the relationship. (RP 237-238) In addition, the 2005 Dodge Ram, valued at \$39,832.34, (RP 85) and the 2007 Jeep Wrangler, valued at \$34,020.32, (RP 83) were purchased during the relationship. (RP 191) The Guardian testified that the Ownership of the vehicles was transferred

by Mason to Jackie on October 17, 2009. (RP 84, 86) (Exhibits 35, 36 & 37)

The trial court accepted the values listed by Jackie in exhibit 79. (RP 288-290) The trial court erred by not including the 2005 Dodge Ram and the Jeep in its calculations of property acquired during the relationship. After excluding the gun collection on the exhibit, the trial court stated that the items purchased during the relationship totaled \$76,700. (RP 289) The trial court then determined that half of the value of those items equaled \$38,400. (RP 289-290) The trial court determined the value of the two vehicles that Mason had transferred to Jackie was \$41,065. (Mason's Judgment against Jackie (CP 150)). The trial court did not use the value of the Toyota 4 Runner in its calculations. (RP 293) The Trial Court calculated that the \$41,065. was almost \$10,000 more than the \$38,400 she received under exhibit 79. (RP 290)

Based upon Jackie's understand of the oral ruling the trial court's calculations, though inherently erroneous from her understanding of the law and the application of the laws to the facts of her case, there should have been a \$10,000 judgment against her. (actually \$41,065. - \$38,400 = \$2,665) Instead, the trial court stated that Jackie had come to the court

with “unclean hands”, awarded her none of the community-like property (RP 292-293) and entered a judgment against her in the amount of \$41,065. (PR 293, CP 150)

VIII. THE TRIAL COURT’S DECISION DOES NOT COMPLY WITH
ESTABLISHED STATUTORY PRESCRIPTIONS AND THE CASE
LAW WHICH INTERPRETES THE STATUTE

Before Connell, this Court stated, “We believe the time has come for the provisions of RCW 26.09.080 to govern the disposition of property acquired by a man and a woman who have lived together and established a relationship which is tantamount to a marital family, except for a legal marriage.” Warden v. Warden, 36 Wn. App. 693, 698, 676 P. 2d 1037 (1984). Connell, supra, 349 states that portions of RCW 26.09.080 should apply by analogy. RCW 26.09.080 specifically requires the trial court to make a just and equitable division of the assets and liabilities “without regard to misconduct”.

- IX. ISSUE 1a: The trial court erred when it gave Mason a judgment for two vehicles that had properly been transferred to Jackie.

ARGUMENT

Spouses commonly transfer personal property between themselves. There is no unique requirement for such transfers of personal property. See Johnson v. Dar Denne, 161 Wash. 496, 497, 296 P. 1105 (1931).

In our case Mason, transferred the titles to Jackie of three vehicles on October 17, 2009. (RP 84, 86, 88) (Exhibits 35, 36 & 37) The transfer took place at Northwest Licensing (RP 118) with the signature of the owner, Chuck Hamstreet. (RP 118) (Exhibits 35, 36 and 37) Mr. Hammerstreet was a friend of both Mason and Jackie. (RP 192) Mr. Hammerstreet inquired as to why the transfer was occurring. (RP 192) Mr. Hammerstreet was satisfied with the answer and signed the vehicle transfer along with Mason and Jackie. (RP 192)

The Washington State Supreme Court long ago stated in dictum, "It is undoubtedly the law that a gift from one spouse to another of money or other personality may be proved by parol declaration of the donor if accompanied by delivery to the donee with a complete

relinquishment of dominion by the donor.” Union Savings and Trust Co. v. Manning, 101 Wash. 274, 281, 172 P. 25 (1918). The transfer documents speak for themselves. As the Guardian testified, the document purports to release Mr. Bailey’s interest in the vehicle to Jacqueline Bailey. (RP 84) The transfer of the three vehicles to Jackie was finalized upon the execution of the three documents. At that point the three vehicles were Jackie’s separate personal property. She could, at any time after the transfer, do as she will with the vehicles.

This Court should recognize the transfer of Mason’s interest in the three vehicles to Jackie. These three vehicles were her separate property at that time. This Court should vacate the judgment in favor of Mason for two of these three vehicles, in the amount of \$41,065. (RP 293) This Court should remand the case back to the superior court with instructions that the Jackie’s separate interest be considered in the just and equitable division of the parties’ assets.

- X. ISSUE 1b: The Trial Court erred when it made the decision to enter a judgment against Jackie, while awarding her none of the community and marital-like assets, based upon the court’s belief of Jackie’s misconduct.

XI. FACTUAL BACKGROUND:

Similar to other marriage-like relationships and marriages, the parties had a division of labor as to the performance of tasks. (RP 158) The parties initially did the finances together. (RP 158) Because Mason did not like to do the finances, the task fell to Jackie. (RP 158) Jackie would write out the checks and Mason would sign them (RP 158-159) Because Mason chose not to be bother with even the signing of his own checks, Mason gave Jackie permission to make out Mason's checks and sign Mason's name to them. (RP 159)

Because Jackie was the more computer literate of them, she would use her American Express card at Costco. (RP 159) Jackie always had Mason's ATM card with her. (RP 159) When Mason wanted cash for any expense, he would send Jackie to the cash machine for the cash. (RP 159-160)

After Mason went to stay at Highgate, Jackie continued the same financial procedures the parties had followed before Mason went to Highgate. The Guardian admitted that he did not know where the parties' money was spent before he became the Guardian. (RP 117-118)

The Guardian also admitted that his knowledge of the purchases made by the parties was limited to the documents he had found in the house. (RP 118)

ARGUMENT

Based upon the standard of living enjoyed by the parties and the obligations they were incurring during their marriage-like relationship and marriage, the expenditures complained about by the Guardian were not excessive.

The trial court abused its discretion when it improperly used “unclean hands”, or a lack of good faith as its basis for its decision. (RP 281, 287) It is Jackie’s position that “unclean hands”/lack of good faith is equivalent to a determination of marital misconduct. According to the Washington State Supreme Court, “marital misconduct at issue in RCW 26.09.080 refers to immoral or physically abusive conduct, within the marital relationship [,not] gross fiscal improvidence, the squandering of marital assets, or ... the deliberate and unnecessary incurring of tax liabilities.” Marriage v. Muhammad, 153 Wn. 2d 795, 800, 108 P. 3d 779 (2005). In Muhammand, the trial court improperly considered marital misconduct when it reduced the wife’s property award because she had

obtained a protection order against her husband who ultimately lost his job as a result of the terms of the Protection Order.

In our case, Jackie was continuing to live as the parties had done throughout their relationship. In reversing the Court of Appeals and the trial court, the Washington State Supreme Court held, “In sum, we hold that the language in the trial court’s oral ruling and written findings of fact, along with the questionable aspects of the property division itself, establish a clear inference that the trial court improperly considered Gilbert’s decision to obtain a protective order against Mohammad as “marital misconduct.” Muhammad, supra, 806.

This Court should determine the trial court’s determination of bad faith to be marital misconduct. This court should the return this case to the superior court for a just and equitable distribution of the parties’ assets without regard to alleged marital misconduct.

- XII. ISSUE 1c: The Trial Court Erred When It Made a Disparate Distribution of Awarding Mason All of the Community-Like Property, All of the Community Property and a Judgment Against Jackie in the Amount of \$41,065.00.

ARGUMENT

The Washington State Supreme Court, in Wills v. Wills, 50 Wn. 2d 439, 312 P. 2d 661 (1957), appears to have limited the trial court's authority to make a disparate property award. In Wills, at 441, the Supreme Court stated, "We agree with the appellant that when the parties are both without fault, the community should be divided more equally than two-thirds of it to one and one-third to the other." The holding in Wills has been interpreted by subsequent cases. In the absence of significant statutory factors or equities, it has been held that community property should be divided more equally than one third/two thirds. See Peterson v. Peterson, 3 Wn. App. 374, 376, 475 P. 2d 576 (1970).

In our case, Mason was awarded all the community-like property, all of the community property and a judgment against Jackie in the amount of \$41,065. There are no significant statutory factors that apply to our case. It is Jackie's position that bad faith is not a factor that applies to our case. There is no basis for a disparate award to Mason. This court

should determine that the trial court abused its discretion when it made a disparate property award. This court should then remand the case back to the superior court with directions that the court make a just and equitable division of the parties' assets.

- XIII. ISSUE 1d: The division of the parties' property is not just and equitable because it is not based upon the economic condition in which the decree leaves the parties.

ARGUMENT

The trial court's paramount concern, when distributing property, is the economic condition in which the decree leaves the parties. RCW 26.09.080 (4); In Re Marriage of Terry, 79 Wn. App. 866, 871, 905 P. 2d 935 (1995). The trial court stated that Jackie's current standard of living at the time of trial was clearly less than the standard the standard of living established during the Marriage and the Committed Intimate Relationship. (RP 294) Jackie testified that after the separation she was using her credit cards more because she did not have the means to support herself. (RP 201) Jackie testified that she was used to having Mason help her financially. (RP 194) "I mean, we had a situation where

he, his income was a lot more, and it gave us a lot of fluidity throughout life, and without him, I was nothing.” (RP 194)

Jackie provided her financial declaration at the time of trial. (RP 226) (Exhibit 76) At the time of the entry of the decree, Jackie was working for Megellan Group. (RP 143) Jackie was working part-time; 30 hours per week. (RP 226) She was earning \$12.00 per hour, (RP 226) and a gross monthly income of \$1,528. (RP 226) At trial, Jackie testified that she had \$5.00, cash-on-hand (RP 227), and \$9.00 on deposit in the bank. (RP 227)

Because Jackie was using her credit cards after separation to supplement her income to help make ends meet, she showed a Discover Card statement with an outstanding amount owing of \$4,579.49; (RP 201) (Exhibit 61) the outstanding balance owing her Wells Fargo National Bank account was \$4,907.27, (RP 202) (Exhibit 62) and the outstanding balance owing on her American Express account was \$890.13. (RP 202) (Exhibit 63)

Jackie’s financial situation worsened after the parties’ separation because of missing work due to her back, which she injured while moving bales of hay for the animals on Mason’s separate real property. (RP 198)

Jackie subsequently had surgery on her back on September 12, 2011. (RP 206)

The decree left Mason very well off. He was awarded all of his separate property, all of the property of the parties' relationship and a judgment against Jackie in the amount \$41,065. Jackie received the separate property she brought into the marriage in the amount of \$3,200. (RP 288) (CP 151,155) (In its oral ruling, the trial court did not award Jackie her "miscellaneous books" because the trial court did not know what "miscellaneous books" means.) (RP 288)

In addition to all of the community property, all of the community-like property and the judgment against Jackie, Mason received, at the time of trial, and continues to receive, at least a monthly income of \$4,597.58 from his pension (RP 33) and \$1,242.50 from Social Security (RP 33) Based upon these two incomes, Mason has a monthly, gross income of \$5,840.08, and Mason has an annual, gross income of \$70,080.96. In addition to these two sources of income, Mason also has other income. In 2011, Mason's federal tax return shows an adjusted gross income of \$96,043. (RP 107) (Exhibit 29) Mason was also suffering from dementia and schizophrenia, when the decree was entered. (RP 22)

Mason's life style is basically limited to dictates of his caregiver and the confines of his home. (RP 22)

The trial Court failed to comply with the statutory dictates of RCW 26.09.080; the trial court's paramount concern, when distributing property, is the economic condition in which the decree leaves the parties. This Court should reverse the trial court and remand the case to the superior court with directions to distribute the parties' property based upon the economic condition in which the decree leaves the parties.

- XIV. ISSUE 1e: The trial court erred when it ordered Jackie to pay a judgment to Mason in the amount of \$41,065 when she did not have the ability to pay the amount the trial court awarded and the vehicles were Jackie's separate property.

ARGUMENT

The trial court stated, "I don't anticipate that there is much likelihood that she is ever going to pay Mr. Bailey back the money that she owes him, but I will grant a judgment in the total amount of ...\$41,065." (RP 293) Jackie argues, by analogy, the Washington State Supreme Court case of Merkel v.Merkel, 39 Wn. 2d 102, 234 P. 2d 857 (1951) "Where the husband is expected to pay off a substantial

indebtedness incurred by the community, he ought, if possible, to be left with the means whereby this can be done.” Merkel, supra, 115. As stated by the trial court, “She’s currently not making as much money as she probably needs to maintain herself...” (RP 294) Jackie therefore does not have the means to pay the \$41,065 judgment in favor of Mason.

At the time of trial, Jackie stated that she had \$5.00 in her “pocket” (RP 227) and \$9.00 in her bank account. (RP 227) (Exhibit 76) She had increased her use of credit cards since the separation to make ends meet. (RP 201) At the time of trial, Jackie offered examples of her financial situation: Discover Card statement, \$4,579.49 (RP 201) (Exhibit 61)

- XV. Improvements to Mason’s Separate Real Property during the Committed Intimate Relationship and the Marriage

- XVI. ISSUE NUMBER TWO: The trial court erred when it acknowledge that the parties had improved Mason’s separate real property but refused to award Jackie any compensation for her contributions to the improvements.

XVII. Oral ruling and the Facts concerning this Issue:

The trial court stated, "She has been employed throughout the course of this relationship and since." (RP 294) Jackie testified that she was working as a Realtor when she moved in with Mason. (RP 139) She then went to work for Skywest Airlines in Bellingham (RP 140) where she worked until October 8, 2007. (RP 141) She then went to work for Cargill (RP 141) where she worked through the remainder of the time Mason and Jackie lived together (RP 142)

Jackie testified that some of her funds went to pay down the line of credit and the home improvement loan. (RP 143)(Exhibit 70, 71) Jackie also testified that she would direct the transfer funds from her account to pay on the equity, the line of credit and the home improvement loan. (RP 207) In support of her testimony, Jackie submitted exhibit 70, which showed a \$4,600 direct transfer of her funds to the line of credit. (RP 208), and exhibit 71 which showed a \$10,000 direct transfer of her funds to the line of credit. (RP 208) When these transfers were brought to the attention of the trial court during the oral ruling (RP 298), the trial court responded that the payment of community debt with community funds is

what is expected of married couples. (RP 298) Jackie additionally testified that both parties contributed to a "Slush Account" that was used to purchase items for the benefit of their relationship. (RP 207)

Jackie testified to the improvements and the costs of those improvements to Mason's separate real property. The size of Mason's separate real property is 19.73 acres. (RP 127) When Jackie moved onto the property, there was no lawn, only stickers and blackberry bushes. (RP 163) The parties cleared the property and planted a lawn (RP 163) that was about an acre (RP 177) at a cost of \$5,000. (RP 178) Additional improvement to Mason's separate property included: a curtain drain (RP 176) at a cost of \$3,000 (RP 177); planted fruit trees (RP 177) at a cost of \$420 (RP 178); built a run-in shed at a cost of \$5,000 for labor and materials (RP 179); purchased a tough Shed for the storage of grain and hay at a cost of \$800 (RP 179); installed a cyclone fence across a portion of the property at a cost of \$3,000 (RP 179); installed a second well on the property at a cost of \$2,000 (RP 181); installed electricity from the house to the barn and towards the road for the electric gate at a cost of \$1,800 (RP 181); filled a pond in with about ten loads of gravel at a cost of \$4,000 (182); installed a step-in tub for Mason's use (RP 182) at a cost

of \$19,000 (RP 183); installed a security system to protect the contents of the house (RP 183); and renovated the gun room in the house (RP 165).

Jackie was also instrumental in defeating the neighbor's lot line claim. (RP 168-169) Her success increased the square footage of Mason's separate property. (RP 180) The increase in the square footage allows the property to be short plated (RP 180), which increased the value of the property by fifty thousand dollars, according to Jackie. (RP 181)

The trial court acknowledged that improvements were made to Mason's real property. (RP 290) The trial court refused to consider any compensation to Jackie for the improvements to the property because there was no evidence as to whether the improvements were made during the Committed Intimate Relationship or during the marriage. (RP 290) It is Jackie's position the trial court's decision is a distinction without a difference. There is no dispute that the improvements were made to Mason's separate real property, while Jackie was living on the premises. The trial court uses the same statute, RCW 26.09.080, and the same case law to determine Jackie's interest in the improvements, at the time the parties were married and at the parties were in a Committed Intimate Relationship.

ARGUMENT

The Washington State Supreme Court stated that it had overruled Creasman v. Boyle, 31 Wn. 2d 345, 196 P.2d 835 (1948), in part, to recognize the contributions made by both parties to the purchase and maintenance of property and, through an equitable division of the property or analogous compensation, sought to avoid unjust enrichment of one partner at the expense of the other. Peffley-Warner v. Bower, 113 Wn. 2d 243, 252, 778 P. 2d 1022 (1989).

Jackie seeks the recognition for her uncompensated community-like and community labor and the contributions of community funds to Mason's separate property. Jackie's testimony concerning the improvements to the real property was not disputed. These contributions should be considered in the overall just and equitable distribution. The Washington State Supreme Court stated, "This court will not single out a particular factor, such as the character of property, and requires as a matter of law that it be given greater weight than other relevant factors. The statute directs the trial court to weigh all factors, within the context of the particular circumstances of the parties, to come

to a fair, just and equitable division of property.” In Re Marriage of Kozen, 103 Wn. 2d 470, 478, 693 P.2d 97 (1985).

This Court should recognize Jackie’s uncompensated community and community-like labor and the contribution of community and community-like funds to the improvement and maintenance of Mason’s separate real property. This Court should then remand the case to the superior court for consideration of these contributions in the overall just and equitable distribution of the parties assets.

XVIII. ISSUE NUMBER THREE: The trial court erred when it refused to allow Jackie’s expert witness, a real estate appraiser, to testify as to the increased value the improvements had made to the property.

XIX. STANDARD OF REVIEW FOR THIS ISSUE

The trial court’s evidentiary ruling to exclude the testimony of Jackie’s expert witness, a real estate appraiser, who was hired to give his expert opinion of the increased value of Mason’s separate real property, as a result of the improvements made to the real property, is the abuse of discretion standard. State v. McPherson, 111 Wn. App 747, 761, 46 P. 3d 284 (2002).

FACTS AND PROCEDURAL HISTORY: The trial was set to be heard on October 9th and 10th of 2012. (CP 135) (RP 3) The trial court moved, on its own initiative, the October 9th and 10th trial dates to September 24th and 25th, 2012. (RP 3) Jackie filed and served her notice of her intent to call her expert witness on October 7, 2011. (CP 133-134) (RP 249-250) Jackie's expert witness, a real estate appraiser, (RP 3) was informed that he was scheduled to testify in October. (RP 246) Jackie telephoned his office and spoke with one of his assistants who stated that they were unable to contact him because he was away on personal business. (RP 246) The purpose of Jackie's expert witness testimony was to determine how the improvements to Mason's separate property, increased the value of the property. (RP 246) The trial court determined that Jackie's expert witness would not be allowed to testify. (RP 278)

Argument

The trial court abused its discretion by refusing to allow Jackie's expert witness to testify as to his opinion of the increased value to Mason's separate property because of the above-stated improvements. It is Jackie's position that the increased value of Mason's separate property is an essential element of the case. A similar evidentiary ruling

was analyzed by the Washington State Supreme Court in Walker v. Bangs, 92 Wn. 2d 854, 601 P. 2d 1279 (1979). In Walker, the issue was attorney malpractice. “By its very nature, an action for professional negligence is the preparation and conduct of specific litigation involving matters of special skill or knowledge – proper subjects for expert testimony.” Walker, supra, 857-858. “The general rule is to permit but not require expert testimony ... We believe that expert testimony was both proper and necessary in this instance.” Id., at 858.

The increased value of Mason’s separate real property is an essential element of Jackie’s case that is beyond the expertise of lay witnesses. In fact, the Guardian’s attorney objected to Jackie’s lay opinion concerning the increased value of Mason’s separate real property. (RP 180)

Like Walker, the very nature of the issue, increased value of the separate real property as a result of the improvements, involves matters of special skill or knowledge. It is therefore a proper subject for expert testimony. This Court should reverse the evidentiary ruling and remand the case to the superior court for opinion testimony of Jackie’s expert

witness as to the increased value of Mason's separate real property because of the improvements.

- XX. ISSUE NUMBER FOUR: The trial court erred by not awarding Jackie her costs and attorney fees in the dissolution of marriage portion of the case.

Attorney fees were requested for the dissolution of marriage portion of the two combined cases. (RP 234) Jackie requested attorney fees under RCW 26.09.140. (CP 147) The trial court affirmed that an award for attorney fees under RCW 26.09.140 is based upon need and ability to pay. (RP 296) In considering the financial resources of both parties, the court balances the needs of the requesting party against the other party's ability to pay, for purposes of awarding costs and attorney fees in dissolution proceedings. In Re Marriage of Wilson, 117 Wn. App. 40, 68 P. 3d 1121 (2003)

Jackie incorporates those portions of this brief as to her debt and income at the time of trial to substantiate her need for the award of attorney fees. The trial court recognized, "She's currently not making as much money as she probably needs to maintain herself, but there is no evidence that she is incapable of working full-time or couldn't work full-

time.” (RP 294) It is Jackie’s position that working an additional 10 hours per week at \$12.00 per hour would not have substantially improved her financial situation.

Mason had the ability to pay Jackie’s costs and attorney fee for the dissolution of marriage portion of the two cases because he receives pension and social security income in the amount of \$5,840.08 per month. In denying Jackie’s request for maintenance, the trial court stated that Mason “Clearly, Mr. Bailey could pay some...” (RP 295) It is Jackie’s position that as long as Mason has the clear ability to pay maintenance, he also has the ability to pay her costs and attorney fees. This Court should reverse the decision of the trial court as to the award of costs and attorney fees to Jackie on the dissolution of marriage portion of the case and remand the case to the trial court for the determination thereof.

XXI. ISSUE NUMBER FIVE: This Court should award Jackie her costs and attorney fees on appeal.

Jackie's request for attorney fees on appeal is based upon RAP 18.1 (a) and RCW 26.09.140. In deciding to award attorney fees on appeal from a trial court's decision in a dissolution of marriage proceeding, the appellate court examines the arguable merit of the issues on appeal and the financial resources of the respective parties. Mansour v. Mansour, 126 Wn. App. 1, 106 P. 3d 768 (2004), reconsideration denied.

The issues Jackie has brought forth for this Court for consideration on appeal are significant. The disparate property award in the trial court resulted in no award of the community and community-like property to Jackie. (Conclusion of Law 3.8, Appendix 1-F) In fact, Jackie was ordered to pay Mason a judgment in the amount of \$41,065.(Conclusion of Law 3.8, Appendix 1-F) Although the trial court recognized several improvements to Mason's separate real property done by the parties, (RP 290) Jackie received no compensation for her monetary and labor contributions to Mason's improved separate property. (RP 290) The trial court would not allow Jackie's expert to testify as to the increased value

the improvements had made to the property. (RP 278) Jackie's financial need and Mason's ability to pay for Jackie's costs and attorney fees on appeal have been previously stated in this brief. Jackie incorporates those portions of her brief, as if stated herein.

This Court should award Jackie her costs and attorney fees on appeal.

XXII. CONCLUSION

Based upon the arguments above, this Court should reverse and remand this case to the superior court for a redetermination of a just and equitable distribution of the parties' community, community-like and separate assets. This Court should reverse the evidentiary ruling of the trial court and remand the case with instructions that Jackie's expert witness shall testify to the increased value of Mason's separate property as a result of the improvements made to the real property. This Court should reverse the trial court's decision as to the award of attorney fees to Jackie in the superior court for the dissolution portion of the case. Finally, this Court should award Jackie her attorney fees on appeal.

Respectfully Submitted this 12th day of August 2013.

A handwritten signature in cursive script that reads "D.G. Porter". The signature is written in black ink and is positioned above a horizontal line.

David G. Porter, WSBA 17925

APPENDIX

1. Findings of Fact and Conclusions of Law 1-A to 1-I
2. Decree of Dissolution 2-A to 2-I
3. RCW 26.09.080 3
4. RCW 26.09.140 4

FILED IN OPEN COURT

10-24-2012

WHATCOM COUNTY CLERK

By [Signature]
Deputy

Superior Court of Washington
County of WHATCOM

In re the Marriage of:

MASON C. BAILEY

No. 10-3-00763-6

and

Petitioner,

Findings of Fact and
Conclusions of Law
(Marriage)
(FNFL)

JACKIE E. BAILEY

Respondent.

I. Basis for Findings

The findings are based on trial. The following people attended:

Petitioner's *Guardian per D of P*

Petitioner's Lawyer.

Respondent.

Respondent's Lawyer.

Other:

Brett Bailey, son and guardian of the person and estate of petitioner Mason Bailey

II. Findings of Fact

Upon the basis of the court record, the court *finds*:

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

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2.2 Notice to the Respondent

The respondent was served in the following manner:

Per the Declaration of Service filed herein November 3, 2010

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent.

The respondent is currently residing in Washington.

The parties lived in Washington during their marriage and the petitioner continues to reside in this state.

2.4 Date and Place of Marriage

The parties were married on August 11, 2008 at Bellingham, Whatcom County, Washington.

2.5 Status of the Parties

Husband and wife separated on February 23, 2010.

2.6 Status of Marriage

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

2.7 Separation Contract or Prenuptial Agreement

There is no written separation contract or prenuptial agreement.

2.8 Community Property

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

2.9 Separate Property

The husband has the following real or personal separate property: See under other.

1
2 The wife has the following real or personal separate property: See under other.

3 Other:

4 The husband has the following real or personal separate property:

- 5 01. Residence located at 642 Wiltse Lane, Bellingham, WA
6 02. Household furnishings, personal property, vehicles and farm equipment
7 03. Retirement accounts
8 04. Social Security
9 05. Checking and savings accounts in his name
10 06. All other items described as "Mick's property" and "Gun collection" in Exhibit "A"
11 attached hereto, also known as Exhibit 79 at trial.

12 The wife has the following real or personal separate property:

- 13 01. Household furnishings and personal property, including personal vehicle
14 02. Retirement accounts
15 03. Checking and savings accounts in her name
16 04. All other items described as "Jackie's property" on page 1 in Exhibit "A" attached hereto,
17 also known as Exhibit 79 at trial; namely, 4 bookcases, 1 upstairs, 1 in master bedroom and 2
18 in basement, John Grisham book collection, miscellaenous books, Jackie's Pet Shop sign,
19 Nintendo player and games, 100 vinyl records, large mirror and Singer sewing machine.

18 **2.10 Community Liabilities**

19 The parties have incurred the following community liabilities: See under other.

20 Other:

21 Costco American Express card in the amount of \$13,372

22 **2.11 Separate Liabilities**

23 The husband has incurred the following separate liabilities: See under other.

24 The wife has incurred the following separate liabilities: See under other.

1 The husband has incurred the following separate liabilities:

- 2 01. Peoples Bank mortgage on residence located at 642 Wiltse Lane, Bellingham, WA, in
3 the approximate amount of \$203,619.
- 4 02. U.S. Bank LOC loan in the approximate amount of \$7,982
- 5 03. U.S. Bank Equiline loan in the approximate amount of \$20,995
- 6 04. Elder Law Office of Barry Meyer, Esq. legal fees in the \$17,000

7 Wife's separate liabilities are ~~unknown~~.

*American Express - \$2,500 on
10/17/08*

8 Each party is liable for all debts incurred since February 23, 2010 and for all obligations for any
9 property awarded to them.

9 **2.12 Maintenance**

10 Maintenance should not be ordered because:

11 This is a short one and one half (1 1/2) year marriage. Wife is able to work to provide
12 for her needs. During the marriage, wife accessed, utilized, and took the value of
13 \$41,065 of the husband's separate property.

13 **2.13 Continuing Restraining Order**

14 Does not apply.

15 **2.14 Protection Order**

16 The antiharassment Order for Protection is currently in effect in the petitioner's
17 guardianship case.

18 **2.15 Fees and Costs**

19 There is no award of fees or costs.

20 **2.16 Pregnancy**

21 The wife is not pregnant.

22 **2.17 Dependent Children**

23 The parties have no dependent children of this marriage.

24 **2.18 Jurisdiction Over the Children**

25 Fndngs of Fact and Concl of Law (FNFL) - Page 4 of 6
WPF DR 04.0300 Mandatory (6/2012) - CR 52; RCW 26.09.030; 070(3)

1 Does not apply because there are no dependent children.

2 **2.19 Parenting Plan**

3 Does not apply.

4 **2.20 Child Support**

5 Does not apply.

6 **2.21 Other:**

7 The parties lived together for ^{short} a period before they were married and accumulated ^{in a marriage-like relationship} property. During the parties' marriage, the wife accessed, utilized and took \$41,065 ^{of} worth of the husband's separate property without his permission and not for his benefit.

9 **III. Conclusions of Law**

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

11 **3.1 Jurisdiction**

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

13 **3.2 Granting a Decree**

14 The parties should be granted a decree.

15 **3.3 Pregnancy**

16 Does not apply.

17 **3.4 Disposition**

18 The court should determine the marital status of the parties, consider or approve
19 provision for maintenance of either spouse, make provision for the disposition of
20 property and liabilities of the parties, make provision for the allocation of the child as
21 federal tax exemptions, make provision for any necessary continuing restraining orders,
and make provision for the change of name of any party. The distribution of property
and liabilities as set forth in the decree is fair and equitable.

22 **3.5 Continuing Restraining Order**

23 Does not apply.

24 **3.6 Protection Order**

25 A Vulnerable Adult Order for Protection entered in Whatcom County Superior Court is

Fndngs of Fact and Concl of Law (FNFL) - Page 5 of 6
WPF DR 04.0300 Mandatory (6/2012) - CR 52; RCW 26.09.030;.070(3)

adequate to protect the petitioner for the next three years, and the court reserves the right to issue an order post-dissolution should the facts warrant.

3.7 Attorney Fees and Costs

Attorney fees, other professional fees and costs should be paid by by each party

3.8 Other

The wife came before the court with unclean hands in her request for an equitable division of property acquired by the parties while they lived together before they married; therefore, the court declined to make such a division.

The husband should be awarded a judgment against the wife for the \$41,065 worth of his separate property that she accessed, utilized and took for her own benefit without his permission.

Dated: October 24, 2012

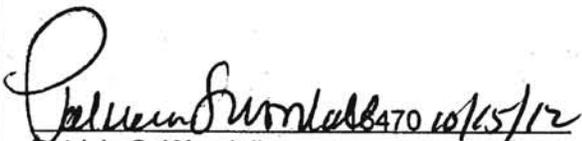


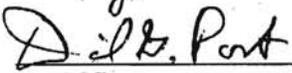
Judge/Commissioner

Presented by:

~~Approved for entry:~~
~~Notice of presentation waived:~~

Copy Received


Patricia S. Woodall Date 10/15/12
Signature of Party or Lawyer/WSBA No.

 17925 Date 10/24/12
David Porter Date
Signature of Party or Lawyer/WSBA No.


BRETT BAILEY GUARDIAN OF THE
PERSON AND ESTATE OF MASON
C. BAILEY

Jackie's Property	Jackie	Mick	
4 bookcases, 1 upstairs, 1 in master bedroom and 2 in basement	\$200		
John Grisham book collection	\$500		
Misc books	\$100		
Jackie's Pet Shop Sign	\$500		
Nintendo payer and games	\$300		
100 vinyl records	\$500		
Large Mirror	\$1,000		
Singer Sewing Machine	\$200		
	SUB TOTAL	\$3,300	\$0
Items Purchased during our relationship			
China Buffet	\$150		
8 trickle chargers		\$150	
3 large battery chargers		\$100	
Safe 4ft. X 3ft.	\$300		
ADT Security System		\$2,150	
1 hay paker attachment for tractor		\$200	
Coin and stamp collection - US Presidentds and States		\$10,000	
1 large flat screen tv in the living room		\$3,000	
John Deere riding lawn mower with bag catcher, replacement blades and mise parts	\$800		
New Holland Tractor with 1 hay paker		\$35,000	
Patio Furniture	\$150		
Christmas decorations and outdoor lights	\$300		
Recliner/rocker (my chair)	\$200		
Ottoman	\$150		
Automated recliner (heated) (Mick's chair)		\$1,500	
Automated Skeet Shooter	\$900		
Musical clock	\$400		
Air compressor		\$600	
Grass Spreader	\$200		
Beverage machine		\$200	
Older freezer in basement		\$50	
Slot machine		\$1,500	
2 Ice cream makers	\$50		
Gun safe in basement	\$3,000		
Tuff Shed 8 x 10 upper pasture		\$250	
Run-in Shed - upper pasture		\$5,000	
Curio upstairs with duck collection		\$3,500	
Fuel for diesel tractor storage tank		\$800	
Ammo for weapons	\$3,500		
Corvette car collection		\$2,500	
Gun collection	\$77,100		
	SUB TOTAL	\$87,200	\$66,500

Jackie's Property	Jackie	Mick
Mick's property		
King size sleigh bed		\$2,500
1 newer large freezer		\$500
1 newer freezer	\$500	
2 large ladders		\$500
large couch downstairs		\$75
couch main floor		\$50
large desk in computer room 1 bookcase in computer room		\$75
Referigerator/freezer in garage		\$75
Referigerator/freezer in kitchen		\$500
Washer/dryer in laundry room		\$500
Playboy magazine collection		\$250
Generator-garage		\$250
Welding torch		\$500
Log Splitter		\$500
4 cuckoo clocks in bassement		\$500
Swing chair		\$350
Smoker	\$50	
Wagon - pulls behind quad	\$50	
John Deere mower - old		\$350
Neon signs	\$5,000	
3 - tv's		\$75
Dining Room table		\$40
1 - curio cabinet in master bedroom with Corvette collection		\$4,188
1 - curio cabinet in master bedroom with China music boxes	\$4,188	
2 - curio cabinets in living room with figurines		\$20,000
Massey Ferguson Tractor.		\$2,500
Bush Hog		\$1,500
Re-load equipment fro ammo	\$3,500	
Roto tiller fits behind both tractors		\$1,500
6 rolls of chain link fencing		\$900
Bucket for tractor		\$1,500
Army truck - military - arena		\$1,000
Toyota pick up		\$1,000
1 ton Ford pickup		\$800
Juke Box full of records - basement	\$3,500	
Barn - tools and misc. equipment		\$10,000
Black gun powder	\$2,000	
Household dishes and cookware		\$2,000
Caprice		\$5,000
Little toyota 4 wd pick up		\$5,000
Honda ATV	\$6,000	

Jackie's Property	Jackie	Mick	
Spare ATV		\$5,000	
Flat Bed trailer (title in Jacqueline Bailey's name)	\$3,000		
	SUB TOTAL	\$27,788	\$69,478
	Total	\$118,288	\$135,978

FILED IN OPEN COURT
10-24-2017
WHATCOM COUNTY CLERK
By CU
Deputy

Superior Court of Washington
County of WHATCOM

In re the Marriage of:

MASON C. BAILEY

No. 10-3-00763-6

Petitioner,

Decree of Dissolution (DCD)

and

(Marriage)

JACKIE E. BAILEY

Respondent.

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:

To the husband, the real property located at 642 Wiltse Lane, Whatcom County, Bellingham, WA 98225; BAKERVIEW ADDITION TO BELLINGHAM E1/2 BLK88 ASSESSOR'S PARCEL 380202369221.

1.3 Money Judgment Summary:

Judgment Summary is set forth below:

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

ORIGINAL

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1	A.	Judgment Creditor	Mason C. Bailey	
	B.	Judgment Debtor	Jackie E. Bailey	
2	C.	Principal judgment amount		\$41,065.00
	D.	Interest to date of Judgment		\$
3	E.	Attorney fees		\$
	F.	Costs		\$
4	G.	Other recovery amount		\$
	H.	Principal judgment shall bear interest at 12% per annum		
5	I.	Attorney fees, costs and other recovery amounts shall bear interest at % per annum		
6	J.	Attorney for Judgment Creditor	Patricia S. Woodall	
	K.	Attorney for Judgment Debtor	David Porter	
7	L.	Other:		

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9 **End of Summaries**

10 **II. Basis**

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

12 **III. Decree**

13 **It Is Decreed** that:

14 **3.1 Status of the Marriage**

15 The marriage of the parties is dissolved.

16 **3.2 Property to be Awarded the Husband**

17 The husband is awarded as his separate property all the property set forth in Exhibit A, *except for the items of property listed on page 1 under heading "Jackie's property"; namely the following items which are awarded to wife: 4 bookcases, 1 upstairs, 1 in master bedroom and 2 in basement, John Grisham book collection, miscellaenous books, Jackie's Pet Shop sign, Nintendo player and games, 100 vinyl records, large mirror and Singer sewing machine. This exhibit is attached or filed and incorporated by reference as part of this decree.*

21 The husband is awarded as his separate property the additional following property: See under Other

23 Other:

24 01. Residence located at 642 Wiltse Road, Bellingham, Whatcom County, Washington

25 02. Any and all general household furnishings, furniture, appliances, vehicles, farm

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

1 machinery, and tools currently in his possession or under his direct control

2 03. Any and all personal property currently in his possession or under his direct control;

3 04. Any and all life insurance policies currently in his name or under his direct control;

4 05. Any and all bank accounts, investment accounts and JC Penney stock currently in his
5 name or under his direct control;

6 06. All rights, benefits, property, tangible and intangible, acquired by him connection with
7 his employment; including but not limited to profit sharing plans, pension and retirement
8 plans, including his Longshoreman's Retirement, and/or benefits including employer and
9 employee contributions, group insurance benefits, his Social Security benefits, or any
10 other employee rights, provided however, nothing contained herein shall affect rights
11 vested in the non-employee party by the laws of the United States regulating Social
12 Security Benefits.

13 3.3 Property to be Awarded to the Wife

14 The wife is only awarded as her separate property the property in Exhibit A as set forth
15 under the heading "Jackie's Property" namely: 4 bookcases, 1 upstairs, 1 in master
16 bedroom and 2 in basement, John Grisham book collection, miscellaenous books,
17 Jackie's Pet Shop sign, Nintendo player and games, 100 vinyl records, large mirror and
18 Singer sewing machine. This exhibit is attached or filed and incorporated by reference
19 as part of this decree.

20 The wife is also awarded as her separate property the following property: See under
21 Other.

22 Other:

23 01. Any and all general household furnishings, furniture, appliances, vehicles, and tools
24 currently in her possession or under her direct control

25 02. Any and all personal property currently in her possession or under her direct control;

03. Any and all life insurance policies currently in her name or under her direct control;

04. Any and all bank accounts currently in her name or under her direct control;

05. All rights, benefits, property, tangible and intangible, acquired by her connection with her
employment; including but not limited to profit sharing plans, pension and retirement plans or
benefits including employer and employee contributions, group insurance benefits, Social
Security rights, or any other employee rights, provided however, nothing contained herein shall
affect rights vested in the non-employee party by the laws of the United States regulating Social
Security Benefits.

3.4 Liabilities to be Paid by the Husband

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

1 The husband shall pay the following community or separate liabilities: See under
2 Other.

3 Other:

- 4 01. Peoples Bank mortgage on residence located at 642 Wiltse Lane, Bellingham,
5 Whatcom County, Washington, in the approximate amount of \$203,619
6 02. U.S. Bank LOC in the approximate amount of \$7,982
7 04. U.S. Bank loan in the approximate amount of \$20,995
8 05. Elder Law Office of Barry Meyer, Esq. legal fees in the approximate amount of \$17,000
9 06. Costco American Express in the approximate amount of \$13,372

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

12 **3.5 Liabilities to be Paid by the Wife**

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

15 **3.6 Hold Harmless Provision**

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

20 **3.7 Maintenance**

21 Does not apply.

22 **3.8 Continuing Restraining Order**

23 Does not apply.

24 **3.9 Protection Order**

25 The court reserves the right to enter an order post-dissolution if the facts so warrant.

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3.10 Jurisdiction Over the Children

Does not apply because there are no dependent children.

3.11 Parenting Plan

Does not apply.

3.12 Child Support

Does not apply.

3.13 Attorney Fees, Other Professional Fees and Costs

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

Each party shall pay his or her own attorney fees, other professional fees and costs.

3.14 Name Changes

~~Does not apply.~~ *Jacqueline Edith Hill pm*
DA

3.15 Other

The husband is awarded a judgment in the amount of \$41,065 against the wife for the value of his separate property which she accessed, utilized, and took without his permission.

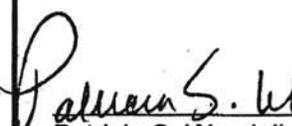
Dated: October 24, 2012

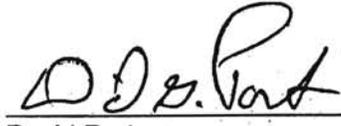


Judge/Commissioner

Petitioner or petitioner's lawyer:
A signature below is actual notice of this order.
Presented by:
Approved for entry:

Respondent or respondent's lawyer:
A signature below is actual notice of this order.

 6470 10/15/12
Patricia S. Woodall Date
Signature of Petitioner or Lawyer/WSBA No.

 17925 10/24/12
David Porter Date
Signature of Respondent or Lawyer/WSBA No.

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Brett Bailey, Guardian of the Person
and Estate of Mason C. Bailey

Jackie's Property	Jackie	Mick
4 bookcases, 1 upstairs, 1 in master bedroom and 2 in basement	\$200	
John Grisham book collection	\$500	
Misc books	\$100	
Jackie's Pet Shop Sign	\$500	
Nintendo payer and games	\$300	
100 vinyl records	\$500	
Large Mirror	\$1,000	
Singer Sewing Machine	\$200	
SUB TOTAL	\$3,300	\$0
Items Purchased during our relationship		
China Buffet	\$150	
8 trickle chargers		\$150
3 large battery chargers		\$100
Safe 4ft. X 3ft.	\$300	
ADT Security System		\$2,150
1 hay paker attachment for tractor		\$200
Coin and stamp collection - US Presidentds and States		\$10,000
1 large flat screen tv in the living room		\$3,000
John Deere riding lawn mower with bag catcher, replacement blades and misc parts	\$800	
New Holland Tractor with 1 hay paker		\$35,000
Patio Furniture	\$150	
Christmas decorations and outdoor lights	\$300	
Recliner/rocker (my chair)	\$200	
Ottoman	\$150	
Automated recliner (heated) (Mick's chair)		\$1,500
Automated Skeet Shdoter	\$900	
Musical clock	\$400	
Air compressor		\$600
Grass Spreader	\$200	
Beverage machine		\$200
Older freezer in basement		\$50
Slot machine		\$1,500
2 ice cream makers	\$50	
Gun safe in basement	\$3,000	
Tuff Shed 8 x 10 upper pasture		\$250
Run-In Shed - upper pasture		\$5,000
Curlo upstairs with duck collection		\$3,500
Fuel for diesel tractor storage tank		\$800
Ammo for weapons	\$3,500	
Corvette car collection		\$2,500
Gun collection	\$77,100	
SUB TOTAL	\$87,200	\$66,500

Jackie's Property	Jackie	Mick
Mick's property		
King size sleigh bed		\$2,500
1 newer large freezer		\$500
1 newer freezer	\$500	
2 large ladders		\$500
large couch downstairs		\$75
couch main floor		\$50
large desk in computer room 1 bookcase in computer room		\$75
Referigerator/freezer in garage		\$75
Referigerator/freezer in kitchen		\$500
Washer/dryer in laundry room		\$500
Playboy magazine collection		\$250
Generator-garage		\$250
Welding torch		\$500
Log Splitter		\$500
4 cuckoo clocks in bassement		\$500
Swing chair		\$350
Smoker	\$50	
Wagon - pulls behind quad	\$50	
John Deere mower - old		\$350
Neon signs	\$5,000	
3 - tv's		\$75
Dining Room table		\$40
1 - curio cabinet in master bedroom with Corvette collection		\$4,188
1 - curio cabinet in master bedroom with China music boxes	\$4,188	
2 - curio cabinets in living room with figurines		\$20,000
Massey Ferguson Tractor.		\$2,500
Bush Hog		\$1,500
Re-load equipment fro ammo	\$3,500	
Roto tiller fits behind both tractors		\$1,500
6 rolls of chain link fencing		\$900
Bucket for tractor		\$1,500
Army truck - military - arena		\$1,000
Toybta pick up		\$1,000
1 ton Ford pickup		\$800
Juke Box full of records - basement	\$3,500	
Barn - tools and misc. equipment		\$10,000
Black gun powder	\$2,000	
Household dishes and cookware		\$2,000
Caprice		\$5,000
Little toyota 4 wd pick up		\$5,000
Honda ATV	\$6,000	

Jackie's Property	Jackie	Mick
Spare ATV		\$5,000
Flat Bed trailer (title in Jacqueline Bailey's name)	\$3,000	
SUB TOTAL	\$27,788	\$69,478
Total	\$118,288	\$135,978

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RCW 26.09.080
Disposition of property and liabilities — Factors.

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and

(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

[2008 c 6 § 1011; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

Notes:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.



Mobile

[RCWs](#) > [Title 26](#) > [Chapter 26.09](#) > [Section 26.09.140](#)

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[26.09.138](#) << [26.09.140](#) >> [26.09.150](#)

RCW 26.09.140 **Payment of costs, attorneys' fees, etc.**

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

[2011 c 336 § 690; 1973 1st ex.s. c 157 § 14.]



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IN THE COURT OF APPEALS FOR THE
STATE OF WASHINGTON
DIVISION ONE

In re The Marriage of:

MASON C. BAILEY,

Petitioner,

and

JACKIE E. BAILEY,

Appellant.

No. 69616-5-1

DECLARATION OF SERVICE

2013 AUG 20 PM 1:28
COURT OF APPEALS
STATE OF WASHINGTON
[Signature]

I, David G. Porter, hereby declare, under penalty of perjury, under the laws of the State of Washington, that the following statements are true and correct to the best of my information and belief. ___

On the 19th day of August 2013, I personally delivered a re-formatted copy of the Brief of Appellant, that was previously filed with the above-entitled Court and served upon attorney Buri's office on August 12, 2013, and a copy of Appellant's Supplemental Clerk's Papers, with the Whatcom County filing stamp of August 19, 2013, to the law office of Philip J. Buri, attorney for the Respondent, at 1601 F Street, Bellingham, Washington 98225.

Declaration of Service - Page 1 of 2

David G. Porter
Attorney at Law
103 E. Holly Street #409
Bellingham, WA 98225
(360) 714-9821

Dated this 19th day of August 2013, in Bellingham, Washington.

A handwritten signature in black ink, appearing to read "D.G. Porter", written over a horizontal line.

David G. Porter, WSBA 17925
Attorney for the Appellant