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## I. ASSIGNMENTS OF ERROR

1. The trial court erred when it conducted an independent investigation into the wife's ability to become self-supporting and testified as to those facts during trial.
2. The trial court's distribution of property and financial awards were inequitable.
3. The trial court erred when it imputed income to the wife at half-time minimum wage.
4. The trial court's findings and conclusions are erroneous in their entirety because of the judge's bias or the appearance of bias. The appellant also assigns specific error to the following findings of fact or conclusions of law:

The net income of the obligee is imputed at \$784 because:

the obligee is voluntarily unemployed.

The amount of imputed income is based on the following information in order of priority. The court has used the first option for which there is information:

Other: minimum wage at half time earnings as the obligee is a full time student.

CP 77. See, also, CP 69 (§ 2.21(A): imputing income).

2.21 III. SPOUSAL MAINTENANCE (in its entirety: see appendix)

2.21 IV. PROPERTY DIVISION (in its entirety: see appendix)

K. The court has adopted the wife's property division, which does result in a disproportionate share being awarded to the wife. The division of the parties' property, both separate and community, is fair and equitable in consideration of all the evidence.

#### 3.4 Disposition

The distribution of property and liabilities as set forth in the decree is fair and equitable.

CP 70-73.

#### *Issues Pertaining to Assignments of Error*

1. Does Washington law prohibit a trial court from conducting factual investigations in cases pending before it?
2. Does Washington law prohibit a trial court from testifying in a trial pending before it?
3. Does it demonstrate bias or the appearance of bias when the court investigates facts material to a contested issue and testifies about them in a trial pending before it?
4. Where a trial court investigates facts material to a contested issue and testifies about them in a trial pending before it, has the court violated a party's right to due process?
5. Where a trial court investigates facts material to a contested issue and testifies about them in a trial pending before it, is the remedy remand for a new trial before a different judge?
6. Are the property distribution and the financial awards fair and equitable?

7. Does statute require the court to impute full-time income to the wife at the level appropriate to her education and income earning history?

## II. STATEMENT OF THE CASE

The parties separated in 2009 after 17 years of marriage. CP 67. They finalized their divorce after a trial in 2012, at which time the wife was 47 YOA and the husband 48. CP 8. Before marriage, both parties worked full-time, the husband in sales and the wife in accounting. RP 160-164. During the marriage, shortly after the birth of their first child, the wife stopped working outside of the home and became a “stay at home” parent. RP 164-165. She thought raising the children at home was “the most important thing to do” and that “a working mother was just not the thing to do,” as the husband recalled. RP 474.

The husband acquiesced in this decision and became the family’s sole financial provider, which, for the seven years before separation, he did as a regional vice president for a power transmission equipment manufacturer. RP 403. As part of his job, he was required to travel extensively. RP 166. He was well compensated for this work, but it took a toll on his health. For example, the air travel, with the time changes and long flights, took

a physical and emotional toll. RP 182. In late 2004, he suffered a debilitating mental health crisis, caused by anxiety and stress, and took a six-month medical leave. RP 180-181. He was eventually diagnosed with bipolar disorder. RP 403. After returning to work, he realized the position put his health at risk and, with his employer's support, transitioned into a different job at the same company, at a reduction in salary. RP 74-75. He has less air travel (RP 182) and generally believes the new position benefits his health and well-being. RP 74-75.

During the marriage, the husband's compensation allowed the family to live very well, and they spent nearly everything he made. RP 211. At the time of trial, his annual gross income was \$164,623.00. CP 86. However, his work also kept the husband out of the home frequently, as much as 60-70% of the time. RP 125-126. The wife managed the home, including the family finances, and took care of the children. RP 113, 184, 507-508. In early 2009, the wife moved funds into two certificates of deposit in her name alone. RP 275-296. The parties disputed whether the husband knew of or consented to her doing so. RP 113-115; CP 9-10. Six months later, she asked the husband to move out of the house. RP 506-507. She said the separation would be short-term,

during which time they would catch their breath and work on the marriage. RP 449-450. However, two weeks later, the wife filed a petition for legal separation. CP 2-7.<sup>1</sup> The husband was “shocked.” RP 450. The wife testified she hoped they could work it out, but it became clear within a couple months they could not. RP 167-168.

It took three years to bring the case to trial. The husband claimed much of the delay was caused by the wife. RP 32-40, 300-306. During that time, the wife continued to live with the parties’ two children (ages 17 and 11) in the family home. CP 76 (ages at trial; children are now 18 and 12). She argued this was a good choice for the children. RP 351-355. The husband argued it was not an affordable choice, especially in light of the wife’s unemployment and the fact that they had used all his income to support the family in a single household. RP 211. In fact, in the immediate aftermath of the separation, they agreed he would have to live off proceeds from sales of stock, since she would need his entire paycheck. RP 190, 448-449.

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<sup>1</sup> The petition mistakenly states the date of separation as 08/12/09, instead of 09/12/09, an error by the wife’s attorney. RP 490. The wife’s attorney, Mr. Hardesty, conceded his error late in the trial. RP 390, 490. However, early in the trial, he implied the husband had stated the date of separation incorrectly. RP 68-71, 274-275.

in accounting and, even, qualify as a CPA. "It's a choice," he testified, "on what you want to do in your life and do you want to help support your family or do you want to delay it out three to four years down the road and have somebody else, me, be the only one supporting and doing the family." RP 142. "[W]e are trying to support a family and, currently, I am the one supporting two families." RP 142. She could choose to pursue a CPA, which would pay her a lot more, rather than spend four to five more years in school to get a special education degree. RP 143. Had she pursued this route, the husband testified, she would be in a better position to support herself. RP 482.

The wife disputed she could get a job in accounting, testifying that she had tried for part-time accounting jobs during separation without any success. RP 314. However, she also testified she could not hold down a job and go to school. RP 178-179. She also said her experience working for Arthur Young, Nordstrom, King County Metro (RP 161-163) left her unqualified for any of the kinds of jobs available in the Bellingham area. RP 170. She also really did not want to work in accounting any longer. As far as improving her marketability by passing the CPA exam and getting certified as a CPA, the wife declared she simply "can't do it."

RP 385. It would take one and one-half to two years to acquire the experience necessary, and then pass the test, to be certified, she testified. RP 385-386.

The husband disagreed. From the Internet, he provided a sample listing of available part-time jobs in the area and sought to introduce into evidence information about the steps to take to become a CPA. RP 474-478. The wife's attorney conducted voir dire as to the exhibit, to ascertain its source. RP 478-480. At this point, the court "interjected," as follows:

THE COURT: Let me interject. I have gone to the website and I can take judicial notice without admitting of that which is contained on the website. [sic] It says accounting EDU dot org. That's a general website. You can click on State of Washington and then it says steps to become an accountant in Washington. But there is a separate website for which I can also take judicial notice that is maintained by the Washington State Board of Accountancy that has a Washington dot gov address and it states the experience requirements for a CPA in Washington and those requirements differ somewhat from this general site that is not maintained by the State of Washington.

RP 480. The court then examined the Husband regarding the investigation he had done. Then the court testified as follows:

THE COURT: Well, the Washington Board of Accountancy website, and I can print this out if anyone wants to see it, but it does say that among the requirements for CPA there is experience that must be obtained through the practice of public accounting,

et cetera. Employment experience must be demonstrated occurred in a work environment. Included tasks sufficient to provide an opportunity to obtain the competency and total at a minimum of 12 months, total minimum of 2,000 hours, um, and there is other requirements here. Um, and all of this has to have been obtained no more than eight years prior to that the board receiving the application.

RP 481. No action was taken on the exhibit offered by the husband and testimony proceeded to another topic.

After trial, the court essentially awarded to the wife everything she requested. Compare CP 39 and CP 99-102. The court ordered an additional two years of maintenance at \$3500 per month and a third year at \$1750 if the wife was not working full-time. CP 102. The court denied the husband's request that the marital residence be sold, allowing the wife to continue to live in the home until June 2015 and ordered the husband to pay the property taxes and to continue to pay \$500 toward the mortgage on the residence. CP 71. The court denied the husband's request that this payment be characterized as maintenance, so he might at least claim it for tax purposes. RP 587. The court denied the husband any right to reimbursement for the wife's use of the home or any credit against the proceeds for his monthly mortgage payments. RP 585. Once sold, the net proceeds were to be awarded 70% to the wife and 30% to the husband. CP 101-102.

The court also denied the husband's request to claim the children as tax exemptions for two years, since the wife had claimed them for the past two years, even though the wife did not have an opinion on whether he should be able to claim them for the next two years. RP 298-299. The court imputed income to her at half time earnings based on the minimum wage because she is a "full time student." CP 77. The court also ordered post secondary educational support, in an amount to be determined at a later date. CP 79.

As to the wife's career plans, which affect all aspects of the court's decision, the court ruled the wife's "decision to further her education in a different discipline is reasonable under the circumstances,..." CP 45, 70. The court viewed the suggestion that she find a minimum wage job as "patently unreasonable, especially when considered in light of the fact that the Husband voluntarily gave up in annual salary an amount nearly as much as the wife hopes to make when she finishes her career path." CP 45; see, also, CP 70. The court found the wife "is not able to sit for a CPA license given her lack of employment history and the Washington State requirements." CP 70. Further, the court found "[t]he Husband's testimony suggesting that the Wife could promptly

acquire a CPA license in the near future is not supported by the weight of the evidence, including the Wife's testimony and the actual Washington State Website reflecting the requirement of which the Court has taken judicial notice." CP 45.

The husband timely appealed. CP 103-143.

### III. ARGUMENT

#### A. THE COURT VIOLATED ER 605, FEDERAL AND STATE DUE PROCESS PROTECTIONS, AND THE APPEARANCE OF FAIRNESS DOCTRINE WHEN IT CONDUCTED A FACTUAL INVESTIGATION AND TESTIFIED AS TO THE RESULTS.

There was really only one issue in this case: whether and when the wife should be required to shoulder some of the financial responsibility for herself and the children. RP 28-41. The husband argued that, with a degree in accounting and business (double major, magna cum laude) and experience with highly creditable employers, with one child about to enter college and another in middle school, the wife could have re-entered the market as an accountant or, even, improved her position by passing the CPA exam and becoming a CPA. The wife argued she wanted to change careers, requiring an additional four to five years of education and resulting, if hired, in a job paying only \$35,000 a year. She did not want to work at all while attending school. Into

the midst of this contest, the court interjected itself as a witness testifying to evidence it independently sought. This is forbidden and utterly taints the results.

First, under Washington law, it is reversible error for a judge to search for and rely on “extrinsic evidence to be applied in corroborating or discrediting the testimony of a witness.” *Christensen v. Gensman*, 53 Wn.2d 313, 318, 333 P.2d 658 (1958). This rule is grounded fundamentally in our commitment to a trial that is not only fair but appears fair. *Elston v. McGlauflin*, 79 Wash. 355, 359, 140 P. 396 (1914). That is, “[t]he law goes farther than requiring an impartial judge, it also requires that the judge appear to be impartial.” *State v. Romano*, 34 Wn. App. 567, 569, 662 P.2d 406 (1983). “Without this the judgments of courts would no longer command or deserve public confidence, and without confidence courts have no function to perform.” *Elston*, 79 Wash. at 359. This is the principle at stake in this case.

In *Romano*, the trial judge contacted several jewelers to verify the defendant’s statements about his income. In *Elston*, the court examined the premises in dispute in search of extrinsic evidence. Here, the court searched the Internet, found information

supporting the wife's position, interjected that information into the proceedings, and relied on that information in reaching its decision.

This conduct is expressly addressed in the Code of Judicial Conduct, which provides:

A judge shall not investigate facts in a matter pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law.

CJC Canon 2.9(C).<sup>2</sup> As the comment makes clear, “[t]he prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.” *Id.*, *Comment* (6) (emphasis added). This comment, added to the model code in the past decade, expressly enlarges the scope of the rule to address concerns about electronic media. Among these concerns is the reliability of the search and the searcher, “[b]ecause facts obtained on the Internet and in other electronic media are often incomplete or incorrect...” David H. Tennant & Laurie M. Seal, "Judicial Ethics and the Internet: May

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<sup>2</sup> Relatedly, CJC Canon 3(A)(4) declares a judge “should ... neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.” The provision allows the judge to seek advice “on the law” by means of “amicus curiae only,” and then only if the parties have an opportunity to respond. CJC Canon 3(A)(4) (emphasis added).

Judges Search the Internet in Evaluating and Deciding a Case?" 16  
*Professional Lawyer* 2, 16 (2005).

Not only is the judge prohibited from investigating, the judge also is prohibited from testifying. ER 605 expressly provides: "The judge presiding at the trial may not testify in that trial as a witness." The comment to the rule declares it to be "absolute; there are no limitations or qualifications." *Judicial Council Comment 605*, reproduced at Tegland, *5A Wash. Pract.* § 605.1. The rule also saves trial counsel "from the predicament of choosing between remaining silent and thereby waiving objection, or objecting, which is apt to be considered an offensive attack on the judge's integrity." *Id.* The rule provides that "[n]o objection need be made in order to preserve the point." Thus, it is "an exception to RAP 2.5, which establishes the general principle that a claim of error will not be considered on appeal unless an objection was made at trial." Tegland, *5A Wash. Pract.* § 605.5.

Here, too, the fundamental concern is with fairness. Not only do the parties have no notice of the judge's testimony, no ability to cross-examine, etc., but the parties, or, at least, one party, necessarily knows the trial is taking place in the absence of a neutral arbitrator. Simply, the judge has assumed the role of

advocate for one of the parties. Obviously, this, too, violates judicial conduct canons. CJC Canon 3(A)(5) mandates that judges “shall perform judicial duties without bias or prejudice.” Similarly, CJC Canon 3(D) requires judges “to disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which: ... the judge has ... personal knowledge of disputed evidentiary facts concerning the proceeding; ....”

These principles are absolutely fundamental to our justice system, nothing less than an aspect of due process. U.S.Const., amend. 14; Const. art. I § 3. “Due process, the appearance of fairness, and canon 3(D)(1) of the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality may be reasonably questioned.” *State v. Ra*, 144 Wn. App. 688, 704-705, 175 P.3d 609 (2008).

These concerns are longstanding. As Justice Cardozo said, the “function of the judges ‘is to determine cases...’ They are not adjuncts or advisers, much less investigating instrumentalities...” *In re Richardson*, 160 N.E. 655, 658 (N.Y. 1928). Certainly, the temptation must be at times considerable, made worse, no doubt by various technologies. See, e.g., *In re Anderson*, 814 P.2d 773

(Ariz. 1991) (judge censured for repeatedly using telephone in courtroom to contact “friends of the court” to determine cases). With the Internet at the judge’s fingertips, these principles are tested. See, e.g., *N.Y.C. Medical & Neurodiagnostic, P.C. v. Republic Western Insurance Company*, 8 Misc. 3d 33, 798 N.Y.S.2d 309, 313 (N.Y. App. Div. 2004) (court “usurped the role of counsel and went beyond its judicial mandate of impartiality” when it conducted Internet search). But, for that same reason, these proscriptions are all the more important. There is great risk to core principles of justice if judges are deciding cases based, not on the evidence presented by the parties, but based on independent “Google” searches, which may or may not even be disclosed to the parties.

Finally, this analysis is not altered by the court purporting to take judicial notice of the facts it found in its investigation. For one thing, whatever the court was looking at on the computer is not part of the record, so it can hardly be ascertained whether it meets the requirements of ER 201. In any case, whether or not the facts themselves are “adjudicative facts,” the court is still prohibited from gathering those facts itself and testifying to them. In addition to the many problems with this kind of “evidence” as evidence, the bottom

line is that the proceedings are no longer fair; certainly, they do not appear fair.

Here, the results suggest an actual bias, since they skew so completely in the wife's favor. However, it is not the husband's burden to prove prejudice. *Sherman v. State*, 128 Wn.2d 164, 205, 905 P.2d 355 (1995). Rather, "[t]he CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating." *Id.* (emphasis added). In *Sherman*, the trial judge had his clerk investigate the employer's policy for monitoring a physician with a history of drug abuse. Our Supreme Court held the judge "violated the unambiguous dictates" of CJC Canon 3(A)(4). Accordingly, the test is not whether the litigant was harmed by the judicial misconduct, but whether a reasonable person would question the judge's impartiality. Certainly, that test is satisfied here. On a critical factual issue, the court undertook an investigation and testified to the results of that investigation and relied on his own testimony to resolve the parties' dispute.

This conduct is especially troubling and disheartening since the husband expressed faith in the judge's impartiality after the judge advised the parties that he and the wife's attorney play in a

band together. RP 4-5. Notably, the husband had waited a long time for a trial date and was eager to put an end to the protracted proceedings. But the judge is human and perhaps the close affiliation with the mother's trial counsel – musical affinities, hours of rehearsal, late night performances – unconsciously influenced him. Regardless whether the judge's intrusion into the proceeding was consciously or unconsciously biased, it completely demolishes any confidence in the judge's neutrality. Nothing can remedy this problem but a new trial before a different judge. *State v. Ra*, 144 Wn. App. at 705.

**B. THE DISTRIBUTION AND FAMILY SUPPORT AWARDS ARE INEQUITABLE.**

Because of the fatal defect in these proceedings, it is unnecessary to challenge the substance of the court's ruling. However, in short form, the husband challenges the distribution and financial awards.

In a dissolution action, the trial judge must make a "just and equitable" distribution of the marital property. RCW 26.09.080. The equitable division of property does not involve mathematical precision but fairness in light of "all the circumstances of the marriage, both past and present, and an evaluation of the future needs of the parties." *In re Marriage of Crosetto*, 82 Wn. App. 545,

556, 918 P.2d 954 (1996). Relatedly, the court's award of maintenance is governed by the parties' circumstances. RCW 26.09.090. In respect of both these assessments, nothing was more crucial than the wife's future income capacity.

Importantly, spousal maintenance is not a matter of right. *Friedlander v. Friedlander*, 80 Wn.2d 293, 297, 494 P.2d 208 (1972). Rather, the purpose of maintenance is to support a spouse until he or she is able to become self-supporting. *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). Here, the wife could have become self-supporting by a quicker route than she chose, by returning to the profession in which she was already qualified and experienced. Yet, from the start, she argued she lacked the "potential ... to ever come anywhere close" to making income like her husband's. RP 30. Actually, it seemed she lacked the desire. At her age, and with her background, the wife had the capacity to pursue a highly remunerative accounting career. The trial court simply failed to note the distinction between the ability to earn and the desire to earn.

The wife's choice had consequences for both the maintenance analysis (her "need") and for the property distribution (future earnings potential). It also has consequences for child

support, with the mother basically getting a pass on fulfilling her obligation to support the children in their minority, but also for postsecondary education. In the short and the long term, while she pursues her passion, the husband almost singlehandedly must support the children. When the court viewed this as fair, it abused its discretion.

C. THE TRIAL COURT ERRED BY IMPUTING INCOME TO THE WIFE AT LESS THAN MINIMUM WAGE.

The trial court imputed income to the wife at half the minimum wage because she is attending school. CP 77. In two respects, this is wrong. The court must impute income to the voluntarily unemployed parent and it must do so at a rate compliant with statute. RCW 26.19.071(6).

First, the income must be based on full-time employment. See *In re Marriage of Pollard*, 99 Wn. App. 48, 54, 991 P.2d 1201 (2000) (income imputed to part-time working mother even though her purpose for working part-time was to care for her children). There the court observed that while it is “laudable” to work less to care for children, “these actions cannot adversely affect” child support obligations. *Id.* at 54; accord *Dewberry v. George*, 115 Wn. App. 351, 62 P.3d 525 (2003). The child support obligation falls on

both parents. *In re Marriage of Brockopp*, 78 Wn. App. 441, 445-46, 898 P.2d 849 (1995).

Indeed, child support serves two purposes: to insure support adequate to meet the needs of children commensurate with the parents' income, resources, and standard of living and to equitably apportion that support obligation between the parents. RCW 26.19.001.<sup>3</sup> In other words, the law aims to provide for the children and to do so fairly. It simply is not fair for the mother, with her degrees in accounting and business, her employment experience, and her age, to be imputed income at half the minimum wage. She does not appear to meet the standards for application of the minimum wage, let alone half the minimum wage.<sup>4</sup>

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<sup>3</sup> The statute provides:

The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

<sup>4</sup> RCW 26.19.071(6)(d) provides for imputation at the minimum wage:

...where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

Here, the court had an independent obligation to ensure the correctness of the support order, since “[i]t is well settled that parents cannot agree to waive child support obligations. *In re Marriage of Hammack*, 114 Wn. App. 805, 808, 60 P.3d 663 (2003). The children have a right to the full support of both their parents. *In re Marriage of Pippins*, 46 Wn. App. 805, 808, 732 P.2d 1005 (1987). The child support order in this regard must be vacated and a correct order entered, imputing income to the mother at a level compliant with RCW 26.19.071(6).

#### IV. CONCLUSION

For the foregoing reasons, the court’s orders should be vacated and this cause remanded for a new trial before a different judge.

Dated this 16th day of July 2013.

RESPECTFULLY SUBMITTED,



PATRICIA NOVOTNY  
WSBA #13604  
Attorney for Appellant

FILED IN OPEN COURT  
12/13 2012  
WHATCOM COUNTY CLERK  
Deputy W

ORIGINAL

Superior Court of Washington  
County of WHATCOM

In re the Marriage of:

JULIE DAVIS

No. 09-3-00642-3

and

Petitioner,

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

PAUL DAVIS

Respondent.

I. Basis for Findings

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

Petitioner.

Petitioner's Lawyer.

Respondent.

Respondent's Lawyer.

Other:

Christin Roger, Betty Sumner

II. Findings of Fact

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

199

1     **2.1    Residency of Petitioner**

2           The Petitioner is a resident of the State of Washington.

3     **2.2    Notice to the Respondent**

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

5                 The respondent was served in the following manner:

6           Personal Service; 9/30/2009

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8     **2.3    Basis of Personal Jurisdiction Over the Respondent**

9           The facts below establish personal jurisdiction over the respondent.

10                 The respondent is currently residing in Washington.

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

13     **2.4    Date and Place of Marriage**

14           The parties were married on 5/30/92 at Tacoma, WA.

15     **2.5    Status of the Parties**

16           Husband and wife separated on 9/12/09.

17     **2.6    Status of Marriage**

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

20     **2.7    Separation Contract or Prenuptial Agreement**

21           There is no written separation contract or prenuptial agreement.

22     **2.8    Community Property**

23           Other:

24           See Paragraph 2.21

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**2.9 Separate Property**

Other:

See Paragraph 2.21

**2.10 Community Liabilities**

Other:

See Paragraph 2.21

**2.11 Separate Liabilities**

Other:

See Paragraph 2.21

**2.12 Maintenance**

Maintenance should be ordered because:

See Paragraph 2.21

**2.13 Continuing Restraining Order**

Does not apply.

**2.14 Protection Order**

Does not apply.

**2.15 Fees and Costs**

There is no award of fees or costs.

**2.16 Pregnancy**

The wife is not pregnant.

**2.17 Dependent Children**

The children listed below are dependent upon either or both spouses.

Name of Child	Age	Mother's/Father's Names
SHANE	11	JULIE DAVIS PAUL DAVIS

1 ANDREA

17

JULIE DAVIS  
PAUL DAVIS

2  
3 **2.18 Jurisdiction Over the Children**

4 This court has jurisdiction over the children for the reasons set forth below:

5 This state is the home state of the children because the children lived in  
6 Washington with a parent or a person acting as a parent for at least six  
7 consecutive months immediately preceding the commencement of this  
8 proceeding.

9  
10 **2.19 Parenting Plan**

11 The parenting plan signed by the court May 2, 2011, is approved and incorporated as  
12 part of these findings.

13  
14 **2.20 Child Support**

15 There are children in need of support and child support should be set pursuant to the  
16 Washington State Child Support Schedule. The Order of Child Support signed by the  
17 court on this date or dated the date and the child support  
18 worksheet, which has been approved by the court, are incorporated by reference in  
19 these findings.

20  
21 **2.21 Other:**

22 **I. PARENTING PLAN**

23 A. The parties entered a Stipulation and Order Re Parenting Plan on May 2,  
24 2011 and a final Parenting Plan was entered on that date. The Parenting Plan entered  
25 by the court May 2, 2011, shall be the final Parenting Plan in this matter.

**II. CHILD SUPPORT**

A. For purposes of child support, and as agreed to by the parties, the father's  
gross monthly income shall be \$13,718.62, which is comprised of \$11,291.67 of wages  
and salaries, \$60.62 of interest and dividend income and \$2,366.33 in commissions.  
His net monthly income, after deductions of income taxes, FICA, voluntary retirement  
contributions as limited by statute, and \$3,500.00 per month maintenance, is \$7,469.20.  
The mother shall have income imputed to her at minimum wage, half-time, in the amount  
of \$783.50 mo. gross, together with \$3,500.00 mo. in maintenance for a total gross  
monthly income of \$4,283.50. After deduction for income taxes and FICA, the mother's  
net monthly income is \$3,846.08.

1  
2  
3 B. Currently, the parties' daughter is 17 years old and the parties' son is 11.  
4 Child support shall be calculated on that basis through May, 2013. Beginning June,  
5 2013, the child support shall be recalculated for two children of 12 years and older.

6  
7 C. The parties have stipulated that each parent shall contribute to  
8 post-secondary educational expenses of the children. The percentages and amounts of  
9 those contributions are to be determined at a later time.

10  
11 D. Under the unusual facts of this case, the husband does not make a  
12 contribution of time to the raising of the children. The children are both engaged in  
13 extra-curricular recreational activities and the husband shall be required to contribute  
14 financially to those activities on a proportional basis with his share of the parties'  
15 combined income.

16  
17 E. As long as the children are dependent on the parties for their support, the  
18 husband shall maintain his current life insurance policies through his employment with  
19 Hubbell Incorporated, naming the children as his beneficiaries, with appropriate  
20 provisions directing those funds to be administered by the mother on behalf of the  
21 children.

### 22 III. SPOUSAL MAINTENANCE

23 A. The husband has far greater earning capacity than the wife, which will not  
24 change even with the passage of time and the completion of the wife's career path. The  
25 husband is paid numerous perquisites for many day to day items that most other people  
in the work force have to pay for. The husband is thus able to maintain a higher lifestyle  
than most persons with an equivalent income.

B. The wife's decision to further her education in a different discipline to become  
a special education teacher is reasonable under the circumstances and the suggestion  
that she find a minimum wage job at this time is unreasonable, especially when  
considered in light of the fact that the husband voluntarily gave up in annual salary an  
amount nearly as much as the wife hopes to make when she finishes her career path.  
The wife is not able to sit for a CPA license given her lack of employment history and the  
Washington State requirements.

C. This is a relatively long marriage of 17 years, though it hasn't reached the 25  
year milestone. The parties cannot hope to maintain the same standard of living that  
they did when they lived together. The wife has needs as stated in the amount of  
\$3,500.00 per month spousal maintenance to be paid until September, 2014 and this is  
consistent with the statutory goals. The husband has the ability to meet those needs  
without significant impairment of his lifestyle. If she is able to find full-time employment  
by September 30, 2014, the maintenance will stop. If she is unable to find full-time  
employment by that date, the maintenance shall continue for one more year at the rate  
of \$1,750.00 per month, ending September 30, 2015 or the first day of the month  
following her full employment.

1  
2 D. The husband is virtually debt-free and the wife has incurred significant  
3 post-separation debt both by way of consumer credit, attorney's fees and student loans.

4 E. The husband has the ability to pay the spousal maintenance as ordered  
5 without significant impairment of his lifestyle.

#### 6 IV. PROPERTY DIVISION

7 A. The parties own a home on South Hills in Bellingham, WA. The value is  
8 approximately \$427,500.00 and it is encumbered with a mortgage of approximately  
9 \$207,000.00. Currently the wife and children reside in the property and testimony has  
10 established that it is reasonable for the wife to continue to live in the family home with  
11 the children until their son leaves middle school at the end of spring, 2015.

12 B. The house shall be listed for sale on or before June 1, 2015. Upon the sale,  
13 and after payment of all costs of sale and encumbrances, each party will first be  
14 reimbursed for any property tax that he or she has paid since the date of separation and  
15 the remaining proceeds should be divided 70% to the wife and 30% to the husband.

16 C. Until the property is sold, the wife shall be responsible for the day to day  
17 maintenance of the property, maintaining homeowners insurance and to pay all but  
18 \$500.00 of the monthly mortgage. The husband shall be responsible for paying  
19 \$500.00 per month towards the mortgage, and the Whatcom County property taxes on  
20 the property as they come due.

21 D. At separation the parties had a Nissan Pathfinder with equity of  
22 approximately \$9,700.00, which was traded in on a Hyundai Sante Fe, and a boat and  
23 trailer worth approximately \$2,500.00, which should be awarded to the wife. Each of  
24 the parties had a small IRA at separation and each should be awarded his or her  
25 respective IRA.

26 E. The husband has earned retirement benefits during the marriage. The  
27 community portion of the Hubbell Incorporated Retirement Plan for Salaried Employees  
28 (that portion earned between the date of marriage and the date of separation), shall be  
29 divided equally between the parties pursuant to a Qualified Domestic Relations Order.  
30 The husband shall receive the remainder of that benefit. The husband also has  
31 contributed to a 401(k) managed by T. Rowe Price, both during the marriage and after  
32 the separation. The 401(k) was worth approximately \$71,167.00 at the time of trial,  
33 approximately \$44,245.00 of which was contributed after the date of separation and  
34 which would be classified as the husband's separate property. However, it is equitable  
35 under the circumstances to award the wife the sum of \$35,000.00 of the total value of  
36 the 401(k).

37 F. The husband exercised Hubbell Incorporated stock options that were granted  
38 during the marriage, and which vested both before and after the separation, as part of an  
39 incentive award plan. The husband has sold some of the stocks. Those stocks that  
40 vested after the date of separation were and are the husband's separate property. He

1 currently has 649 shares of Hubbell Incorporated Common B stock at a value of  
2 approximately \$80.00 per share, which should be awarded to him.

3 G. The husband, both during the marriage and after separation, accumulated  
4 Alaska air miles with no apparent monetary value and Hilton Hotel points valued at  
approximately \$11,760.00, all of which should be awarded to the husband.

5 H. There was insufficient evidence presented at trial for the court to make a  
6 finding as to the value of furniture and furnishings in the family home. The husband has  
7 stated that he has no need of them. The court directs that those items remain in the  
8 family home and if the husband wishes to be awarded any specific items, he can notify  
the wife in writing within 30 days. If need be, there can be further hearing to establish a  
value, but if there is no action taken within 30 days of the Decree, they will be presumed  
to be the wife's and may remain with the home.

9 I. The husband borrowed \$5,000.00 from his sister and owes \$137.00 on a  
10 Whidbey Island Bank Visa and \$209.00 on a Hilton Visa, all of which debts were  
11 incurred after separation. He has also been paying on a Hilton Visa which was extant  
at the time of separation that has a current balance of \$1,165.55. The husband shall  
continue to be responsible for those debts.

12 J. The wife has been paying on a Target credit card, which was extant at the  
13 separation and which has a current value of approximately \$1,259.00. Since separation  
14 she has borrowed approximately \$54,920.00 for attorney's fees and \$6,527.00 for other  
15 items from her parents, has Wells Fargo credit card debt of \$2,784.00, Banana Republic  
16 Visa of \$6,915.00, Discover Card of \$8,602.00, Chase Visa of \$22,014.00 and student  
loans of approximately \$20,488.00 She should be responsible for continuing to pay  
those debts.

17 K. The court has adopted the wife's property division, which does result in a  
18 disproportionate share being awarded to the wife. The division of the parties' property,  
both separate and community, is fair and equitable in consideration of all of the  
evidence.

19 L. There were three Certificates of Deposit, which were in existence around the  
20 time of the separation of the parties that the wife cashed as part of the normal course of  
21 business or for necessities of life. Her cashing and use of those funds did not violate  
any court orders.

### 22 III. Conclusions of Law

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

#### 24 3.1 Jurisdiction

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

1 **3.2 Granting a Decree**

2 The parties should be granted a decree.

3 **3.3 Pregnancy**

4 The wife is not pregnant.

5 **3.4 Disposition**

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

11 **3.5 Continuing Restraining Order**

12 Does not apply.

13 **3.6 Protection Order**

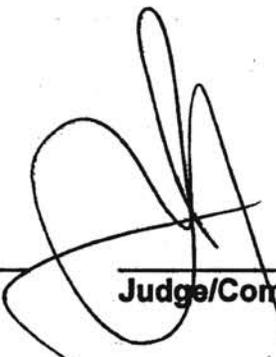
14 Does not apply.

15 **3.7 Attorney Fees and Costs**

16 Does not apply.

17 **3.8 Other**

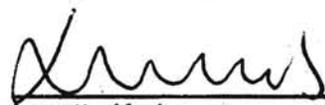
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19 Dated: 12/13/12

  
\_\_\_\_\_  
Judge/Commissioner

20  
21 Presented by:

Approved for entry:  
Notice of presentation waived:

22  
23   
\_\_\_\_\_  
Ronald C. Hardesty 12029 Date  
Signature of Party or Lawyer/WSBA No.

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Lynette Korb 34346 Date  
Signature of Party or Lawyer/WSBA No.

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