

No. 72148-8

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

CORRIE WEBER,

Respondent,

v.

BLAINE J. WEBER,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE TANYA L. THORP

BRIEF OF RESPONDENT

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APPELLANT'S BRIEF
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I. INTRODUCTION

Appellant, Blaine Weber (hereinafter, “Blaine”), requests this court reverse the trial court orders issued on May 6, 2014 and June 26, 2014, requiring him to pay spousal maintenance to the Respondent, Corrie Weber (hereinafter, “Corrie”) in the total amount that the parties’ Property Settlement Agreement (PSA) provided after dissolution of a 33 year marriage.¹ Specifically, Blaine asks this court to allow him to reduce the total sum of maintenance paid to Corrie by an aggregate amount of \$171,915, despite the prior Court Orders which only modified his obligation temporarily by suspending and reducing maintenance pending further reviews.

During the parties’ marriage, Blaine’s income ranged between \$368,544 and \$514,958 per annum. From 2009 to 2011, Blaine’s income temporarily decreased. However, Blaine’s total income from Weber Thompson for 2012 was \$641,050 and for 2013 was \$816,977. Despite the significant sums Blaine earned after his business rebounded, Blaine seeks to limit his spousal maintenance to a minimum monthly payment of \$2,000 and a maximum payment of \$4,000 ignoring the plain language of the modification orders which do not absolve him from paying the full amount of maintenance in the PSA.

¹ The parties’ first names will be used for ease of reference. No disrespect is intended.

At the time of their divorce in 2008, the parties' most significant asset was the community architectural firm, Weber Thompson. This asset was awarded to Blaine at a value of \$700,000. To effectuate the total property division in the PSA, Blaine signed a Promissory Note to Corrie as an equalizing payment in the amount of \$450,000 with no interest for 12 months, and then 6% interest per annum unless Blaine defaulted at which time statutory interest would accrue. Barely a year after the PSA was signed, Blaine submitted a Petition for Modification asking to terminate spousal maintenance in its entirety and also submitted a CR 60 motion to set aside the provision in the PSA requiring him to pay Corrie the \$450,000. Essentially, Blaine attempted to "undo" the entire settlement agreement.

Pursuant to Blaine's Petition to Modify, on June 26, 2009, the Court modified the spousal maintenance by *suspending* Blaine's payments and scheduling review hearings. The Court did not absolve Blaine from paying the total amounts enumerated in the PSA but granted him temporary relief because his income had diminished.

On July 29, 2011, consistent with the Order temporarily suspending maintenance, the Court established a formula for Blaine to pay maintenance and specifically found that the case involved a 33 year

marriage and an original 9 year spousal maintenance obligation. The court ordered that Blaine would pay a minimum of \$2,000 per month, plus 50% of any draws over \$6,000 per month with the provision that the maintenance would not exceed the original terms of the property settlement agreement. Blaine resumed making payments under the formula. However, both the 2009 and 2011 orders set future review dates due to the expectation of a change in Blaine's financial circumstances at a later date. Neither the 2009 Order nor the 2011 Order absolved Blaine from paying the same amounts as the PSA required and it was the intent of the Court that Blaine pay maintenance pursuant to the "original terms of the property settlement agreement".

By 2012, Blaine's income rebounded, significantly surpassing what he had earned while the parties were married. Even though he had the ability to make full payments on his maintenance obligation, and to repay the amount of maintenance that had been suspended, Blaine unilaterally capped his payments at \$6,000 per month. In February 2014, Blaine unilaterally lowered his payments to \$4,000 per month. When Corrie objected, Blaine filed a Motion for Declaratory Relief asking the Court to "declare" he did not have to comply with the original terms of the PSA by paying Corrie the full amount of maintenance.

On May 16, 2014, Commissioner Canada Thurston denied Blaine's Motion and found that what he was asking the Court to do was "unconscionable" as it related to retroactively modifying the terms of the original PSA. On Blaine's Motion for Revision, Judge Tanya Thorp affirmed Commissioner Canada Thurston's findings and Order and also denied Blaine's motion for declaratory relief.

From the time of entry of the 2009 order through 2014, Blaine accrued an arrearage of \$171,915.76.

This court should affirm the trial court's decision, and remand for entry of a decision to require Blaine to pay Corrie the payments that were suspended, missed, and deliberately underpaid.

II. STATEMENT OF ISSUES IN RESPONSE

1. When parties to a Property Settlement Agreement agree to a specific amount of spousal maintenance to be paid and the Court later temporarily modifies and suspends those payments should the payor have to comply with the original terms of the Property Settlement Agreement when he has the ability to do so?
2. Where a Property Settlement Agreement contains multiple, separate duties and financial obligations of each party, does the fulfillment of one obligation (payment of a promissory note) substitute for fulfillment of other obligations (payment of spousal maintenance)?
3. Should the Appellate Court award Corrie attorney's fees for this appeal pursuant to RCW 26.09.140 and RAP 18.1?

III. STATEMENT OF THE CASE

Appellant, Blaine, and Respondent, Corrie Weber, were married in August of 1974. (CP 130) During the course of their marriage, Blaine founded Weber + Thompson, LCC in 1987, a successful and highly regarded architecture firm in Seattle, Washington. (CP 98) In 2007, his adjusted gross income reached \$514,958.00 (CP 220).

Leading up to the parties' separation and divorce, Corrie's physical and emotional health begin to seriously deteriorate when she discovered Blaine was having an extramarital affair. (CP 114) Corrie was tested for STDs and later for cervical cancer following abnormal pap smears. (CP 114) This led to a bout of severe depression and anxiety attacks which made it difficult for her to function. (CP 114)

In May 2006, the parties separated. At the time of separation, Corrie was unemployed and had not worked since September 2005. Prior to September 2005, Corrie was employed as a legal assistant where she earned approximately \$60,000.00 a year. (CP 98) During the divorce, Corrie was faced with the realization that her income earning potential was much more limited than Blaine's, and that a woman starting a career at age 55 years old would not allow for much growth or career enhancement. (CP 98, 375) During the parties' separation, Corrie

returned to school, the Art Institute of Orange County, to study graphic design until the onset of the threat of the economic downturn of the market. Her income prospects were extremely poor relative to Blaine's. Although Blaine's business was affected by the economic downturns of 2009-2011, it appears that by 2012, his business income had fully recovered. (CP 99)

During their 33 years of marriage, the parties accumulated mutual assets, including but not limited to real property, business interest, retirement accounts, bank accounts, personal property, and life insurance policies, with a net value of \$2,018,919. (CP 146-147) After two separate mediation sessions with retired Judge Larry Jordan in November 2007 and February 2008, the parties reached a settlement agreement on March 14, 2008. (CP 132) In order to effectuate a 56%/44% division of the assets and liabilities, a transfer payment of \$465,000.00 was awarded to Corrie, secured by a promissory note. (CP 134-135) The terms of both the Property Settlement Agreement and Decree of Dissolution reflect the agreement reached between the parties. (CP 298) Similar to most settlement agreements, both parties made compromises which took into consideration a variety of factors. For Corrie, she agreed to the terms of

their settlement “specifically because Blaine agreed to pay me the spousal maintenance set forth above”. (CP 115)

The spousal support provision in the Property Settlement Agreement reads as follows:

“Maintenance. The husband shall pay spousal maintenance to the wife in the sum of \$6,000.00 per month for 72 months commencing March 1, 2008, and ending February 28, 2014. The husband shall pay spousal maintenance to the wife in the sum of \$4,000.00 per month for 36 months commencing March 1, 2014 and ending February 29, 2017. Maintenance shall be paid monthly on the first of each month via automatic wire transfer to an account designated by the wife. Maintenance shall terminate on the wife’s remarriage or death, or end of term, whichever first occurs....”

(CP 133-134)

In March of 2009, one year after entry of the parties divorce decree, Blaine filed a Petition for Modification of the Spousal Maintenance claiming that he did not have sufficient funds to pay Corrie. (CP 115). Blaine filed his Petition even though he was able to purchase a \$450,000 condominium as an investment in 5/2008, he invested \$33,500 in an LLC in 06/2008, inexplicably paid an attorney \$62,000 in 06/2008 related to his LLC, invested \$124,904 in a business, Cherry Pick LLC in 08/2008, invested \$9,610 into his 401k in 9/2009 and purchased a \$1.2 million condominium with his fiancée in 11/2009. (CP 119)

Pursuant to Blaine's Petition, on June 26, 2009 the trial court entered an order specifically declining to terminate maintenance and stated as follows:

The court denies the request to terminate maintenance but will suspend the maintenance for the months of June, July, Aug and September, 2009 pursuant to the authority set forth in *Drlik*, 121 Wn. App. 269 (2004). The court will review the maintenance suspension on September 25, 2009 and is continuing the trial to that date.

(CP 164)

Three months after entry of this order, Blaine brought a CR 60 motion to vacate the requirement that he pay me the \$450,000 Promissory Note enumerated in the property settlement agreement. That motion was denied on November 5, 2009. Blaine revised that motion and order. That revision was denied. Blaine then appealed the denied revision to the Court of Appeals, Division I, (Case No. 64739-3-1) which appeal was also denied. Corrie incurred substantial attorney's fees responding to Blaine's court actions. (CP 116)

Pursuant to Court Order, the review to modify spousal maintenance occurred on July 11, 2011. At that time, the court entered an order which in pertinent part states as follows:

**...2) Court finds a basis to modify the maintenance downward.
3) Court will impute income to Mr. Weber in the amount of \$100,000.00 per year. Court will impute income to Ms. Weber**

in the amount of the median income for her age. This case involves a 33 year marriage and an original 9 year spousal maintenance obligation.

4) The court recognizes that draws to Mr. Weber may not be income.

5) The court modifies the maintenance obligation to \$2,000.00 per month beginning August of 2011. Further if Mr. Weber receives a draw of more than \$6,000.00 such that if he received \$10,000.00, his maintenance obligation for that month shall be \$2,000.00 + \$2,000.00 but maintenance shall not exceed the terms of the original settlement agreement.

...

7) This matter shall be reviewed in July of 2012. If Mr. Weber has income not just draws then it may be brought sooner on the Family Law Motions Calendar.

...” (Emphasis added).

(CP 117)

Blaine incorrectly interpreted the order to cap his maintenance obligation at \$6,000.00 per month. However, there is no cap other than “the maintenance shall not exceed the terms of the original settlement agreement.” The terms of the original settlement agreement required that Blaine pay 72 months of spousal maintenance at \$6,000.00 per month beginning March, 2008 and \$4,000.00 per month for 36 months from March, 2014 until February 2017. (CP 118, 134-135)

By 2012, Blaine was earning sufficient income to pay Corrie the originally agreed upon \$6,000.00 per month pursuant to the above

referenced formula. (CP 99). In fact, Blaine's 2012 income tax return reflected \$641,050 in income from Weber Thompson. (CP 289, 574) Despite this significant income, Blaine did not pay Corrie in excess of \$6,000.00 per month, though had he applied the above court ordered formula correctly, he should have. Blaine continued to pay Corrie \$6,000.00 per month until March 1, 2014, at which point he unilaterally reduced the payment from \$6,000.00 per month to \$4,000.00 per month. (CP 123) Again, Blaine had significant income in 2012 and 2013 and could have made up his past due maintenance. His 2013 income tax return reflected \$816,977 in income from Weber Thompson. (CP 289, 512)

When Corrie inquired as to why Blaine stopped paying her the full amount of maintenance, he asserted that he was seeking to uphold the application of the listed dates to reduce his spousal maintenance obligation contained in the PSA. Corrie asserted that Blaine could not cite the dates as a basis to discontinue or reduce the monthly payment because he was not current in the previous dates. (CP 295-297)

Blaine does not cite a lack of income as the basis for reducing the payment, but, instead argues that regardless of whether or not he met the terms of payment contained in the PSA, and that the court modified spousal maintenance with a formula tied to his income, he would seek to

reduce and terminate maintenance as though he had actually paid it. (CP 228, 327)

Rather than setting a review hearing on spousal maintenance as contemplated in the trial court's July 29, 2011 order, Blaine instead filed a Motion for Declaratory Relief asking the court to absolve him from the additional spousal maintenance payments he owed to Corrie.² (CP 2) On May 16, 2014, Commissioner Canada Thurston denied Blaine's Motion as follows:

It is hereby ordered that the order of 2009 on the motion calendar was not a modification of the maintenance order to that in the term suspended did not under any circumstance terminate or modify his obligation under the original PSA.

At the original and final TBA the trial court had the authority to retroactively modify the maintenance back to the date of filing of the modification but the court did not.

For this court to make any changes retroactively to the PSA would not only be unconscionable, it would violate the terms of arms length bargaining that set up the PSA and would be analogous to an impermissible retroactive modification of maintenance, similar to C/S as stated in Abercrombie, 105 Wn.App. 239, 2001.

(CP 394)

² Blaine only filed his motion after receiving a letter from Corrie asking him to comply with the terms of the 2009 and 2011 orders and PSA and indicating that she would bring this matter before the Court if he did not do so. Further, initially, Blaine failed to file any financial documents pursuant to Local Family Law Rule 10 with his motion. Corrie's initial and timely response objected to Blaine's failure to comply with LFLR 10. Blaine struck his motion and then re-noted it providing some of the documents required by LFLR 10.

Blaine filed a Motion for Revision of Commissioner Canada
Thurston's Order. (CP 367-373). On June 6, 2014, Judge Tanya L. Thorp,
denied Blaine's motion as follows:

1. **Respondent's Motion for Revision is DENIED.**
2. **The court finds that Marriage of Drlik, 121 Wn.app. 269 (2004) is the law of this case and because the Order of June 26, 2009 and July 11, 2011 and the order of 9/2/11 are clear on their face regarding spousal maintenance being suspended and then providing a formula for future maintenance to be paid, there is no basis for Respondent's motion for declaratory relief. This court affirms the decision and findings of the Court Commissioner consistent with this Court's oral ruling and these additional findings.**

(CP 392-393).³

IV. ARGUMENT

A. **THE TRIAL COURT PROPERLY DENIED BLAINE'S MOTION FOR DECLARATORY RELIEF PURSUANT TO RCW 7.24.010, THE UNIFORM DECLARATORY JUDGMENTS ACT.**

The trial court properly denied Blaine's request for declaratory relief. Blaine improperly moved for a declaratory judgment regarding what was really a retroactive request to modify his outstanding spousal maintenance obligation. To avail himself of the Uniform Declaratory Judgments Act requires the threshold requirement "that a justiciable

³ Corrie provides a transcript of Judge Thorp's oral ruling referenced in her ruling as Appendix A to this Brief.

controversy must exist between the parties.” Osborn v. Grant County, 130 Wn.2d 615, 631, 926 P.2d 911 (1996). A justiciable controversy is

“(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.”
To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (alteration in original)
(quoting Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). “Absent these elements, the court ‘steps into the prohibited area of advisory opinions.’ ”

Bloome v. Haverly, 154 Wn. App. 129, 145 (2010).

Blaine did not argue to the trial court the parties’ current respective financial positions regarding an appropriate amount of spousal maintenance as contemplated by the July 11, 2011 order. As a result, Blaine’s posing of the question to the court of whether he should have a modified sum of back support owed or future support owed involves theoretical and abstract facts which were not before the court. Blaine did not argue his financial circumstances remained dire, and that he needed to permanently reduce his maintenance obligation from that which the court previously ordered, but describes a period of time where he had poor

financial circumstances from which he was granted temporary relief. (CP 203-216) From the financial documents Blaine did provide, his income not only fully recovered but substantially increased showing his ability to comply with the original PSA. (CP 283-287, 511, 574) Additionally, Blaine's request for declaratory relief sought to obtain a judgment which had the effect of retroactively terminating any future outstanding maintenance obligation when that is not what the court ordered. (CP 215) Retroactive modification as Blaine argues is not appropriate in this case. Additionally, a declaratory judgment is not an appropriate remedy where review hearings were ordered specifically because the trial court's orders did not render any decision "final and conclusive." Blaine's attempt to circumvent the additional review hearings by filing a request for declaratory relief was properly denied by the trial court as reflected in Judge Thorp's ruling that the prior trial court orders were "*clear on their face...*". (CP 393)

In *Bloome v. Haverly*, the court held that the controversy between property owners was not justiciable because specific facts were not asserted by the parties which were decisive of the issue at hand. In that matter, the owner of a view covenant sought declaratory relief from the court to prevent the burdened property owner from trying to build any

structure on the lower parcel so as to in any way block or hinder the view of the benefited estate. *Bloome v. Haverly*, 154 Wn. App. 129, 145 (2010). But there were no building plans submitted by the burdened estate and therefore there was no way to determine whether the proposed plan would actually violate the view covenant. The court was not willing to limit the burdened party's building rights in a vacuum.

In his Motion for Declaratory Relief, Blaine sought a blanket limitation on Corrie's ability to enforce and/or have reviewed by the trial court spousal maintenance payments contained in the PSA. (CP 203-216) He sought outright termination of the obligation to pay the maintenance outlined in the PSA, which is really a further modification of the court's existing orders without producing evidence supporting that such a modification would be necessary. By posing his request in the guise of a declaratory judgment, he hoped to prejudice any possibility of Corrie requesting modification extending spousal maintenance in the future despite Blaine's substantial increase in income and the orders scheduling a review hearing. The trial court recognized Blaine's attempt to circumvent the prior orders and denied his request for declaratory relief. (CP 394-395) Corrie challenges Blaine's argument in this appeal that the trial court's order denying his request for declaratory relief justifies what

is a masked appeal of the temporary orders suspending and modifying the spousal maintenance paid to Corrie, which were not final orders pursuant to RAP 2.2.

B. THE TRIAL COURT WAS CORRECT IN ITS DECISION THAT THE MODIFICATIONS THAT SUSPENDED MAINTENANCE IN 2009 AND 2011 WERE TEMPORARY AND NOT PERMANENT ALTERATIONS TO THE MAINTENANCE AWARD AND PROPERTY SETTLEMENT AGREEMENT.

The trial court correctly interpreted the orders suspending maintenance and requiring Blaine to comply with the terms of the PSA regarding payment of maintenance. Nothing in the July 11, 2011 Order forgives, terminates nor suspends the past due maintenance pursuant to the original terms of the PSA. (CP 166-167) Also, nothing in the 2009 order states that the temporarily suspended amount of maintenance was forgiven, terminated, or that the maintenance provided in the PSA did not have to be paid. (CP 163-164) Essentially, the trial court determined that Blaine's total amount of maintenance due to Corrie was left whole, except the actual timing of the payments due to the brief downturn in the economy. The sole purpose of the Court's order stating that maintenance was being modified downward, was to give Blaine some relief because his income had temporarily diminished. (CP 166-167) However, none of the Court's orders state that the total amount of maintenance pursuant to the

PSA was being reduced. The orders from the Court reflect that in the immediate present (relative to the time the order was issued), Blaine's monthly maintenance amount was suspended and reduced, respectively. (CP 163-164, 166-167) In the future, the issue of maintenance payments was to be reviewed. (CP 164, 167)

It is the objective of the court in a long term marriage to place the parties in roughly equal financial positions for the rest of their lives. *Marriage of Wright*, 179 Wn. App. 257, 319 P.3d 45 (2013). Here, the trial court acknowledged that the parties agreed in their PSA to a specific term and amount of maintenance based in part on their 33 year marriage. The trial court correctly ordered that Blaine must comply with the terms of the PSA regarding the total amount of spousal maintenance he pays to Corrie. (CP 166-167).

1. THE TRIAL COURT CORRECTLY ORDERED THAT CORRIE REMAINS ENTITLED TO THE FULL AMOUNT OF MAINTENANCE UNDER THE PARTIES' ORIGINAL AGREEMENT.

The trial court's 2011 temporary order modified the maintenance downward such that "*the maintenance shall not exceed the terms of the original settlement agreement.*" (CP 274). The terms of the original settlement agreement required that Blaine pay 72 months of spousal maintenance at \$6,000.00 per month beginning March, 2008 and

\$4,000.00 per month for 36 months from March, 2014 until February 2017, for a total of \$576,000.00 in maintenance. (CP 32) The only limitation in the 2011 Order is that the total Blaine must pay Corrie cannot exceed this amount. In fact, the only dates referred to in the modification order of 2011 are the start date for the reduced maintenance of August, 2011, and a review hearing for July of 2012. There is no date for spousal maintenance to end or be reduced. There is no forgiveness of past due maintenance. It is clear that Blaine was not ordered to pay Corrie in excess of the amount she agreed to originally take, pursuant to the formula. Blaine read into the formula a cap of \$6,000.00 per month, but, the formula also allows Corrie to recoup the funds that Blaine had previously suspended, and that would not have exceeded the terms of the original settlement, had he simply caught up. (CP 167) Additionally, this interpretation is more logical because the court's formula gave Blaine enough money to meet his basic needs, whereas clearly, Corrie's basic needs were not being met without the maintenance.

There is no basis to assert that the court intended to allow Blaine to cut Corrie off by the dates listed in the PSA when it was clear that he had not complied with the terms set forth on the earlier dates. The court never references the pay dates listed in the PSA in its order, but refers to the

monthly sums of money that Blaine is to pay Corrie between August, 2011 and July, 2012, *and not* to the duration of time in which spousal maintenance is to be paid, because the court expected to review the matter prior to any event triggering a change of maintenance. It was Blaine's burden to bring the modification matter in for review before making any unilateral decisions to reduce Corrie's maintenance. (CP 167) His attempt to terminate past due maintenance on the basis of the language contained in the PSA stepping maintenance down as of a given date is an argument of form over substance. Blaine did not comply with the earlier terms of the PSA and he should not be allowed to assert the later terms to his benefit without a showing of absolute necessity.

Further, Blaine is mistaken in his belief that the court anticipated he would pay less to Corrie than was originally agreed. The court clearly recognized Blaine's circumstances might change for the better, thus it set the matter for review and required both parties to provide quarterly financial updates. (CP 167) In fact, Blaine's income rebounded significantly and from looking at his 2012 and 2013 tax returns, he is now earning more than was originally contemplated in the PSA. (CP 32-33, 511, 574) Blaine is attempting to benefit from the brief decrease in his income and reduction in maintenance paid to Corrie (who suffered greatly

when she had no maintenance coming in) without repaying Corrie the spousal maintenance missed now that Blaine's income has more than rebounded.

Blaine's reliance on *Marriage of Ochsner*, 47 Wn. App. 520, 736 P.2d 292 (1987) is misplaced. The Court in *Ochsner, supra*, did not modify maintenance by suspension for any duration as the Court did in the instant case. Therefore, the *Ochsner* court did not address the issue of whether suspended maintenance payments are required to be recouped when the payor has the ability to do so. *Id* at 522. Also, in *Ochsner*, the ex-wife was due \$600 maintenance every month "during her lifetime" and there was no end date. *Id* at 522. There is a significant difference between a decree that provides lifetime maintenance versus maintenance in a PSA for a fixed amount and duration. Therefore, *Ochsner* stands only for the proposition that spousal maintenance can be modified pursuant to a substantial change of circumstance. It does not stand for the proposition, as argued by Blaine, that a payor of maintenance is relieved from his obligation to pay the full amount of maintenance when temporarily modified by suspension.

Blaine's reliance on *Marriage of Glass*, 67 Wn. App. 378, 835 P.2d 1054 (1992) is also misplaced. In *Glass, supra*, the Court addressed

the issue of whether it could relieve the payor of spousal maintenance payments when the parties contractually agreed that it would be non modifiable in duration or amount pursuant to RCW 26.09.070. The *Glass* court held that due to the non modifiability provision contractually agreed between the parties that any equitable relief must be “*fashioned in such a manner that the full award will be paid within the time contemplated by the initial decree.*” *Id* at 391. The *Glass* court did not address the issue regarding whether the suspension of modifiable maintenance payments absolved the payor of the duty to make up the missed payments when it is determined the payor had the ability to do so. In the case sub judice, the trial court properly ruled that the suspended maintenance payments did not absolve Blaine from paying Corrie the full amount of maintenance pursuant to the PSA.

2. THE TRIAL COURT PROPERLY RULED THAT BLAINE WAS REQUIRED TO PAY THE AGREED UPON AMOUNT OF MAINTENANCE PURSUANT TO THE PSA.

Blaine received a temporary suspension of spousal maintenance following the economic downturn in 2009. The court’s June 26, 2009 order did not terminate spousal maintenance, nor forgive the spousal maintenance owed. That order “suspended” the spousal maintenance payments then owed for a period of four specific months. (CP 163-164).

The June 26, 2009 order states:

The court denies the request to terminate maintenance, but, will suspend the maintenance for the months of June, July, Aug and September, 2009, pursuant to the authority set forth in *Drlik*, 121 Wn.App. 269 (2004).

(CP 164).

Blaine overlooks the application of the word “suspend” in the case cited by the trial court in trying to reach the result he wants. In *Drlik* the court stated:

By contrast, suspending maintenance is to *temporarily defer or delay payment* of the obligation until a later time. Because the maintenance obligation still exists, albeit in a suspended state, the trial court retains jurisdiction until payments resume or the obligation is terminated. (Emphasis added).

Marriage of Drlik, 121 Wn. App. at 278 (2004).

As used by the court in *Marriage of Drlik*, it is clear that the court was applying the third meaning of “suspend” in the dictionary, “to make (something) happen later; to *delay* (something)” and not the second definition cited by Blaine, “to stop (something) for a short period of time.” There is nothing in the court order or case law to indicate that the court in its June, 2009 order was using a definition different from the definition cited to in *Drlik*.⁴ Therefore, the trial court properly ordered that Blaine’s

⁴ Additionally, in looking at the customary uses of the word, Blaine overlooks the most common factor tying his examples together. A player “suspended” from a team can be suspended *with or without pay*- which is customarily specified. A police officer “suspended” from the force, can be suspended *with or without pay*. When a city

suspended maintenance payments to Corrie were not forgiven.

Blaine seeks to impose an affirmative duty on Corrie to ask the court to have the original spousal maintenance obligation “reinstated,” but, she has an order of spousal maintenance contained in the decree that was suspended pursuant to *Drlik*. It was not Corrie’s duty to request relief from the court on the expiration of Blaine’s temporary relief- it was Blaine who sought court permission to suspend or terminate maintenance, and ultimately it was Blaine who failed to seek review of his action. Corrie’s April 7, 2014 letter to Blaine clearly states her understanding and intent of the 2009 and 2011 orders not requiring her to request additional relief from the Court and requiring Blaine to comply with the original terms of the PSA. (CP 295-297).

The trial court’s orders modifying maintenance by suspending the obligation and later calculating the temporary reduction pursuant to a formula did not absolve Blaine from making up the payments pursuant to the PSA.

“suspends” bus service during a storm, the city customarily replaces the missed bus services with other service. A student “suspended” from school still has to make up the days in the school year to progress to the next grade. “Suspended” peace talks are commonly resumed- war is not typically automatically waged in the interim.

3. REQUIRING BLAINE TO MAKE UP MAINTENANCE PAYMENTS THAT HE CAN CLEARLY AFFORD ACCOMPLISHES THE PURPOSE OF MAINTENANCE IN A LONG TERM MARRIAGE, WHICH IS TO ROUGHLY EQUALIZE THE PARTIES' FINANCIAL POSITIONS FOR THE REMAINDER OF THEIR LIVES.

It is well established law that the goal of the Court in a long term marriage is to place the parties in roughly equal financial positions for the remainder of their lives. See Winsor, *Guidelines for the Exercise of Judicial Discretion in Marital Dissolutions*, Wash. St. B. News, 14, 16 (Jan. 1982). Judge Winsor's article was in part codified in the case of Marriage of Rockwell, 141 Wn. App. 235 (2007) which states:

In a long term marriage of 25 years or more, the trial court's objective is to place the parties in roughly equal financial positions for the rest of their lives. 2 WASH. STATE BAR ASS'N, FAMILY LAW DESKBOOK § 32.3(3), at 32-17; see also *Sullivan v. Sullivan*, 52 Wash. 160, 164, 100 P. 321 (1909) (finding that “after a husband and wife have toiled on together for upwards of a quarter of a century in accumulating property, ... the ultimate duty of the court is to make a fair and equitable division under all the circumstances”). The longer the marriage, the more likely a court will make a disproportionate distribution of the community property.

A recent case addressing the issue of property division and spousal maintenance in a long term marriage is Marriage of Wright, 179 Wn.App. 257 (2013). Specifically, the *Wright* court states:

“if the spouses were in a long-term marriage of 25 years or more, the court's objective is to place the parties in roughly equal financial positions for the rest of their lives. *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572

(2007). To reach this objective, the court may account for each spouse's anticipated post dissolution earnings in its property distribution by looking forward. In *In re Marriage of Rockwell*, this court approved a property award that provided more amply for the wife, who was six years older than her husband and in ill health, where the court determined that the husband would make up the difference through at least seven years of anticipated postdissolution employment earnings. 141 Wn. App. 235, 248-49, 170 P.3d 572 (2007).

Id.

Ordering Blaine to comply with the terms of the bargained for spousal maintenance in the PSA conforms to the policy enumerated in *Rockwell* and *Wright, supra*. Blaine's income has clearly rebounded and he is now earning sums beyond what was contemplated by the parties when they agreed to the terms in their PSA and finalized their divorce. (CP 32-33, 511, 574) The trial court's order denying Blaine's declaratory relief did not require that Blaine would pay spousal maintenance beyond February of 2017. (CP 392-393) The trial court's orders suspending and modifying maintenance recognized that Blaine needed a temporary reduction in the amount of maintenance that he would pay and set up review hearings to determine the appropriate amount of ongoing maintenance. (CP 163-164) Instead of filing a motion with the court to review the parties' respective financial positions, Blaine instead chose to file a Motion for Declaratory Relief asking the Court to absolve him of future spousal maintenance payments without performing any of the

financial analysis necessary to determine an appropriate amount of future maintenance. (CP 1-16) Blaine's choice to file a Motion for Declaratory Relief and attempt to circumvent this analysis resulted in the trial court denying his motion and finding that it would be "unconscionable" to "declare" that Blaine did not have a maintenance obligation consistent with the original terms of the PSA. (CP 395).

Had the trial court performed the analysis that was contemplated by its prior orders, the trial court would have found that Blaine's income far surpassed Corrie's income even after including the additional maintenance that Blaine was trying to circumvent. What is clear from the financial records that Blaine finally provided to the Court is that by his own calculation, he is earning **\$37,026** net per month and has living expenses of \$10,114. (CP 283) **Therefore, Blaine has \$26,912 net per month in additional income!** By contrast, Corrie is earning \$5,742 gross and \$3,102 net per month at her job as a salaried employee at Boeing, barely able to make ends meet. (CP 197-202) There is a substantial disparity between the parties and they are not in roughly equal financial positions pursuant to the *Rockwell, supra* and *Wright, supra* cases cited above. The trial court recognized this disparity when properly denying Blaine's requested relief. (CP 394-395)

4. THE TRIAL COURT RELIED ON THE APPROPRIATE CASE LAW AND WERE CORRECT IN THEIR ANALYSIS THAT THE 2009 AND 2011 ORDERS DID NOT PERMANENTLY MODIFY MAINTENANCE.

The trial court correctly interpreted and applied two cases in reaching a decision that Blaine must repay Corrie his suspended maintenance payments. *Marriage of Drlik, supra*, was cited as authority for the suspension of spousal maintenance by Commissioner Ponomarchuk in the 2009 Order. (CP 163-164) Judge Thorp found that *Drlik* was the “law of the case” insofar as the term “suspend” was utilized in the 2009 order, including the definition of suspend as specifically defined in *Drlik*. (CP 392-393). Judge Thorp’s findings and order specifically provide that because the prior orders, “...are clear on their face regarding spousal maintenance being suspended and then providing a formula for future maintenance to be paid, there is no basis for Respondent’s motion for declaratory relief”. (CP 392-393)

Contrary to Blaine’s contention, if he believed that the 2009 and 2011 orders did not require him to pay maintenance consistent with the terms of the PSA, he should have raised the issue by filing the appropriate motion and addressing the appropriate amount of spousal maintenance based on the respective financial positions of the parties. However,

instead, he attempted to circumvent this analysis by filing a Motion for Declaratory Relief.

Likewise, Commissioner Canada Thurston's reference to *Abercrombie v. Abercrombie*, 105 Wn.App. 239, rev denied, 144 Wn.2d 1010 (2001) being *analogous* to the instant case was also appropriate. In *Abercrombie*, the parties reached an agreement regarding child support, the ultimate terms of which were never modified. In that case, the obligee parent agreed to *temporarily* forgo collection of nine years of child support arrearages provided the obligor remain current in the support obligation until resolution of some lawsuits. However, forbearing collection was not forgiveness of the debt. Once the lawsuits resolved, the obligee sought to reduce the child support arrearage to judgment based upon the decree and agreed amended decree. The obligor in *Abercrombie* then sought a retroactive modification of support based upon a provision in the decree that stated support would be adjusted annually. But the obligor did not file a motion to adjust or petition to modify, so the court held that the amount stated in the decree remained the obligation and refused to retroactively modify support. *Id* at 243.

Specifically, the Court stated,

... Despite Abercrombie's presumed awareness of his statutory right to seek adjustment or modification, and despite the

decree provision expressly authorizing modification without a showing of changed circumstances, Abercrombie sought neither. Indeed, he has not done so yet. He cannot now seek to erase 10 years of accrued judgments. ...

The *Abercrombie* case is analogous to this case insofar as Blaine is attempting to wipe out the spousal maintenance payments that were only *suspended* pursuant to a Motion for Declaratory relief, similarly to how Mr. Ambercrombie attempted to recalculate his child support obligation without filing a motion to adjust or petition to modify the support obligation. The 2009 and 2011 orders did not terminate the past due spousal support. (CP 163-164, 166-167). For a time, support was suspended and reduced to accommodate Blaine's decreased income. (CP 163-164). However, support should have also increased when Blaine's income went up pursuant to the July 29, 2011 order until the terms of the PSA were met. (CP 166-167). Instead, when the dates which marked the duration of time to pay maintenance occurred, Blaine then unilaterally reduced it as though he had paid it, when in fact, he had not. (CP 101). Blaine placed form over substance in the agreement. There is no prior order by the court terminating, forgiving, or otherwise modifying the amount that was to be paid pursuant to the PSA. The trial court declined to modify retroactively, especially now when it is clear that Blaine's income

has more than fully recovered and he can actually meet the terms of the original obligation. (CP 283-287, 511, 574)

C. EQUITY SUPPORTS CORRIE'S INTERPRETATION OF THE MODIFICATION ORDERS – BLAINE'S CHOICE TO PAY INTEREST ON THE PROMISSORY NOTE SHOULD NOT AFFECT HIS OBLIGATION TO PAY MAINTENANCE.

Blaine's argument that paying the default rate of interest on the promissory note pursuant to the property settlement portion of the PSA equitably offsets the obligation to pay spousal support is completely without merit and is a "backdoor" attempt to improperly modify the property distribution using the vehicle of spousal maintenance. Blaine's previous requests to vacate the terms of the PSA have all been denied, on reconsideration, on revision and on appeal to the Court of Appeals, Division I (Case No. 64739-3-1). (CP 168-169, 392-393) Blaine's voluntary choice to default on the Promissory Note and pay Corrie statutory interest should not affect this Court's decision to require Blaine to pay spousal maintenance pursuant to the PSA.

The interest payments Blaine chose to make on the promissory note to Corrie were anticipated and negotiated in the event that Blaine did not make the lump sum payment he agreed to make in the agreement. In exchange for the promissory note, he received an extremely profitable

share of property as well as the right to sell the family home and immediately draw out his equity, which it appears he promptly reinvested. (CP 32-38) There are multiple reasons a person may elect to pay interest instead of making a lump sum payment, most often because they are anticipating a greater return on invested funds, than on funds owed in debt. Corrie's assets significantly depreciated in value after the downturn in the economy, and had she been paid the agreed promissory note sums when she should have been, she may have recouped some of her lost investments by increasing her investment base. However, because Blaine elected to withhold the owed funds, and forcibly borrow from Corrie rather than liquidate his own assets or borrow from others as she had to do, Corrie was not able to make any anticipated investments. The fact that Blaine did not pay what he agreed to pay curtailed Corrie's ability to make any of her own future investments and also delayed her ability to recover financially.

Corrie suffered greatly after Blaine's maintenance obligation was suspended and he defaulted on the promissory note. Corrie originally had to sell the family home to pay Blaine his share of equity pursuant to the terms of the PSA. (CP 34). She then moved to a condominium in California because she could not afford to purchase a house. (CP 115).

After Blaine stopped paying maintenance, Corrie depleted the other assets she received in the divorce and applied for Section 8 housing because she was unable to earn enough to pay for the condominium which she sold at a loss. At age 58, Corrie was forced to contact the Community Action Partnership to inquire about assistance with her basic sustenance and payment of her bills. She gave her dog up for adoption because she could not afford to house him and took out a Speedy Cash Loan at an abhorrent interest rate with her car as collateral just to pay her living expenses. (CP 121, 333)

In 2012, Corrie was diagnosed with breast cancer and underwent a double mastectomy. It took her over 8 months to recover from the surgery and reconstruction. Corrie takes medication for the post cancer treatment which causes her to have pain in her joints, high blood pressure, high cholesterol, is pre-diabetic and experiences exhaustion after a day's work. The emotional and physical impact from the double mastectomy will probably be with Corrie for the remainder of her life. (CP 122).

On the other hand, during the same time frame that Corrie was barely able to survive, Blaine continued to reside in the 1.2 million dollar downtown Seattle high rise condominium, (estimated increased value now to be worth 2.3 million), had a \$450,000 condominium as an

investment (5/2008), invested \$33,500 in an LLC (06/2008), inexplicably paid an attorney \$62,000 in related to his LLC (06/2008), invested \$124,904 in a business, Cherry Pick LLC (08/2008), invested \$9,610 into his 401k (9/2009). (CP 119) The fact that Blaine did not pay what he agreed to pay curtailed Corrie's ability to make any of her own future investments and also delayed her ability to recover financially. (CP 119).

Corrie does not receive a windfall if Blaine is required to pay spousal maintenance pursuant to the terms of the PSA as the parties respective financial positions are clearly nowhere near "roughly equal" as the *Wright* and *Rockwell*, supra, cases enumerate. Affirming the trial court's order only assures that Corrie receives the benefit of the bargain that she negotiated as contained in the original PSA.

D. THE COURT OF APPEALS SHOULD AWARD CORRIE ATTORNEY'S FEES FOR THIS APPEAL PURSUANT TO RCW 26.09.140 AND RAP 18.1.

Corrie asks the Court to award her attorney's fees for this appeal based on a need versus ability to pay analysis. RCW 26.09.140 allows the court to order one party in marriage dissolution action to pay attorney fees and costs to the other party for "*enforcement or modification proceedings after entry of judgment.*" *In re Marriage of McCausland*, 159 Wn.2d 607, 621, 152 P.3d 1013 (Wash. 2007); RCW 26.09.140. Under RAP

18.1, a party has a right to recover reasonable attorney fees or expenses on review. Id.; RAP 18.1. The amount of fees and expenses should be calculated at a later time, by affidavit. RAP 18.1(d).

Corrie provided her Financial Declaration to the trial court showing her net income at \$3,102 per month. (CP 197-202) Blaine also provided a Financial Declaration to the Court showing his net income at \$37,026 per month. (CP 283-287). However, Blaine's income is actually higher than that amount pursuant to his income tax returns. (CP 511-655). As indicated in this Brief, Corrie has been forced to respond to and incur significant attorney's fees due to Blaine's continued litigation since their divorce was finalized. Corrie has a need and Blaine has the ability to pay her attorney's fees for this appeal.

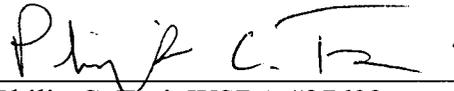
V. CONCLUSION

For the foregoing reasons, this court should affirm the trial court's ruling and hold that Blaine is responsible for paying the unpaid payments, and that he must pay repay all outstanding amounts pursuant to the PSA using the formula pursuant to the trial court orders.

The Court should also award Corrie attorney's fees pursuant to RCW 26.09.140 and RAP 18.1.

Dated this 9th day of February, 2015

TSAILAW COMPANY, PLLC

A handwritten signature in black ink, appearing to read "Philip C. Tsai", written over a horizontal line.

Philip C. Tsai, WSBA #27632
Attorneys for Corrie Weber

Appendix A

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1 (BEGINNING AT: 11:21:21)

2 JUDGE THORP: Counsel, thank you for the
3 arguments to the Court. The Court is prepared to rule.

4 I have spent a considerable amount of time
5 reviewing every piece of paper, every previous order,
6 and what is abundantly clear to this Court is that this
7 has been a dearth of litigation, and it has not ended,
8 and I sincerely doubt it ever will.

9 It's a great concern to this Court that these
10 orders that have been in place for a long time are now
11 being sought for declaratory judgment. But I think
12 what is incredibly important that we must return to is
13 what is actually before this Court and what was
14 actually before the Commissioner.

15 You're here this morning on a revision, on a
16 Motion for Revision. You're not here to modify.
17 You're not here for me to revisit the original orders.
18 You're here on a Motion for Revision for declaratory
19 judgment, declaratory judgment on orders that were
20 modifiable and, in fact, the Court had previously
21 modified.

22 In review in preparation for this case, I
23 noted that March 14th, 2008, the decree of dissolution
24 was entered. There's been a lot of discussion and a
25 lot of pleading time spent on the property agreement,

1 but really, from this Court's point of view, the
2 spousal maintenance provision of the Court-signed
3 decree, which encapsulates the property -- the PSA --
4 is what I was looking at, and frankly, what
5 Commissioner Ponomarchuk was actually modifying.
6 That's what's in front of the Court is the signed
7 decree. Nowhere in the Court file is the PSA, nor
8 should it have been. The decree is the final order.

9 In looking at the June 26, 2009, Order on
10 Modification, it's very clear that the Commissioner
11 granted a suspension. The Commissioner granted it
12 pursuant to the authority set forth in Drlik. That is
13 the law of this case. The Commissioner acted --
14 Commissioner Ponomarchuk acted under the authority of
15 that case in issuing this order that, frankly, he
16 anticipated lasting for four months. That is not
17 Commissioner Ponomarchuk's issue. That is not
18 Commissioner-now-Judge Smith's issue. That is not this
19 Court's issue. That order was entered, and the parties
20 determined that it would take years before this issue
21 got before another court for a trial by affidavit.

22 This Court has reviewed Drlik at 121 Wn.App.
23 269 (2004) in great detail, and noting that the issue
24 in Drlik was the perpetual order suspending
25 maintenance, pending further order of the court,

1 without an end time, and that particularly given the
2 facts before it, Mr. John Drlik was most likely not
3 going to survive. He had a terminal illness. The
4 likelihood of that suspension ever getting lifted and
5 that maintenance order ever returning was frankly
6 probably nil. He was never going to return to the
7 level of income he had prior to that. And that is
8 exactly what suspension means, and that is exactly why
9 it continues to apply to this case. It is a temporary
10 order.

11 The Court specifically found in Drlik that
12 the relevant meaning of suspend includes to set aside
13 or make temporarily inoperative, to defer to later, to
14 withhold for a time on specified conditions. That to
15 terminate something . . .

16 (END OF TRACK AT: 11:25:25)

17 (BEGINNING OF TRACK AT: 11:25:25)

18 JUDGE THORP: . . . is to bring to an ending
19 or cessation in time, sequence or continuity. That by
20 contrast, suspending maintenance is to temporarily
21 defer or delay payment of the obligation until a later
22 time because the maintenance obligation still exists,
23 albeit in a suspended state.

24 Drlik was looking at that for purposes of
25 jurisdiction and (indiscernible words), but it's the

1 action in asking this Court to review the actions of
2 other courts that Commissioner Ponomarchuk was clear
3 that this was what he was relying on.

4 The -- interestingly enough, fast forwarding
5 to Commissioner Bonnie Canada-Thurston's order where
6 she cites Abercrombie, there's argument in the
7 pleadings about the appropriateness of that citation,
8 but even in Drlik the Court discusses that it is
9 well-settled the Court may not modify maintenance and
10 support payments retroactively. At most, the Court can
11 only modify maintenance and support provisions as of
12 the date of the filing of the modification petition.

13 The -- no Court has ever done that. No Court
14 in this case has done that. I look at the June 26,
15 2009, order as being clear on its face. It was
16 suspended. The Court's anticipation was that the
17 hearing would occur September 25th, 2009, but instead
18 we have an appeal on the denial of the CR 60 motion to
19 vacate the decree that occurred January 7th, 2010.
20 Then January 26, 2010, a stipulation and order on
21 modification to continue the trial by affidavit. The
22 parties stipulate that the terms and conditions of the
23 Court's order of 6/26/09 shall remain in effect without
24 prejudice until a new trial by affidavit held on March
25 19th, 2010, or further order of the Court.

1 It perpetuated itself again March 5th, 2010,
2 March 31st, 2010, June 11th, 2010, July 30th, 2010,
3 October 8th, 2010, March 4th, 2011, April 22nd, 2011,
4 July 22nd, 2011, which was only entered because the
5 Court did not receive moving parties. That is the
6 first order that wasn't by agreement of the parties
7 perpetuating the situation that they had asked for.

8 That order set a schedule for briefing and
9 possible argument before Commissioner Ponomarchuk.
10 July 29th, 2011, is when then-Commissioner Lori K.
11 Smith held the trial by affidavit.

12 Now-Judge Smith specifically ordered that the
13 modification was -- beginning August of 2011 and
14 calculated the order and amount in that very detailed
15 order.

16 What this Court found most perplexing is why
17 no one mentioned the September 2nd, 2011, order denying
18 reconsideration of her ruling. But I was able to
19 locate that in the electronic court file, and notably
20 the reason why that's significant is because it
21 explains her order. It explains her order in the exact
22 way that you're asking this Court to do.

23 She specifically found that the intention of
24 the Court in suspending the maintenance obligation in
25 2009 was to revisit the issue in three months, and not

1 two years. The parties agreed to continue the matter
2 past the three months provided in Commissioner
3 Ponomarchuk's order.

4 She specifically found that there was
5 sufficient evidence to proceed to trial. She
6 specifically found that the Court did not disregard the
7 Petitioner's income was greater than Respondent's at
8 that time.

9 The Court went -- the Court already revisited
10 her order and didn't change it. Respondent's Motion
11 for Reconsideration is denied, and attorney's fees were
12 ordered.

13 Fast forward to the additional financial
14 documents. It almost appeared as though this was not a
15 request for a declaratory judgment, but a request to,
16 frankly, revisit history. What is -- as Commissioner
17 Bonnie Canada-Thurston identified, the unconscionable
18 part from the Court is that we're essentially being
19 asked to re-write history that should have been very
20 clear. The authority under Commissioner Ponomarchuk's
21 Order in Drlik . . .

22 (END OF TRACK: 11:30:25)

23 (BEGINNING OF TRACK: 11:30:25)

24 JUDGE THORP: . . . clearly set out that the
25 modification to maintenance can go back to the date of

1 the filing of the modification petition, but that was
2 not ordered here, that was not found. I did not review
3 the pleadings, so I don't know if it was asked for, but
4 that was not done, and we are now in this situation.

5 I'm not going to order attorney's fees for
6 the Petitioner because I concur with the Commissioner
7 that there was a reasonable basis to bring this motion
8 and ask for this clarification, but this Court is
9 affirming the Commissioner. This Court is affirming on
10 the order that the Commissioner entered, as well as the
11 additional finding and order that Drlik v. Drlik is the
12 law of this case. It is how the 2009 order came into
13 existence.

14 There was absolutely -- there was a Motion to
15 Reconsider that was denied September 2nd, 2011, where
16 the Court articulated further its intention in issuing
17 the July 29th, 2011, order.

18 There has been no indication in any of these
19 orders that the plain language of any of them or the
20 decree is subject to confusion at this time. The
21 decree maintains that commencing March 1, 2008, and
22 ending February 28, 2014, it's a sum of \$6,000 for mom,
23 which is apparently a total of 72 months.

24 And then March 1, 2014, and ending February
25 28th, 2017, it's a sum of \$4,000 per month for what

1 would be 36 months with the change in the calculation
2 that was entered by then-Commissioner Lori K. Smith, as
3 outlined on the second page of her order, beginning
4 August of 2011.

5 There's nothing left to decide. The -- it
6 was very intriguing to me that there was all of this
7 litigation, but at no point did this Court observe, in
8 at least the electronic court file, that there was ever
9 an effort by either party to take the offer in the July
10 29th, 2011, order of having the matter reviewed in July
11 of 2012. In fact, it's three years later that we're
12 here, or thereabouts.

13 The Motion for Revision is denied. The
14 Commissioner's Order is affirmed. It is affirmed on
15 additional grounds that the issuing of an original
16 order in 2009 was issued under the authority of Drlik.
17 That is the law of this case. And there's been no
18 showing to this Court as to why five years later we're
19 being asked under the authority of a declaratory
20 judgment to what is in all practicality retroactively
21 modifying a maintenance award. The parties had access
22 to the courts at that time, and that was the time to do
23 it.

24 For those reasons, the Commissioner is
25 affirmed.

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We're at recess.

(END OF TRACK: 11:34:00)

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C E R T I F I C A T E

I, MARY JEAN BERKSTRESSER, a Certified Court Reporter in and for the State Washington, residing at Gig Harbor, Washington, authorized to administer oaths and affirmations pursuant to RCW 5.28.010, do hereby certify:

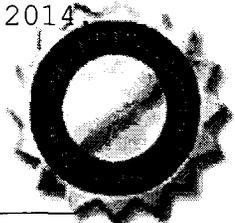
That the foregoing proceedings were electronically recorded; that I was not present at the proceedings; that I was requested to transcribe the electronically-recorded proceedings; that a transcript was prepared by me by listening to the recorded proceedings.

That the foregoing transcript is a full, true and correct transcript of all discernible and audible remarks.

That I am not a relative or employee of any party to this action, or a relative or employee of any attorney in said action, and that I am not financially interested in the outcome thereof.

DATED AND SIGNED this 9th day of February, 2014

Mary Jean Berkstresser



Mary Jean Berkstresser
Washington State Certified Court Reporter
CCR No. 2671