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COURT OF APPEALS  
DIVISION II

06 OCT 13 PM 1:19

STATE OF WASHINGTON

BY cm No. 34155-7-II  
DEPUTY

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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DARLENE D. COX,  
Respondent

v.

FREDERICK J. COX,  
Appellant

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REPLY BRIEF OF APPELLANT

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Charles D. Creason  
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The Respondent fails to “respond” in any way to the crux issue of this appeal: the trial court’s distribution of an asset twice by assigning a present day value to the pension for the purposes of a property distribution and then ALSO dividing the stream of income produced thereby.<sup>1</sup> Instead, the Respondent, claiming this appeal is without merit, states that the court’s application of a present value approach to the pension for purposes of the property division and then ALSO dividing the income generated from the property already awarded “was an ordinary exercise of the court’s obligation to provide for the future economic well-being of the parties in equitably dividing the marital estate.” Brief of Respondent at 10.<sup>2</sup>

NONE OF THE CASES CITED BY THE RESPONDENT SUPPORTS THIS PROPOSITION. In all of the cases cited by the Respondent the Court EITHER used a present day value approach to divide the pension for the purposes of property distribution OR divided the stream of income. The Respondent cites no case where a Court, in

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<sup>1</sup>Interestingly, the Respondent correctly states in the introduction of her brief that “the trial court did not err by dividing the husband’s pension to ensure roughly equal incomes **OR** by dividing the marital estate instead of providing for maintenance.” (Emphasis added) Brief of Respondent at 1. In this case however the Court **did both**.

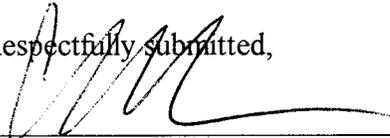
<sup>2</sup>The Respondent also claims Appellant’s Brief failed to contain assignments of error pursuant to RAP 10.3(g) even though Appellant’s Brief at Page 1 enunciates five “Assignments of Error” while elaborating in full on the Court’s specific Findings of Fact at Pages 7-8.

awarding and/or distributing a pension or ANY asset, utilized a present day value for the purposes of a property division and ALSO awarded a portion of the stream of income. The cases cited by the Respondent show the Court doing one or the other BUT NEVER BOTH.<sup>3</sup>

The Respondent in conclusion states “the fallacy of the husband’s argument is most clearly demonstrated by its implication that the court had only two choices with regard to the husband’s pension: to either assign it completely to the husband (or wife), or divide the income equally between them.” Brief of Respondent at 13. This is a complete misstatement of the Appellant’s argument and misses the issue entirely. The Court could EITHER divide the income OR utilize a present day value approach for purposes of a property distribution: not both.

DATED this 12th day of October, 2006.

Respectfully submitted,



Charles D. Creason  
Attorney for Appellant  
WSBA #20295

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<sup>3</sup>This culminates in Respondent’s citation to *Marriage of Konzen*, 103 Wn.2d 470, 477-78, 693 P.2d 97, *cert. Denied*, 473 U.S. 906 (1985). Brief of Respondent at 10. However, even though the trial court in *Konzen* awarded a portion of the husband’s separate property military retirement pay to the wife, the Court *did not* also assign a present value for purposes of the property distribution.

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In re the Marriage of DARLENE )  
D. COX and FREDERICK J. COX )  
DARLENE D. COX, )  
Respondent, )  
vs. )  
FREDERICK J. COX, )  
Appellant. )

DECLARATION OF SERVICE/  
MAILING

On October 12, 2006, I deposited in the United States Mail a properly stamped and addressed envelope addressed to the following:

Clerk David C. Ponzoha  
Washington State Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, Washington 98402-4454  
  
Catherine W. Smith  
Edwards, Sieh, Smith & Goodfriend P.S.  
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1109 First Avenue Suite 500  
Seattle, Washington 98101-2988

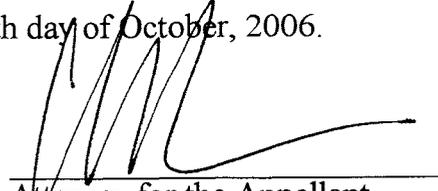
which contained the original in regards to the later and a copy in regards to the former of the Appellants Reply Brief.

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

DATED at Poulsbo, Washington, this 12th day of October, 2006.



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