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COURT OF APPEALS
DIVISION II

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No. 35924-3-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE MARRIAGE OF:

DARLENE M. TEHENNEPE
Appellant.

and

BERNARD G. TEHENNEPE
Respondent.

RESPONDENT'S BRIEF

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A. ASSIGNMENTS OF ERROR

The appellant, Darlene Tehennepe made the following assignments of error:

- A) Number 1. The trial court erred in denying reconsideration of the property division.
- B) Number 2. The trial court erred in failing to order sufficient maintenance for the wife on reconsideration.
- C) Number 3. The trial court erred in utilizing an expedited trial procedure and not admitting any evidence on the record.
- D) Number 4. The trial court erred in entering Finding of Fact Number 2.8 relating to community property.
- E) Number 5. The trial court erred in entering Finding of Fact Number 2.9 relating to separate property.
- F) Number 6. The court erred in entering Finding of Fact Number 2.12 as relating to spousal maintenance.

The Respondent, Bernard Tehennepe, has not made any additional assignments of error.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

I. IS THERE AMPLE EVIDENCE IN THE RECORD SUBMITTED TO THE COURT IN THE EXPEDITED TRIAL PROCEDURE TO SUPPORT THE TRIAL COURT'S FINDINGS ON PROPERTY DISTRIBUTION AND MAINTENANCE?

II. DID THE COURT ABUSE ITS DISCRETION IN AWARDING AN EQUITABLE LIEN AGAINST THE YACOLT HOUSE IN LIGHT OF HIS UNUSUALLY SIGNIFICANT INVESTMENT IN THE PROPERTY?

III. DID THE COURT MANIFESTLY ABUSE ITS DISCRETION IN AWARDING TO THE HUSBAND HIS RETIREMENT AND ANNUITY ACCOUNTS AS HIS SEPARATE PROPERTY?

IV. DID THE COURT MANIFESTLY ABUSE ITS DISCRETION IN MAKING ITS AWARD OF SPOUSAL MAINTENANCE?

B. STATEMENT OF THE CASE

STATEMENT OF PROCEDURE

For consistency with the Appellant's Brief, and for ease of reference, hereinafter the respondent husband will be referred to as Bernard and the wife appellant as Darlene.

Bernard and Darlene were married on April 2, 1992 and separated on February 15, 1995. CP 4, Findings of Fact and Conclusions of Law, paragraphs 2.4 and 2.5. There is no written separation contract or prenuptial agreement. CP 4, Findings of Fact and Conclusions of Law, paragraph 2.7. Bernard filed a petition for the dissolution of the marriage in the Clark County Superior Court on February 15, 2005, CP 10. The matter was presented as an expedited trial before the Honorable Edwin Poyfair on January 23, 2006, RP 1. Judge Poyfair issued his oral ruling on February 15, 2006, RP 110. Findings of Fact, Conclusions of Law, and a

Decree of Dissolution were prepared and presented on March 17, 2006, CP 4, 2. Darlene filed a Motion for Reconsideration on March 22, 2006. The Motion for Reconsideration was heard on March 30, 2006, RP 121. No action was taken by either party, and no written order regarding the Motion for Reconsideration was entered until December 22, 2006 when Darlene cited the matter on for entry of an Order Denying Reconsideration. Judge Poyfair heard the matter on January 12, 2007 and entered an Order Increasing Spousal Maintenance and Denying Reconsideration on All Other Bases, CP 6. Thereafter Darlene filed her Notice of Intent to Appeal the decision of the trial court on February 9, 2007.

STATEMENT OF FACTS

This is the second marriage for Bernard and Darlene. RP 51. At the time of their marriage they did not execute a prenuptial agreement. RP 34. In order to address the issues before the court in an efficient manner the parties requested an expedited trial. RP 8, 108. Judge Poyfair engaged in a colloquy with the parties and the attorneys at the outset of the proceedings on January 23, 2006:

Now, you know the formal trial method. That's where the attorneys stand up, give their opening statements and then they submit each of the documents and have you identify it. They then have a right of cross-examination. And expedited, normally they hand up the packet without

objection to certain items, and the Court will address those items. Those items that are not objected to will be automatically admitted. . . . What it is, it that you get to expound on everything you want pertaining, of, course, to this particular case. Thus, you get to do it without interruption.

RP 6-7.

After this colloquy both parties, in which both parties were represented by attorneys and given an opportunity to ask questions and object to the process, were sworn in and stated on the record that it was their desire to proceed with an “expedited” trial. RP 8.

Bernard presented his case first consisting of his theory of the value and characterization of: the real estate he acquired on his own and from his family; the family home; his business interests in his machine shops; personal property; liabilities; and, incomes of the parties. RP 9-49.

Darlene presented her case in which she questioned the sufficiency of the record to trace the claims of separate property that Bernard submitted; her part time employment; and that she was debt free entering the marriage; and liabilities. RP 50-107.

At the end of the parties cases Judge Poyfair commented that he was able to obtain ten times the amount of information by the parties following the expedited process. RP 108. Bernard’s attorney asked if the court required that he file his trial memorandum with the information that

the court referred to during the course of the trial. RP 108-09. Judge Poyfair stated that it was not necessary and Darlene did not object. RP 109.

On February 15, 2006, after reviewing the testimony of the parties and considering the documentation presented and, where appropriate, the case law, Judge Poyfair began his oral ruling by stating:

The Court would make reference to the lists given by the Petitioner with regards to the various breakdown of the property. Primarily what we're dealing with is property distribution.

The Court notes that there is a family residence located in Yacolt. I have in my notes the parties stipulated to a valuation of 730, \$730,000, with a \$220,000 outstanding obligation thereon. The wife, or excuse me, the husband indicated that he had sold, I believe, three parcels for some 562,000. That 480,000 was used out of that to pay off the Yacolt home and that it was -- there was no mortgage on it. Later there was a mortgage taken to purchase other property and to satisfy obligations. Mister wishes to have that all as an equitable reimbursement being awarded the home. The Court believes that because it is a 13-year marriage, because there was a beauty salon, because there was a shop, that there certainly is some community property involved in that particular parcel and not all of it should be simply separate property.

The Court sets \$150,000 as community property in that particular. The balance the Court will treat as either equitable reimbursement or separate.

RP 110-11.

The written Decree of Dissolution was entered on March 17, 2006 and contained five schedules dividing the property of the parties. CP 2.

The court heard testimony regarding reconsideration of the property settlement and maintenance on March 30, 2006. RP 121-39. At no time did Darlene make a motion for a new trial based upon the argument that the form of trial had been improper. Id. After a delay of nine months in entering an order denying reconsideration, the court entered a written Order Increasing Spousal Maintenance and Denying Reconsideration on all other Bases on January 12, 2007. CP 6.

C. ARGUMENT

I. THE STIPULATED EXPEDITED TRIAL DID NOT VIOLATE THE RULES OF CIVIL PROCEDURE AND PROVIDED A PROPER RECORD FOR REVIEW.

Darlene has challenged the form of the expedited trial and asserts that it is inconsistent with CR 38, other unspecified Superior Court Civil Rules, the testimony of counsel, and the failure to admit exhibits. Appellants Brief at 7. However, Darlene has not cited any authority for her position that the form of trial was improper. She does, however, challenge the sufficiency of the findings based upon the record. Id.

The Superior Court Civil Rules do not dictate a specific format for trial. CR 38-53.4. Within those rules are general provisions for trial procedure including an allowance for an attorney to offer himself as a witness on behalf of his client. CR 43(g). The only limitation on an attorney's testimony on the merits of the case is that the attorney who

testifies cannot argue the case to the jury, unless by permission of the court. Id. While there was clearly no jury in this proceeding, the court specifically gave each attorney permission to present evidence on behalf each of their clients. RP 4-5. The specific colloquy with the attorneys included the following exchange:

THE COURT: I'm a bit confused because the way that I've conducted expedited trials has been, and I speak to the parties, has been where I allow the attorneys to say anything and everything that they wish with regards to the issues at hand on each side and then we allow you and we allow you to expound, if you wish, on any particular point or points and the attorneys can in fact assist in saying, don't forget to talk about this and don't you want to say that?

MR. YOSEPH: Okay. We can do that, Judge.

THE COURT: Is that all right?

MR. YOSEPH: Yeah, we can do that.

THE COURT: All right. And then Mr. Yoseph would have the right of summary, and then Mr. Marshack --

MR. YOSEPH: Okay.

THE COURT: -- and maybe we can conclude it in a day if we did that. What I would be willing to do if both attorneys and parties were willing to do is to broaden the scope of the ex parte where there are -- excuse me, expedited, where there are allowances for specific objections and for introductions, and thus not allow in its entirety the admission of a submission to the Court, but to indicate that there are certain areas that will be challenged and let them be challenged on the record.

MR. YOSEPH: That's fine, Your Honor, that'll work.

RP 4-5.

Darlene had her own colloquy with Judge Poyfair:

THE COURT: Now, have you heard what I've said?

MRS. TEHENNEPE: Yes, sir.

THE COURT: And do you have any questions about it?

MRS. TEHENNEPE: No, sir.

THE COURT: Well, you've not been in court, both of

you. I can't imagine that you've been in court on a regular basis. You understand the difference between a formal trial and an expedited trial? The one -- well, yes, both of you look like deer in headlights. It's what I've just explained. Mr. Marshack will go through everything he wants to go through, Mr. Yoseph will do the same thing.

Any evidence that comes in will be offered. If there's an objection, it will be brought up by the other side and then I'll rule on it at that particular time. You will get to say whatever you want to say, uninterrupted. All right? Now do you understand what an expedited is?

MRS. TEHENNEPE: Yes, sir.

THE COURT: Do you want to do formal or expedited?

MRS. TEHENNEPE: Expedited.

RP 8.

Darlene did not object to the expedited trial procedure throughout the trial, the motions for reconsideration, or during the delay in filing a written ruling denying reconsideration.

The proper form for a party to request a new trial is to assert that one of the nine causes contained in CR 59 has materially affected the substantial rights of the moving party. CR 59(a). An irregularity in the proceedings by the court which prevents a party from having a fair trial is one of the nine causes identified by the rule. CR 59(a)(1). The rule also states that a motion for a new trial "shall" be filed not later than 10 days after the entry of the judgment or order. CR 59(b). Darlene failed to request a new trial within the time limits of CR 59 and any request she may have for a new trial based upon the form of the expedited trial should be denied.

The record clearly demonstrates that Darlene made a knowing and voluntary decision to request and proceed with an expedited trial. RP 6-8. She failed to timely seek a new trial pursuant to CR 59, and is therefore precluded from objecting to the form of the trial in this appeal.

II. THE TRIAL RECORD SUPPORTS THE PROPERTY AWARDS OF THE YACOLT HOUSE AND RETIRMENT ACCOUNTS

Darlene has questioned the sufficiency of the trial record to support the property and maintenance awards made by the trial court. On review, the Appellate Court determines whether the findings are supported by substantial evidence, and in turn, whether the findings support the conclusions of law and judgment. State v. Halstien, 122 Wn.2d 109, 128-29, 857 P.2d 270 (1993). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise. Robinson v. PEMCO Ins. Co., 71 Wn. App. 746, 753, 862 P.2d 614 (1993). Findings of fact and conclusions of law should be sufficient to suggest the factual basis for the ultimate conclusions. Groff v. Department of Labor & Indus., 65 Wn.2d 35, 40, 395 P.2d 633 (1964); see also In re Berg, 47 Wn. App. 754, 756, 737 P.2d 680 (1987) (A trial court is required to create an adequate record of the proceedings for appellate review); In re LaBelle, 107 Wn.2d 196, 219, 728 P.2d 138 (1986) (citing Maehren v. Seattle, 92 Wn.2d 480, 487-88, 599 P.2d 1255 (1979) (trial

court must establish and set forth the existence or nonexistence of determinative factual matters), cert. denied, 452 U.S. 938 (1981)).

Inadequate written findings may be supplemented by the trial court's oral decision or statements in the record. LaBelle, 107 Wn.2d at 219 (citations omitted).

The party who challenges a maintenance award or a property distribution must demonstrate that the trial court manifestly abused its discretion. In re Washburn, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re the Marriage of Littlefield, 133 Wn.2d 39, 46-7, 940 P.2d 1362 (1997). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. Id. at 47. An appellate court may not substitute its findings for those of the trial court where there is ample evidence in the record to support the trial court's determination. Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 575, 343 P.2d 183 (1959).

This Appellate Court has outlined a trial court's broad discretion in

distributing property as follows:

A trial court has broad discretion when distributing property in a dissolution case. Under appropriate circumstances, it need not divide community property equally, and it need not award separate property to its owner. According to RCW 26.09.080, the court need only "make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors[.]" When exercising this broad discretion, a trial court focuses on the assets then before it-i.e., on the parties' assets at the time of trial. If one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial.

When exercising its broad discretion, a trial court characterizes each asset as separate or community property. The asset is separate property if acquired before marriage; acquired during marriage by gift or inheritance; acquired during marriage with the traceable proceeds of separate property; or, in the case of earnings or accumulations, acquired during permanent separation. The asset is community property if it is not separate property, which generally means that an asset is community property if acquired onerously during marriage. An asset is characterized as of the date of its acquisition, and its character does not change thereafter, subject to exceptions not pertinent here, regardless of whether the asset is improved, or its value enhanced, by property of a different character.

When exercising its discretion, a trial court is permitted to consider, as one relevant factor, a spouse's unusually significant contributions to (or wasting of) the assets on hand at trial. As Division Three has noted, "Washington courts recognize that consideration of each party's responsibility for creating or dissipating marital assets is relevant to the just and equitable distribution of property."

In re the Marriage of White, 105 Wn. App. 545, 549-51, 20 P.3d 481

(2001) (footnotes and citations omitted).

Darlene has objected to the trial court findings with regard to the Yacolt home and Bernard's retirement accounts. It may be assumed that she stipulates there is sufficient evidence in the record to support the court's findings with regard to the remainder of the property listed in schedules I through V of the dissolution decree.

The Yacolt House.

Bernard stipulated that the Yacolt home was a community asset because it was purchased during the marriage. RP 10. The parties stipulated in chambers that the value of the home was \$730,000.00 based upon two appraisals of the property within ten days of the trial. RP 1-2. The home at the time of trial was subject to a mortgage of \$210,000.00. RP 10. Bernard's attorney provided a trial aid to the court which referenced Bernard investing \$480,000.00 of his separate property into the Yacolt property. RP 11. That source of the separate funds were from the sale of real estate awarded to Bernard from a prior dissolution proceeding. Id. This unusually significant investment of Bernard's allowed the Yacolt home to be mortgage free from 1998 through 2001. RP 15. It also allowed the community to mortgage the Yacolt home to purchase other community property real estate for \$170,000.00 and to pay community liabilities of \$50,000.00. RP 16. The only objection to the calculation of the value of the home was Darlene's attorney stating, "Well, you know, Mr. Marshack

says we have this stipulation that it's 730,000. I think the property's probably worth a lot more than that." RP 58.

Bernard submits that the record is sufficient to support the findings and conclusions made by the court to establish the value of the Yacolt home. Based upon this information the trial court ruled:

The Court notes that there is a family residence located in Yacolt. I have in my notes the parties stipulated to a valuation of 730, \$730,000, with a \$220,000 outstanding obligation thereon. The wife, or excuse me, the husband indicated that he had sold, I believe, three parcels for some 562,000. That 480,000 was used out of that to pay off the Yacolt home and that it was -- there was no mortgage on it.

Later there was a mortgage taken to purchase other property and to satisfy obligations. Mister wishes to have that all as an equitable reimbursement being awarded the home. The Court believes that because it is a 13-year marriage, because there was a beauty salon, because there was a shop, that there certainly is some community property involved in that particular parcel and not all of it should be simply separate property.

The Court sets \$150,000 as community property in that particular. The balance the Court will treat as either equitable reimbursement or separate.

RP 111.

By this calculation the court determined that Bernard received an equitable reimbursement of \$370,000.00 of the net value of the Yacolt house. This is \$110,000.00 less than his separate investment of \$480,000.00 in 1998. In addition, Bernard was awarded the \$220,000.00 mortgage on the home which was used to purchase other community real

property and pay community liabilities. The net result is that the trial court awarded the community half the value of the Yacolt home: \$150,000.00 plus the value received from the mortgage \$220,000.00, or \$370,000.00. When the Yacolt mortgage is paid off by Bernard's post-dissolution separate property he will have paid \$700,000.00 for the property: \$480,000.00 in 1998 and \$220,000.00 post-dissolution.

According to the principles of Marriage of White, supra, and when considering all the relevant factors, it cannot be said that the trial court manifestly abused its discretion in: calculating the value of the Yacolt home; establishing an equitable lien in favor of Bernard that is significantly less than the value of his separate property investment in the home; and, in calculating and dividing equally the community value of the home. Therefore Bernard submits that Darlene has not met her burden of showing manifest abuse of discretion by the trial court with regard to the Yacolt home.

Bernard's Retirement Accounts

Darlene submits that Bernard did not provide full discovery to establish there was no contribution to his retirement accounts during the marriage. Appellant's Brief at 8. The record reflects that the parties engaged in an extensive discussion of the documents regarding Bernard's retirement accounts. RP 93-8. That discussion is summarized below:

MR. YOSEPH: . . . I just wanted to renew my request that we get some hard numbers on a couple of these things, particularly those annuities because they do total over a half million dollars and --

THE COURT: Is there any reason that you cannot show when they were originally set up and with what account?

MR. TEHENNEPE: Yes.

MR. MARSHACK: We have a hard time getting documents back from that time frame --

THE COURT: I realize back in --

MR. MARSHACK: -- we have --

THE COURT: -- '60s or '70s, but.

MR. MARSHACK: -- we have a document April 2000 --

THE COURT: You're looking where, please?

MR. MARSHACK: Tab 10, halfway through. It's a Piper Jaffre account, April 1st, 1993, shows \$246,000 --

. . .

THE COURT: You see, though, what they're asking for is to show that that was set up prior to April of '92.

MR. YOSEPH: Correct.

. . .

MR. MARSHACK: Eleven, yes. It demonstrates that there was a retirement defined benefit plan that he had, it was awarded to him and that was what funded the annuities. And we show a Piper Jaffre letter dated October 15th, 1996, how the IRA rollover was funded from the defined benefit --

THE COURT: Well, I have a Piper Jaffre, going back to your 11, all right? I have a Piper Jaffre of 117,815. That was -- that would have been back, it says January of '92.

MR. MARSHACK: Yes.

THE COURT: All right. Then I see a March of '92, it's your written instructions to distribute the above-referenced blah, blah, blah joint account, balance to be distributed, okay.

MR. MARSHACK: This document here, which my book is slightly different than everybody else's because -- but it's under Tab 10 --

THE COURT: Uh-huh.

MR. MARSHACK: -- it's Piper Jaffre. The statement period that appears right here is April 1st, 1993, but under the name Gerry's Machine Shop it says, defined benefit pension plan dated 11/29/82, so it was established 11/29/82.

THE COURT: All right. I do see also on March 10, '92, after the documentation in Tab 11 where there was a distribution of evidently that particular account based on the dissolution and, again, like I've said, I see a Piper Jaffre account that's awarded evidently to Mister based on the documentation that I see. I'll have to review that.

MR. YOSEPH: A hundred 17 Piper Jaffre?

THE COURT: A hundred and 17, right.

MR. YOSEPH: That went to the wife.

THE COURT: Well, you'll find, just keep turning, you got, I think it was distributed, if I'm not mistaken, it looks like asset summary, you got, let's see, (c), parties will share equally in fluctuation of Piper Jaffre, so it appears that it was divided.

MR. YOSEPH: Well, I'm looking at the spreadsheet that he's --

THE COURT: Keep turning.

MR. YOSEPH: Keep turning? Oh.

THE COURT: Yeah, then down at sub (c) if you get there where there's a sub -- yeah, right, no, I think it's -- well, I don't know.

MR. YOSEPH: Piper Jaffre 117,815?

THE COURT: Right. And you look down and it shows a small c by it -- . . . and then it says parties will share equally in fluctuation of Piper Jaffre, I trust that the parties divided the Piper Jaffre account.

MR. YOSEPH: No, the fluctuation of it.

THE COURT: Well, that's what I'm talking about. If you share equally in the fluctuation, that's in the income of the particular account, so I trust that --

MR. YOSEPH: Well, up -- Okay.

THE COURT: Anyway, I see what, I understand what you're saying, Mr. Yoseph. I will look at the documentation that we have. . . . Well, the only concern -- I mean, you're talking a half million dollar asset, and if you're talking a half million dollar asset,

the Court certainly wants to know what's its genesis, and if in fact it is pre-April of '92 without any other contributions, then it's separate property.

MR. MARSHACK: And that's what our testimony was.

THE COURT: That's what you've said.

RP 93-8.

The parties did not discuss the issue of the retirement accounts after reviewing the material provided by Bernard in his trial aid to all the parties. The court awarded Bernard as his separate property those investment and retirement accounts that he funded prior to the marriage. Findings of Fact Conclusions of Law 2.9, CP 4, Decree of Dissolution of Marriage, Schedule III, CP 2. The court recognized that there was a significant source of funds in the retirement accounts and traced the origin of the funds prior to the marriage in January of 1992, and the inception of the defined benefit plan in 1982. RP 95. Bernard testified that he did not contribute any funds to those retirement accounts during his marriage to Darlene. RP 97. Darlene did not rebut these assertions with any evidence of her own. At the time of reconsideration the focus of the discussion was on the community value of the Yacolt home and the amount of maintenance. RP 121-39. At reconsideration the retirement accounts were never specifically mentioned by Darlene. Her argument at that time was: "This case has always been about recharacterizing property to come to a fair and just decision in this case. Mr. Tehennepe walks away with almost

1.3 million dollars, an estate.” RP 125. The trial court questioned

Darlene’s attorney further about the nature of the separate property:

THE COURT: What you're saying is, if I understand you, Mr. Yoseph, is that equity, the Court should look at his separate property and give her from his separate property so that equity is addressed. And you're saying that what the Court did was not equitable; is that accurate?

MR. YOSEPH: That's accurate, Your Honor.

THE COURT: All right.

MR. YOSEPH: It's exactly accurate.

RP 128.

The trial court applied the law to the theories advanced by Darlene.

The findings reflect that the retirement accounts were the separate property of Bernard’s because those accounts were acquired prior to the marriage. RP 97. The court then considered Darlene’s argument on reconsideration that the case was about making an equitable division of Bernard’s separate property. The court considered the thirteen year term of the marriage and the nature of Bernard’s property and the amount of property determined to be community property. RP 131-33. After weighing these factors the court did not consider that it was equitable to “strip” Bernard of his separate property due to a thirteen year marriage. RP 133.

Therefore Bernard submits that there is a sufficient record to identify Bernard’s retirement accounts as separate property and that

Darlene has not met her burden of showing manifest abuse of discretion by the trial court in awarding those accounts to Bernard.

III. THE COURT DID NOT MANIFESTLY ABUSE ITS DISCRETION IN MAKING ITS AWARD OF SPOUSAL MAINTENANCE

It is within the trial court's discretion to grant a maintenance order in an amount and for a period of time the court deems just. RCW 26.09.090(1), In re Marriage of Vander Veen, 62 Wn. App. 861, 867, 815 P.2d 843 (1991). Some of the factors the court must consider include: the postdissolution financial resources of the parties; their abilities to meet their needs independently; the duration of the marriage; the standard of living they established during their marriage; their ages, health and financial obligations; and the ability of one spouse to pay maintenance to the other. RCW 26.09.090(1). The court's paramount concern is the economic condition in which the dissolution decree leaves the parties. Marriage of Williams, 84 Wn. App. 263, 267-68, 927 P.2d 679 (1996) review denied, 131 Wn.2d 1025 (1997).

The trial court abuses its discretion when its decision is based upon "untenable grounds or for untenable reasons, considering the purposes of the trial court's discretion." Coggle v. Snow, 56 Wn. App. 499, 507, 784 P.2d 554 (1990). "The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors,

the award must be just." In re Marriage of Bulicek, 59 Wn. App. 630, 633, 800 P.2d 394 (1990).

The court heard the testimony regarding the parties incomes and abilities to earn at the time of trial, RP 12-3, 39-41, 43-5, 52-8, and reconsidered the parties positions at the hearing on reconsideration. RP 133-39.

The court examined the earnings and needs of the parties consistent with the statutory provisions outlined above. Id. In light of the trial court's through review of the parties circumstances it cannot be said that the court made an unjust maintenance award based upon untenable grounds or for untenable reasons.

Bernard submits that the based upon the clear record made by the trial court the maintenance award was fair and equitable and should be affirmed by the court.

Attorney Fees.

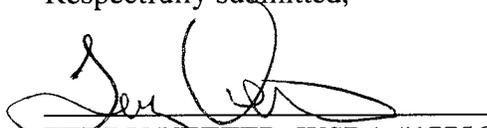
Bernard respectfully requests an award of reasonable attorney fees and costs in this matter pursuant to RAP 18.1(b) for having to defend this action over one year after an oral decision was rendered by the trial court. Bernard requests that the fee request made by Darlene be denied.

D. CONCLUSION

For the reasons set forth above, Bernard Tehennepe respectfully

requests this court affirm: the Findings of Fact and Conclusions of Law,
and Decree of Dissolution entered in the trial court on March 17, 2006;
and, the Order Increasing Spousal Maintenance and Denying
Reconsideration on all other Bases entered on January 12, 2007.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terry Vetter", is written over a horizontal line.

TERRY VETTER, WSBA #17756

Attorney for Bernard Tehennepe, Respondent

COURT OF APPEALS
DIVISION II
07 NOV 19 AM 11:40
STATE OF WASHINGTON
BY _____
DEPUTY

**COURT OF APPEAL, DIVISION II
OF THE STATE OF WASHINGTON**

In Re the Marriage of:

BERNARD TEHENNEPE

and

DARLENE TEHENNEPE

NOTICE OF APPEARANCE AND
CERTIFICATE OF SERVICE

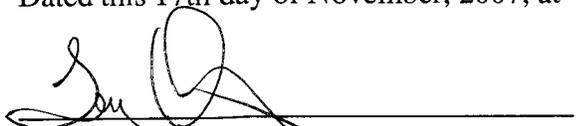
NO. 35924-3-II

TO: The Clerk of the Court of Appeals and to Appellant, Richard Guerrero, by through her attorney, Suzan Clark:

I certify that on November 17, 2007 that I deposited in the U.S. mail a copy of the Respondent's Brief in the above captioned cause addressed to Suzan Clark, Attorney for Appellant, at 1101 Broadway Street, Suite 250, Vancouver, WA 98666.

I declare under penalty of perjury of the State of Washington the foregoing is true and correct.

Dated this 17th day of November, 2007, at Vancouver, Washington.



Terry Vetter WSBA #17756
Attorney for Respondent

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