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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

In re the Marriage of: )  
 )  
ANTHONY SIDERIS, )  
 Respondent, )  
 )  
and )  
 )  
ERIN SIDERIS, )  
 Appellant. )  
\_\_\_\_\_ )

NO. 38395-I-II

BRIEF OF APPELLANT

\_\_\_\_\_  
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2 COURT OF APPEALS  
3 DIVISION II  
4 OF THE STATE OF WASHINGTON

5 In re the Marriage of:

6 ANTHONY SIDERIS,

7 Petitioner/Respondent,

8 And

9 ERIN SIDERIS,

10 Respondent/Appellant)

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) NO. 38395-1-II

) APPELLANT'S BRIEF  
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11 A. Assignments of Error

12 Assignment of Error No. 1: The trial court erred in it's ruling on August 8, 2008 that the  
13 husband's voluntary reduction of income, in conjunction with other factors, is a  
14 significant change of circumstances justifying a modification of the award of spousal  
15 maintenance in the Decree of Dissolution of Marriage.

16  
17 Assignment of Error No. 2: The trial court erred when it considered the Appellant/wife's  
18 cohabitation with another man a significant change in circumstances that warrants a  
19 reexamination of the spousal maintenance.  
20

21 Issues Pertaining to Assignments of Error

22 ISSUE #1: Is it error for the court to consider a husband's voluntary reduction in  
23 income, absent a showing of good faith, in concluding that there was a basis to modify an  
24 award of spousal maintenance to the wife, where at the time of the dissolution of  
25 marriage the husband voluntarily obligated himself to pay \$2,000.00/month spousal  
26 Sideris/Brief of Appellant-1

1 maintenance for ten years, and when, at the time of the dissolution the husband knew he  
2 would likely lose his employment with the federal government earning approximately  
3 \$80,000.00 year, and then became employed earning five hundred dollars a day as an  
4 independent contractor working in Iraq, and then within a month of trial, elected to work  
5 as a real estate agent with no expectation of an immediate income?  
6

7 ISSUE #2: Is it error for the trial court to consider the wife's cohabitation with  
8 another man, who is still married to another woman, as a basis to modify an award of  
9 spousal maintenance when the wife and the man with whom she cohabits do not share  
10 financial resources, nor do they hold themselves out as husband and wife, or combine  
11 assets and he does not contribute to her support?  
12

#### 13 B. Statement of Case

14 Anthony and Erin Sideris were married in 1987. RP. p.15. They were granted a  
15 Decree of Dissolution of Marriage on January 12, 2005. RP. p.18. The parties have two  
16 children , Michael and Stefanie. RP.p.15. They negotiated the terms of the Decree  
17 themselves without counsel. RP. p.17. The Decree provides that Mr. Sideris pay spousal  
18 maintenance in the amount of two thousand dollars per month for ten years, or until Ms.  
19 Sideris remarried. RP. p30-31.

20 The Decree of Dissolution of Marriage awarded profit from the sale of the real  
21 property, as well as a vacant lot to the wife. RP.p.20. Each party received one half of a  
22 Thrift Savings Plan accrued during the marriage. RP. p.19-20.

23 During the marriage the husband completed a Bachelor's of Degree in  
24 Criminology as well as training through Naval Criminal Investigative Services. RP. p.14.  
25 During the marriage the husband was employed for Naval Investigative Services. RP.  
26

1 p.15. He was employed as a GS13 step 4 earning between \$80,000.00 and \$85,500.00 a  
2 year. RP. p.55 From 2005 through May, 2008 the husband was a contract employee with  
3 Blackwater Security for the Department of State in Iraq. RP. p.15. In August, 2004 Mr.  
4 Sideris began looking for alternate employment because his employer transferred him to  
5 Washington D.C., rather than to the Seattle area. RP. p.37. He looked into employment  
6 with the Immigration and Customs Service in August, 2004. RP. p.37. At the time of  
7 entering into the terms of the Decree of Dissolution of Marriage Mr. Sideris also knew  
8 the possibility that he would be forced to give up his employment with Naval Criminal  
9 Investigative Services. RP. p.62. He knew that he might lose his employment because of  
10 his relationship with his current wife, who is a foreign national. RP. p.24.

11  
12 Between 2005 and May 2008 Mr. Sideris earned \$500.00 a day as a contract  
13 employee for Blackwater Security. RP. p.68. In addition, he received food and housing,  
14 and a ten percent commission for completing the contract. RP. p.69. After the completion  
15 of his contract with Blackwater in May. 2008 Mr. Sideris chose not to renew another  
16 contract. RP. p.34.

17 In May 2008 Mr. Sideris tore the ligaments in his shoulder. RP. p.38. Under the  
18 Defense Base Act Mr. Sideris became eligible for disability insurance of \$1,030.78 a  
19 week. RP. p.45.

20 Mr. Sideris did not seek any other employment because he decided to become  
21 employed as a real estate agent, with no anticipation of receiving any income until early  
22 2009. RP. p.49. He did not seek employment with the federal government or doing any  
23 investigative work. RP. p.71.

24 Ms. Sideris dropped out of college to support Mr. Sideris, and did not complete  
25 her college education. RP. p.83. Ms. Sideris did not work outside of the home after her  
26 Sideris/Brief of Appellant-3

1 children were born. RP. p.84. In 2002 Ms. Sideris had neurological problems that may  
2 have been a stroke. RP. p.21. Knowing that, Mr. Sideris agreed to ten years of spousal  
3 maintenance. RP. p.22.

4 Ms. Sideris began residing with Brian Slagle in September , 2005. RP. p.101. She  
5 and Mr. Slagle incorporated a business known as Slagle Construction Company in 2005.  
6 RP. p.102. The corporation pays her \$1,000.00/month when the corporation can afford it.  
7 RP. p.104. Ms. Sideris and Mr. Slagle jointly own a home. RPTTr. p.101-102. Ms. Sideris  
8 pays three-quarters of the mortgage, and Mr. Slagle pays one-quarter of the mortgage and  
9 expenses. RP. p.104-105.

10 Brian Slagle is married. RP. p.128. He shares bank accounts with his current wife.  
11 RP. p.130. Ms. Sideris and Mr. Slagle do not co-mingle assets. RPTTr. p.130. Ms. Sideris  
12 pays for three quarters of the household expenses because she is paying for herself and  
13 the children. RP. p.131.

14 When the Decree of Dissolution was presented to the court it contained language  
15 that Mr. Sideris inserted saying that the maintenance “will terminate 2/1/2015 or upon  
16 remarriage of the party receiving maintenance (wife). CP p14. At the time of the  
17 dissolution Mr. Sideris was cohabiting with someone. RP. p.60. Mr. Sideris was aware  
18 that Ms. Sideris might cohabit with someone, but he assumed that she would eventually  
19 get remarried. RP. p.60.

20 In September 2007 Mr. Sideris petitioned to modify his spousal maintenance  
21 obligation. Following a trial in front of the Honorable Jay Roof on July 16, 2008 in  
22 Kitsap County Superior Court, the court made findings that there was a significant  
23 change in circumstances based on the husband’s employment status, in conjunction with  
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1 other factors. RP. Volume 2 p.4. The court did not find that the wife's use of the equity  
2 that she realized from the sale of property awarded to her for the purpose of building and  
3 selling spec houses constituted a significant change in circumstances. RP. Vol. 2. p.5.  
4 However, the court found that the wife's cohabitation with another man was a significant  
5 change in circumstances that warranted a reexamination of the support obligation. RP.  
6 Vol.2 p.5. The court did not find that the husband's shoulder injury was grounds for a  
7 modification. RP. Vol 2. p.6.

8 The court's order modified the maintenance from two thousand dollars per month  
9 to five hundred dollars per month, but kept the duration of the maintenance award the  
10 same. CP p.59..

### 11 C. Summary of Argument

12 Mr. Sideris is not entitled to a modification of the Decree of Dissolution of  
13 Marriage awarding the wife spousal maintenance for a period of ten years absent a good  
14 faith showing that there has been a substantial change of circumstances such that he is  
15 unable to meet this obligation.  
16

17 The fact that Ms. Sideris cohabits with another man is not a basis to modify the  
18 award of spousal maintenance when the man she lives with is married to another woman,  
19 and they do not commingle assets, and Ms. Sideris does not rely on the man with whom  
20 she cohabits for support in meeting her monthly expenses.

### 21 D. Argument

22 The case of In re Marriage of Drlik, 121 Wn. App. 269 (2004) addresses the  
23 standard for the appellate court in reviewing a trial court's decision to modify an award  
24 of maintenance.  
25

1 A trial court will be reversed only upon a showing of abuse of discretion. Citing  
2 In re Marriage of Jennings, 138 Wn2d 612 (1999). The court, in determining whether  
3 there was an abuse of discretion the court reviews the order for “substantial supporting  
4 evidence and for legal error.” In re Marriage of Spreen, 107 Wn. App. 341 (20021). In  
5 determining whether there has been an abuse of discretion, the appellate court reviews the  
6 order for substantial supporting evidence and for legal error. Substantial evidence  
7 supports a factual determination if the record contains sufficient evidence to persuade a  
8 fair-minded rational person of the truth of the determination. Spreen, at 346.

9 At the time that the parties negotiated the maintenance award to the wife, the  
10 husband was aware that his security clearance was in jeopardy due to his romantic  
11 involvement with a foreign national. He had decided not to continue his employment  
12 working as a GS level 13 civilian employee for the United States Government in part  
13 because he was transferred to Washington D.C. rather than Seattle and the issue of his  
14 security clearance had not been resolved. Nevertheless, Mr. Sideris undertook the  
15 obligation to pay maintenance of two thousand dollars per month for a ten year period.

16 The Revised Code of Washington, RCW 26.09.170(1) allows modification of a  
17 maintenance award when the moving party shows a substantial change in circumstances  
18 that the parties did not contemplate at the time of the dissolution decree. Here, the loss of  
19 employment with the federal government was within the contemplation of the parties at  
20 the time of the entry of the decree.

21 The husband demonstrated his ability to continue paying the maintenance  
22 obligation by entering into multiple contracts with Blackwater, Inc. to provide private  
23 security in Iraq. The husband increased his earnings in that capacity to \$500.00/day plus  
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1 benefits. The trial court took into consideration the risks associated with working in Iraq  
2 as part of the basis of finding a substantial change of circumstances and ruled that the  
3 court would not “impose upon him the income that he received when he was receiving  
4 hazardous duty pay.” The husband worked for Blackwater Inc. up until May 2008 when  
5 he tore some ligaments in his shoulder which would require surgery. Mr. Sideris was  
6 receiving disability pay of \$1.078.00/ week, and otherwise had no income at the time of  
7 trial, other than what he anticipated earning as a real estate agent some time in the future.

8 The court found that the husband’s voluntary reduction in pay, standing alone,  
9 was not sufficient to constitute a substantial change in circumstances, but the court found  
10 that in conjunction with other factors, it was a significant change in circumstances.

11 The trial court looked to the wife’s business ventures, and found that the fact that  
12 she sold the house awarded to her in the decree and converted that to seed money to  
13 finance building and selling spec houses was not a significant change of circumstances,  
14 as she was using the equity in the house that was awarded to her.

15 The trial court then looked at the fact that the wife cohabits with her business  
16 partner, and found that the relationship, although convoluted, its stability and duration,  
17 and given its financial entanglements and the obvious benefits, was a basis for the court  
18 to find the relationship between the wife and Brian Slagle a significant change of  
19 circumstances to warrant reexamination of the support obligation.

20 The case law in Washington requires that the phrase “change in circumstances”  
21 refers to the financial ability of the obligor to pay vis-à-vis the needs of the recipient. Fox  
22 v. Fox, 687 Wn. App. 782, 942 P.2d 1084 (1997), citing In re the Marriage of Ochsner,  
23 47 Wn. App. 520, 736 P.2d 292, (1987).  
24  
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26

1           Where there is a voluntary reduction of income, absent a showing of good faith,  
2 there is not a change of circumstances to warrant a modification of a maintenance  
3 obligation. Lambert v. Lambert, 66Wn.2d 503, 403 P2d 664, (1965.).

4           In the instant case the husband had tripled his income following the entry of the  
5 Decree of Dissolution of Marriage and continued to work at the rate of \$500.00/day from  
6 the time he filed his Petition to Modify Spousal Maintenance up until May, 2008 when he  
7 tore ligaments in his shoulder. He was receiving temporary disability pay at the time of  
8 trial, and planned to sell real estate thereafter. The husband made no attempts, except a  
9 single application to U.S. Customs in 2004, to find employment comparable to what he  
10 earned as a government employee doing investigative work. Instead, he chose to work in  
11 the security field in Iraq under circumstances that earned him significantly higher pay  
12 than he enjoyed during the marriage. The husband chose not to renew his contract with  
13 Blackwater. There is no reason to believe that the husband cannot continue to earn the  
14 equivalent to what he earned at the time of the award of maintenance, as he demonstrated  
15 his ability to earn three times what he earned at the time of the divorce for the three years  
16 following the entry of the Decree, then he received temporary disability income of  
17 \$1,078/week until his shoulder injury healed. He chose to become employed in real estate  
18 because he believes that he can earn more in that capacity than working in a capacity in  
19 which he has extensive training and experience.

20  
21           The trial court did not make any findings whether the voluntary decrease in the  
22 husband's income was in good faith. The appellant would argue that there can be no  
23 finding of good faith where the husband demonstrated he has ample ability to earn  
24 enough money to continue to meet the spousal maintenance obligation the husband  
25 agreed to at the time of the entry of the Decree of Dissolution.  
26

1           The second factor the court used to find that there had been a significant change  
2 in circumstances was the fact that Ms. Sideris shares a home with another man. In  
3 Washington, co-habitation alone cannot be a basis to terminate an award of spousal  
4 maintenance. In re Marriage of Tower, 55 Wn. App. 697, 780 P2d 863, (1989). In the  
5 Tower case the trial court provided that the award of maintenance would terminate upon  
6 the wife's cohabitation. The appellate court found that to violate public policy, and  
7 directed that the language of the Decree be modified such that cohabitation could be  
8 grounds for finding that there had been a substantial change in circumstances warranting  
9 a change in the maintenance. The court articulated that the test was more than simply  
10 whether two people enter into what they hope will be a long term relationship. Instead, it  
11 must be whether the new relationship substantially changes the maintenance recipients  
12 economic circumstances.  
13

14           In this case Ms. Sideris shares a residence with her business partner. The  
15 construction company that they own pays them each one thousand dollars per month  
16 when it is able to do so. The only time that Ms. Sideris received pay from the  
17 construction company was when one of the houses built by the company sold. The  
18 income was sporadic and dependent upon the ability of Ms. Sideris and Mr. Slagle to  
19 build and sell houses at a profit.  
20

21           In Tower the court looked to the dictionary to define the word 'co-habit'. The  
22 definition of 'cohabit' recited by the court was "to live together as husband and wife  
23 without a legal marriage having been performed." In this case, Ms. Sideris resides with a  
24 man who is still married to another woman. He shares accounts with his wife, and keeps  
25 his finances separate and apart from Ms. Sideris' finances. They split expenses of the  
26

1 house that they reside in together based on the percentage of the members of the  
2 household Ms. Sideris is responsible for; i.e. herself and two children, and Mr. Slagle  
3 pays one-fourth of the household expenses.

4 Although the court in Tower did not elaborate upon what is meant by living as  
5 husband and wife, the fact that Mr. Slagle is married, that he shares accounts with his  
6 wife, and that he does not contribute to any of Ms. Sideris' expenses raises the question  
7 of whether Ms. Sideris is living "as husband and wife" under these circumstances. The  
8 benefit that Ms. Sideris derives from the relationship is the business relationship which  
9 has enabled her to generate some income. Without her relationship with Mr. Slagle she  
10 would not be able to engage in the construction business. Ms. Sideris' living  
11 arrangements are therefore less like a marriage and more like a business relationship, or  
12 perhaps comparable to young adults who share housing for economic advantages. The  
13 court in Tower pointed out that meretricious relationships can be quite transitory, leaving  
14 the spouse receiving maintenance vulnerable if the relationship is broken off without  
15 obligation.  
16

17 In the instant case the court reduced the award of maintenance from two thousand  
18 dollars per month to five hundred dollars per month, with the duration remaining the  
19 same. There was no finding that the wife's needs had decreased by fifteen hundred  
20 dollars per month as a result of cohabiting with her business partner. At the time the  
21 parties reached an agreement to provide the wife with two thousand dollars per month for  
22 ten years was based on their understanding of the wife's needs. The marginal and  
23 sporadic income she testified receiving from the sale of houses did not change those  
24 needs dramatically. The court found that the wife had invested the equity of the property  
25  
26

1 awarded to her in her business ventures, but did not find that she had a regular income  
2 that supplanted her need for maintenance. In fact, the wife is still in need of the  
3 maintenance award to be able to meet her monthly expenses.  
4

#### 5 CONCLUSION

6 There was not a substantial change of circumstances that was unanticipated by  
7 the parties to justify a modification of the amount of spousal maintenance provided for in  
8 the Decree of Dissolution of Marriage that the parties entered into by agreement. The  
9 husband significantly increased his earnings following the entry of the Decree of  
10 Dissolution, and continued at his higher rate of pay up until one month prior to trial.  
11 There was no good faith effort on his part to maintain his earnings at a level that would  
12 enable him to continue paying spousal maintenance as awarded in the Decree of  
13 Dissolution of Marriage.  
14

15 The fact that Ms. Sideris resides with her business partner is not a significant  
16 change in circumstances to warrant a modification of the spousal maintenance where the  
17 man she resides with is married and shares financial accounts with his wife, and does not  
18 contribute to Ms. Sideris' financial needs.

19 The trial court should be reversed and the spousal maintenance awarded in the  
20 Decree of Dissolution of Marriage should remain in full force and effect.  
21

22 RESPECTFULLY SUBMITTED this 14 day of February, 2009.  
23

24   
25 KERRY STEVENS WSBA#15420  
26 Attorney for Appellant

COURT OF APPEALS  
DIVISION II

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NO. 38395-I-II

DECLARATION OF SERVICE

I certify that on the 9th day of February, 2009 I caused a true and correct copy of the Brief of Appellant and Transcript of Trial to be served on the following the manner indicated below.

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