

No. 39188-1 II

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

In re the Marriage of:

GREGORY SMITH, Appellant,

v

TAMMY SMITH, Respondent

BRIEF OF RESPONDENT TAMMY SMITH nka SISICH

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INTRODUCTION

Despite the appellant's efforts, this case and the underlying facts are quite simple. The Findings of Fact, Conclusions of Law and Decree of Dissolution were signed by the Pierce County Superior Court and made effective on May 18, 2000. All debts and assets owned by the parties, whether community or separate, were considered and divided by the court at that time and awarded to the respective parties pursuant to the Decree of Dissolution. The terms of the Decree were agreed upon by the parties per the Findings of Fact and Conclusions of Law.

The Decree of Dissolution specifically said that the court retains jurisdiction to address the entry of a qualified domestic relations order. The Petitioner (Appellant, Gregory Smith) vigorously argues that there is an ambiguity where none exists by introducing inadmissible evidence. The Petitioner attempts to have a "trial by affidavit" without cause or proper presentation and in essence attempts to partially reopen the divorce which was finalized more than nine (9) years ago without moving for CR 60(b) relief to vacate the Decree.

In fact, the Decree of Dissolution is clear and the supporting cases well recognize that the community effort supporting the ruling of dividing, not only the past accrued benefits, but future retirement benefits, is both reasonable and within the bounds of the law.

ASSIGNMENTS OF ERROR

Respondent does not agree that there are any errors committed by the trial court, but given the assignment of errors raised by the Petitioner, the following issues are raised:

1. In light of the finality of the Decree of Dissolution, is Petitioner in a position to argue a change to the Decree when the Petitioner has not filed a motion pursuant to CR 60 (b) and when justice does not permit a review of the final decree even if said motion had been filed. (Assignment of Errors 1-7)?

2. Do the rules of construction on interpreting contracts apply to the interpretation of the Decree of Dissolution when there is no ambiguity. (Assignment of Errors 1-4 and 7)?

3. Does the residence of the spouses during the marriage have any relevance at this juncture for purposes of characterizing assets as community or separate property (Assignment of error 5 and 6)?

4. In light of the Decree of Dissolution's plain language and the Bulicek case, has the trial court erred in its award of benefits by the Amended Qualified Domestic Relations Order. (Assignments of Error 7)?

5. Does the untimely filing for a Motion for Reconsideration have any bearing (Assignment of Error 8)?

6. Should Petitioner be required to pay Respondent's fees?

STATEMENT OF THE CASE

Mr. Smith (the Petitioner), filed for divorce with the assistance and through an attorney. The Petitioner later chose to represent himself and terminated the services of his attorney. CP at 87-88. The parties negotiated and reached an agreement to split the Petitioner's retirement benefits 50-50. It was to include all of the retirement benefits without considering Social Security benefits or where the parties resided during the marriage. CP at 88.

The divorce was settled by agreement. See Supplemental CP at 142 and/or Exhibit "A" attached hereto as though fully set forth herein. As part of that agreement, the parties specifically found that Mr. Smith had no separate assets, but Mrs. Smith (a.k.a. Mrs. Sisich, the Respondent) had certain separate property assets, to-wit, 100% of her disability claim. CP at 144 and/or Ex. A, para. 2.9. The parties also agreed that Mr. Smith's interest,

past, present and future, in retirement was community property. The court found and concluded as a matter of law this fact. CP at 143 and/or Ex. A at para. 2.8.

The divorce was finalized on May 18, 2000. No activity occurred relating to Mr. Smith's retirement until 2008. The first hearing on this issue occurred on August 22, 2008 wherein the court granted the Respondent's request for the entry of a domestic relations order based on a certain formula. That order was presented and signed by the court on October 31, 2008. CP at 38-39. The Petitioner filed an untimely motion for reconsideration which was heard on December 5, 2008. The court denied Petitioner's motion for reconsideration by asserting that the motion was not timely filed. The court also, in the alternative, asserted that Petitioner's request for reconsideration was denied based on the substantive issues in the event it was later found that the court erred in denying a motion for reconsideration on the basis of timeliness. That order was presented and entered by the court on March 4, 2009.

Because of a typographical error, an amended domestic relations order was signed by the court and filed on March 25, 2009. CP at 112-118. The Petitioner filed in Notice of Appeal on April 21, 2008 which was more than

30 days from the date the order denying reconsideration was entered.

ARGUMENT

I. PETITIONER HAS NO STANDING BECAUSE HE HAS NOT FILED A MOTION TO VACATE THE DECREE.

A party may seek relief from a decree by filing a motion for the same under Civil Rule 60 (b). The Petitioner's complaint is not with the present ruling of the trial court, but with the Findings of Fact signed by the trial court when the Decree of Dissolution was originally filed on May 18, 2000.

Principally, the main objection of the Petitioner is the characterization of Petitioner's retirement as community property rather than separate property (or a portion thereof) based upon when the parties were married, where the parties lived, and future earnings by the Petitioner. However, those issues were all resolved on May 18, 2000 by agreement of the parties and by decree of the court. If the Petitioner wants to object to the entry of that Decree of Dissolution, he needs to file a motion under civil rule 60 (b) and specifically subsection (11) since none of the other provisions would even closely apply to this case.

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal

representative from a final judgment, order, or proceeding for the following reasons:

* * *

(11) Any other reason justifying relief from the operation of the judgment. Civil Rule 60 (b) (11).

There are a number of cases where the above-stated rule was applied on one party's motion to vacate the Decree of Dissolution. It is obvious from the legal principles stated in those cases that such relief, if sought in this case, would be denied. The first example is the case of *Thurston v. Thurston*, 92 Wn.App. 494, 963 P.2d 947 (1998).

In that case, the former wife sought to vacate the decree of dissolution as to an agreed disposition and settlement of the property. The parties had reached a settlement on property division which was memorialized in the Decree of dissolution. However, a portion of that stipulated Decree stated that certain assets from one of the corporations would be awarded to the wife. That corporation was controlled by her ex-husband's brother who refused to cooperate after that Decree was filed. Because it was a post-decree event that frustrated the ability to fulfill the terms of the decree, the court affirmed the trial court's decision to set the decree aside. However, the court noted that

setting aside a decree must involve extraordinary circumstances, but does not include errors of law.

Application of this provision is limited to "situations involving extraordinary circumstances not covered by any other section of the rule." Such circumstances normally involve "irregularities which are extraneous to the action of the court or go to the question of the regularity of its proceedings." **Errors of law may not be corrected by a CR 60 motion, but must be raised on appeal.** *Id.*, at 499 (emphasis added).

In other words, the issues complained about in this case revolve around claims of errors of law. That is, the Petitioner claims that the trial court designated certain assets as community property that should have been designated, at least in part, as separate property. Petitioner also claims that certain portions of the retirement worked as a matter of law not subject to division because of its substitutionary nature as relates to social security.

However the Findings of Fact clearly assert and declare that all of the Petitioner's retirement benefits (past, present and future) was community property. The Decree also specifically and clearly divided that community asset to the parties and became separate assets upon entry of said Decree. Those were the final decisions upon which a civil rule 60 (b) (11) cannot be sustained. Petitioners only remedy was to file an appeal within 30 days of the entry of the findings and decree. That time expired on June 17, 2000.

In a more recent case involving substituting child support for property division, the court said as follows:

A dissolution decree may be vacated for extraordinary circumstances to overcome a manifest injustice. **The extraordinary circumstances "must relate to irregularities extraneous to the action of the court." The errors of law may not be used to vacate a judgment.** *Hammack v. Hammack*, 114 Wn.App. 805, 810, 60 P.3d 663 (2003) (citations omitted, emphasis added).

Finally, to underscore this rule, Division II of the Court of Appeals very recently addressed this issue in the context of non-modifiable spousal maintenance. *Hulscher v. Hulscher*, 143 Wn.App. 708, 180 P.3d 199 (2008). In order for such spousal maintenance to in fact be non-modifiable it must be based upon an agreement otherwise it is always subject to modification.

The court noted that "[o]n May 28, 2003, Martin and Janice signed agreed findings of fact and conclusions of law pertaining to their proposed dissolution." *Id.* at 711. This court referenced an older decision, *In re marriage of Glass*, 67 Wn.App. 378, 835 P.2d 1054 (1992) for the proposition that a separation agreement does not need to be a separate document from the decree of dissolution. This court ultimately reversed the

trial court's modification of spousal maintenance stating that a party's right to object to an agreed order must be made before it is entered with the court.

Martin did not claim that the spousal maintenance provision was unfair until nearly a year after the trial court approved and entered the decree. But a party must make such a challenge *before* the trial court's approval and entry of the decree. *Hulscher*, 143 Wn.App. at 717.

In the case at bar, just as in the *Hulscher, Id* case, the parties signed the Findings of Fact and Conclusions of Law by agreement. See Exhibit "A" attached hereto. The Decree of Dissolution was based upon said agreed Findings of Fact. See CP at 17. Therefore, Petitioner is too late to object to his own agreement. Furthermore, even if the Petitioner filed a motion under civil rule 60(b), the motion would clearly be denied since his objections are based on rules of law not extraneous and extraordinary circumstances. The cited case law is very clear that errors of law are not a justifiable basis for vacating a decree under civil rule 60. Petitioner is in essence complaining about the agreed finding that the retirement benefits that accrued in the past, present and future were designated as community property. Incidentally, the qualified domestic relations order that divides said retirement benefits applied the formula set forth in the case of *Bulicek v. Bulicek*, 59 Wn.App. 630, 800, P.2d 394 (1990) which preserves both a community and separate property

interest on future accumulations. In other words, it balances the community effort against the petitioners individual effort after the divorce is finalized.

II. PETITIONER IS WRONG AS A MATTER OF LAW IN HIS ATTEMPT TO REOPEN THE CASE BY ARGUING THE DECREE IS AMBIGUOUS AND/OR ISSUES OF COMMUNITY PROPERTY VERSUS SEPARATE PROPERTY AND SOCIAL SECURITY BENEFITS.

A. Any Rules of Construction and Interpretation of Ambiguous Court Orders Favor of the Respondent.

1. The Decree is not ambiguous.

The first question to answer is whether the Degree of Dissolution is ambiguous. That question must be answered in the negative. The court in *Callan v. Callan*, 2 Wn.App. 446, 468 P.2d 456 (1970) stated that the process of interpretation or construction does not even apply when the Decree is not ambiguous. The court said, "If the judgment is unambiguous, there is no room for construction." *Callan, supra.* at 448.

By entering into this line of argument, Respondent is not abandoning the first portion of this brief. Respondent is adamant that this analysis should not even occur because it is not properly before this court in so far as Appellant is seeking to appeal the original Decree which said appeal rights ended on June 17, 2000, approximately 9 years ago. However, in examining the decree, it is obvious that there is no ambiguity other than what is being

made up by the Appellant.

2. Even if the Decree is ambiguous, it can be harmonized to remove any ambiguity.

Even if the Decree is considered ambiguous on this point, the ambiguity is easily cleared by reviewing all portions of the decree and reviewing the decree in conjunction with the findings of fact. The rules of construction and interpretation limit one's review to the document as a whole and review of any related documents in an effort to harmonize all potentially conflicting terms. The *Callan, Id.* is instructive on this point when it set as follows:

If, however, the judgment is ambiguous, then the Court seeks to ascertain the intention of the court entering the judgment or decree. The general rules of construction applicable to statutes, contracts and other writings are used with respect to findings, conclusions and judgment. These rules include the rule that the intention of the court is to be determined from all parts of the instrument, and that the judgment must be read in its entirety and must be construed as a whole so as to give effect to every word in part, if possible. 1A. Freeman, *Law of Judgments*, sec. 76 (5th ed. 1925); H. Black, *Law of Judgments*, sec. 123 (2d 3d. 1902); 3 W. Nelson, *Divorce and Annulment*, sec. 28.17 (2d ed. 1945); 49 C.J.S. *Judgments* sec. 436 (1947); 46 *Am.Jur. 2d Judgments* sec. 73 (1969). The authorities above cited referred to two canons of construction, here particularly pertinent (1) that the court is not confined to ascertaining the meaning of a single word or phrase without regard to the entire judgment, and, if necessary, the judgment roll, and (2) that provisions in a judgment that are seemingly inconsistent will be harmonized if possible. It is not to be

assumed that a court intended to enter judgment with contradictory provisions and thus impair the legal operation and effect of so formal a document. *Callan, supra.*, at 449.

The emphasis in all cases where an interpretation of an ambiguity on a court order exists focuses on the document itself. *In re the Marriage of Gimlett*, 95 Wn.2d 699, 629 P.2d 450 (1981). In the *Gimlett, Id.* case the court was struggling with the meaning of the word "emancipation." In its efforts to define that term the Court made the following observation: "Normally the court is limited to examining the provisions of the decree to resolve issues concerning its intended effect." *Gimlett, supra.* at 705.

In *Byrne v. Ackerlund*, 108 Wn.2d 445, 739 P.2d 1138 (1987) the question presented to the court was the interpretation of when a property must be sold in the decree of dissolution. The decree did not set a specific date for selling the property. Despite the absence of a final disposition date on the subject real property, the court upheld the enforceability of the decree and did not allow it to be modified. "A property settlement agreement incorporated into a dissolution decree that was not appealed cannot be later modified." *Byrne, supra.* at 453. The court later made an important observation about rules of construction and how the construction that results in a more reasonable outcome and results in no contradiction is the interpretation or

construction to be applied.

Where one construction would make a contract unreasonable, and another, equally consistent with its language, would make it reasonable, the latter more rational construction must prevail. *Byrne, supra.* at 453-54.

Also of note, Petitioner is in essence attempting to change the trial court's decision that was entered on May 18, 2000. Aside from being too late, such reversals are rare.

We begin by noting that trial court decisions in marital dissolution proceedings are rarely changed on appeal. *In re Stenshoel*, 72 Wn.App. 800, 803, 866 P.2d 635 (1993). 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); *In re Terry*, 79 Wn.App. 866, 869, 905 P.2d 935 (1995).

In re the Marriage of Williams, 84 Wn.App. 263, 267, 927 P.2d 679 (1996).

In the case at bar, applying the rules of construction set forth hereinabove, Petitioner fails in his arguments. If an ambiguity is identified, the first rule of construction is to look at the document as a whole. Second is to look at the findings of fact. In this case, the decree states as follows:

3.2 PROPERTY TO BE AWARDED THE HUSBAND.

The husband is awarded as his separate property the following property:

One-half of any and all rights accrued by virtue of present, past or future employment of the husband including but not limited to pension, retirement, profit sharing, reserve vacation, sick leave, insurance coverage, social security benefits and the like during the length of their marriage;

Any and all property acquired by the husband after the date of separation, April 26, 1998;

3.3 PROPERTY TO BE AWARDED TO THE WIFE.

The wife is awarded as her separate property the following property: one half (1/2) of any and all rights accrued by virtue of present, past or future employment of the husband including but not limited to pension, retirement, profit sharing, reserve vacation, sick leave, insurance coverage, Social Security benefits and the like for the length of the marriage;

Any and all property acquired by the wife after the date of separation.

CP at 18-19.

The Findings of Fact stay in relevant part as follows:

I. BASIS FOR FINDINGS

The findings are based on agreement.

* * *

2.8 COMMUNITY PROPERTY.

* * *

Petitioners rights accrued by virtue of present, past or future employment including but not limited to pension, retirement,

profit sharing, reserve vacation, sick leave, insurance coverage, Social Security benefits and the like;

* * *

2.9 SEPARATE PROPERTY.

The husband has no real or personal separate property.

See, Exhibit A attached hereto and/or CP at 142-144.

If we look at the decree by itself, it is easy to follow the rules of construction and harmonize the potential conflict or ambiguity where it states that Respondent is entitled to half of his future pension and Petitioner is entitled to all of property he acquires after the date of separation. The specific should control over the general. In this case, the specific is the division of the pension benefits followed by the general statement of being awarded all other property. That is a reasonable interpretation and construction and it harmonizes the entire decree when looked at as a whole.

Therefore, by applying the simple rules of construction, there is no ambiguity and what ambiguity there is can be harmonized. Petitioner wants to examine extrinsic evidence outside of the decree. However, he can cite no case law in support of that proposition. All cases that he cited were contract cases. He could not come up with one decree interpretation case because none exists. All of the decisions on interpreting decrees limit their examination to

the document itself, not extrinsic evidence. Furthermore, Respondent objected to the admission of the documents and declaration cited by Petitioner and renews that objection for purposes of this appeal consistent with the original objection found at Clerk Papers 94-95 and the basis for the objections is ER 401, 402, 801, and 802. The documents objected to is the Declaration of Petitioner dated November 10, 2008 and all letters attached thereto. CP at 43-51.

B. Community Property and Separate Property is not the Issue; the *Bulicek* formula is applicable.

Petitioner was confused the issues by raising issues about separate property and community property. The time for raising those issues was before the entry of the decree of dissolution. Since the parties entered the final decree by agreement, Petitioner has no right to complain on the allocation of assets based on what assets would be community and what assets would be separate. Petitioner attempts to argue from inadmissible evidence where no trial has been heard and attempts to re-open the case.

In reality, the application of the formula used for dividing the pension is well accepted and supersedes any details even if technically incorrect regarding community and separate property. The court in *In re the Marriage*

of Williams, 84 Wn.App. 263, 269, 927 P.2d 679 (1996) made this clear when

it said as follows:

When Stanley actually retired, Glenda was to receive one-half of the amount representing the number of months the couple was married divided by the total number of months Stanley worked. This is the approved method of dividing retirement benefits and pensions. Although the four years of premarital military benefits were, strictly speaking, Stanley's separate property, they have been credited to his city retirement plan. At any rate, the status of property as community or separate is not controlling. *In re Olivares*, 69 Wn.App. 324, 329, 848 P.2d 1281, *review denied*, 122 Wn.2d 1009, 863 P.2d 72 (1993). Even if the trial court mischaracterizes the property, the allocation will be upheld as long as it is fair and equitable. *Olivares*, 69 Wn.App. at 330.

Williams, supra. at 269 (emphasis added).

Probably one (1) of the more famous cases for applying the formula in a qualified domestic relations order is *In re Marriage of Bulicek*, 59 Wn. App. 630, 800 P.2d 394 (1990). The formula specifically approved by that court and has been used as a standard exactly for reasons like the one at bar: "[it] avoids difficult valuation problems." *Bulicek, supra.* at 638.

We next consider the trial court's disposition of pension rights. George contends that the formula adopted by the court improperly allows Janet to share in postseparation contributions to the plan.

* * *

We disagree with George's argument that this disposition of pension rights was unjust or inequitable. An award of pension

rights on a percentage, as-received basis is to be encouraged. Such a disposition avoids difficult valuation problems, shares the risks inherent in deferred receipt of the income, and provides a source of income to both spouses at a time when there will likely be greater need for it. We acknowledge that George's retirement fund may receive proportionately higher future contributions based upon his career longevity and anticipated increases in annual pay. We further acknowledge that the formula utilized for division of future retirement benefits could result in Janet's sharing in those increases. However, far from condemning this apportionment method, we specifically approve it as a means of recognizing the community contribution to such increases.

Bulicek, supra. at 635, 638-39 (emphasis added).

In this case, the formula approved by the trial court was this very same formula set forth in the *Bulicek* case. It is a formula that carves out retirement only for the years that they were married, and not for accumulated benefits prior to marriage or for benefits after marriage except for a proportional interest which is intended to reflect the community effort during their marriage. The formula is fairly self-explanatory and as the Petitioner worked another year, each year the wife's interest in the retirement got smaller and smaller. So while the pension payment may have increased, the percentage portion awarded to the wife got smaller and smaller. It is a balance between reflecting community investment and separate effort. It is a fair and proper reading of awarding pension from the Petition to the

Respondent of his past present and future. It is not reversible error and is consistent with the plain reading of the Decree.

C. Social Security is a Financial Issue that has no Bearing in this Case.

Issues relating to Social Security benefits that are supposedly within a portion of Petitioners retirement is not relevant. The time for Petitioner to argue about the relevance of a Social Security benefit was before the entry of the decree on March 18, 2000. He made no objection and in fact entered the decree by agreement. Seven years later the court of appeals held that the trial court did not err by considering Social Security benefits the wife would have received but for her type of federal pension. *In re the Marriage of Rockwell*, 141 Wn.App. 235, 170 P.3d 572 (2007).

The court did not rule that the presence or absence of Social Security benefits must be considered. On the contrary, the court was attempting to defend the consideration of Social Security benefits in light of the United States Supreme Court decision, *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979) and 42 U.S.C. sec. 407(a). The court was specifically warning against attempting to come up with a value for the Social Security benefits and distribute that asset as prohibited by the Washington

State Supreme Court decision *In re Marriage of Zahm*, 138 Wn.2d 213, 978 P.2d 498 (1999).

In the case at bar, issues regarding Social Security benefits were never raised prior to entry of the decree. The parties reached an agreement regarding the disposition of pension benefits. There was no discussion regarding the existence or absence of Social Security benefits. To reopen only a part of the case is patently unjust and unfair. The parties would need to be an entirely new trial where all assets would be subject to division. That is not appropriate or acceptable.

III. THE FAILURE TO TIMELY FILE THE MOTION FOR RECONSIDERATION WAS THE CORRECT RULING.

The trial court correctly ruled in denying Petitioner's motion for reconsideration because it was not timely filed. As addressed in previous briefing, Civil Rule 59 requires that a motion be filed and a note for setting the hearing be filed at the same time and it must be done within ten (10) days of the hearing sought for reconsideration. Petitioner filed the note of issue about 19 days after the hearing and the motion itself was not properly served on Respondent by mail until 12 days after the hearing sought to be reconsidered. Incorporated by reference is the legal memorandum and analysis previously filed on this issue and found at CP at 90-93.

Even if this court reversed the lower court's ruling that the motion was not timely filed, the lower court already adjudicated the alternative and found that there was no basis for reconsidering her prior ruling. See, CP at 109-110. Therefore, this court should not rule in Petitioner's favor on this issue.

IV. RESPONDENT IS ENTITLED TO AWARD OF ATTORNEY'S FEES.

Attorneys fees is sought by the Respondent, Tammy Smith (aka Sisich) and should be awarded to her. RCW 26.09.140 provides for award of attorney's fees to the party who has a need. Furthermore, RAP 18.1 provides for the award of fees and expenses to the extent it is applicable at the lower court. In this case where financial need is a factor, an affidavit setting forth the financial expenses and demonstrating the need of the requesting party must be filed. RAP 18.1(c).

In this case, the Respondent is in financial need and the Petitioner can afford to pay. Given those facts, petitioner should be required to pay the attorneys fees and costs incurred by Respondent.

CONCLUSION

The appeal in this case should be denied. The Petitioner is attempting to modify the decree of dissolution, not reverse the decision of the trial court in her most recent orders granting a domestic relations order. The proper

motion would have been civil rule 60(b)(11) which Petitioner did not do. There is no legal basis for granting relief under that motion in any event as there were no extraordinary circumstances. The Petitioner is claiming that there were errors of law. The appellate decisions could state that errors of law may not be corrected by civil rule 60.

The Petitioner is attempting to misdirect this court by claiming an ambiguity in the decree. Again the time to complain about the decree lapsed on June 17, 2000. However, even if this court were to look at the decree, it can easily be harmonized within itself and/or in concert with the findings of fact. This divorce was finalized by an agreement of the parties. Petitioner cannot revoke that agreement after the decree was entered almost ten (10) years ago.

Community property versus separate property is not the issue in this case. The findings and decree have identified and disbursed all assets and it is too late to change that fact. However, even if the characterization was wrong, the court still has equitable powers to divide, not only community property but also separate property. This division was done by agreement and should not change ten (10) years later. Social Security is not a relevant factor. The court does not have an obligation to consider alternatives to Social

Security. If this case had gone to trial, so long as the court did not attempt to place a value on Social Security, considering its impact on retirement may have been permitted. It is unfair and inequitable to attempt to go back and re-examine the impact of Social Security on retirement at this late stage. It is especially unfair and unjust to do that without examining all assets divided between the parties. Finally, attorneys fees and costs should be awarded to the Respondent.

DATED this 28 day of January, 2010.



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IN COUNTY CLERK'S OFFICE

A.M. MAY 18 700 P.M.

PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

In re the Marriage of:)	NO. 98-3-04304-0
)	
GREGORY S. SMITH)	FINDINGS OF FACT AND
Petitioner,)	CONCLUSIONS OF LAW
and)	(FNFL)
)	
TAMMY L. SMITH)	
Respondent.)	
)	

I. BASIS FOR FINDINGS

The findings are based on agreement.

II. FINDINGS OF FACT

Upon the basis of the Court record, the court FINDS:

2.1 RESIDENCY OF PETITIONER.

The Petitioner is a resident of the State of Washington.

2.2 NOTICE TO RESPONDENT.

The Respondent appeared, responded or joined in the Petition and was served in the following manner:

Respondent was personally served on or about January 5, 1999.

2.3 BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT.

The facts below establish personal jurisdiction over the

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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1 Respondent.

2 The Respondent is presently residing in Washington.

3 The parties lived in Washington during their marriage and
4 the Petitioner continues to reside in this state.

5 The parties may have conceived a child while within
6 Washington.

6 2.4 DATE AND PLACE OF MARRIAGE.

7 The parties were married on April 16, 1985 at Moses Lake,
8 Washington.

9 2.5 STATUS OF THE PARTIES.

10 Husband and wife separated on April 26, 1998.

11 2.6 STATUS OF THE MARRIAGE.

12 The marriage is irretrievably broken and at least 90 days have
13 elapsed since the date the Petition was filed and since the
14 date the Summons was served or the Respondent joined.

14 2.7 SEPARATION CONTRACT OR PRENUPTIAL AGREEMENT.

15 There is no written separation contract or prenuptial
16 agreement.

16 2.8 COMMUNITY PROPERTY.

17 The parties have the following real or personal community
18 property:

19 1991 Toyota Tercel, VIN JT2EL44A0M0052766;
20 1984 18' Marlin Boat, VIN ZZN22759LI92;
21 1992 Seadoo XP, VIN ZZN22759L192;
22 1993 J30 Infinity, VIN JKKAY21D8PM010139;

23 Household goods, furnishings and personal items;

24 THRIFT SAVINGS AND LOAN RETIREMENT PLAN,
Account #543-78-3942;

Petitioners' rights accrued by virtue of present, past or
future employment including but not limited to pension,
retirement, profit sharing, reserve vacation, sick leave,

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1 insurance coverage, social security benefits and the
2 like;

3 The parties have the following community property real
4 estate. Both properties have either been foreclosed upon
5 or are in the process of being foreclosed.

6 Community property residence commonly known as 5312
7 195th Avenue East, Bonney Lake, Washington 98390;

8 Community property located in Utah, legally described
9 as "LOT 206 OAKER HILLS SUBDIVISION, PHASE III";

10 2.9 SEPARATE PROPERTY.

11 The husband has no real or personal separate property.

12 The wife has the following real or personal separate property:

13 One hundred percent (100%) of the disability claim to be
14 received from her employer for further rehabilitation and
15 training.

16 2.10 COMMUNITY LIABILITIES.

17 The parties have incurred the following community liabilities:

18 WASHINGTON MUTUAL, Loan #0010886240
19 (foreclosed residential mortgage);
20 MONEY STORE, (home improvement) Loan #0084925718;
21 FIRST USA VISA (loan from MR. & MRS. SISICH for partial
22 down payment on home), Account #4417-1229-3320-1882;
23 COLUMBIA BANK, Account #543783942-0004;
24 BON MARCHE, Account #299-78-640;
CAPITAL ONE, Account #529107-1395712266;
CEDAR WEST ESCROW (foreclosed Utah property),
Account #1183-25;
FIRST NATIONAL BANK OF MARIN,
Account #4071-9340-6076-8849;
BENEFICIAL NATIONAL BANK (Price/Costco)
Account #7-001-172-000016049;
SEAFIRST, Account #505-313-4627410-8001.

25 2.11 SEPARATE LIABILITIES.

26 The husband has no known separate liabilities.

27 The wife has no known separate liabilities.

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1 2.12 MAINTENANCE.

2 Maintenance was not requested.

3 2.13 CONTINUING RESTRAINING ORDER.

4 Does not apply.

5 2.14 FEES AND COSTS.

6 There is no award of fees or costs because both parties have
7 the ability to pay their own fees and costs.

8 2.15 PREGNANCY.

9 The wife is not pregnant.

10 2.16 DEPENDENT CHILDREN.

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

Name of Child	Date of Birth	Mother's/Father's Names
DEREK	3/17/86	TAMMY SMITH GREGORY SMITH
KYLE	11/26/91	TAMMY SMITH GREGORY SMITH

13
14
15
16 2.17 JURISDICTION OVER THE CHILDREN.

17 This Court does not have jurisdiction over the children.

18 This Court has jurisdiction over the children for the reasons
19 set forth below:

20 This state is the home state of the children because the
21 children lived in Washington with a parent or a person
22 acting as a parent for at least six consecutive months
23 immediately preceding the commencement of this
24 proceeding.

25 This Court has continuing jurisdiction because the Court has
26 previously made a child custody or Parenting Plan
27 determination in this matter and Washington remains the
28 residence of the children or any contestant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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1 2.18 PARENTING PLAN.

2 The Parenting Plan signed by the Court on this date is
3 approved and incorporated as part of these findings.

4 2.19 CHILD SUPPORT.

5 There are children in need of support and child support should
6 be set pursuant to the Washington State Child Support
7 Schedule. The Order of Child Support signed by the Court on
8 this date and the child support worksheet which has been
9 approved by the Court are incorporated by reference in these
10 findings.

11 2.20 OTHER:

12 Does not apply.

13 III. CONCLUSIONS OF LAW

14 The Court makes the following conclusions of law from the foregoing
15 findings of fact:

16 3.1 JURISDICTION.

17 The Court has jurisdiction to enter a Decree in this matter.

18 3.2 GRANTING OF A DECREE.

19 The parties should be granted a Decree.

20 3.3 DISPOSITION.

21 The Court should determine the marital status of the parties,
22 make provision for a Parenting Plan for any minor children of
23 the marriage, make provision for the support of any minor
24 children of the marriage entitled to support, consider or
approve provision for the maintenance of either spouse, make
provision for the disposition of property and liabilities of
the parties, make provision for the allocation of the children
as federal tax exemptions, make provision for any necessary
continuing restraining orders, and make provision for the
change of name of any party. The distribution of property and
liabilities as set forth in the decree is fair and equitable.

3.4 CONTINUING RESTRAINING ORDER.

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Does not apply.
3.5 ATTORNEY'S FEES AND COSTS.

Does not apply.

3.6 OTHER:

Does not apply.

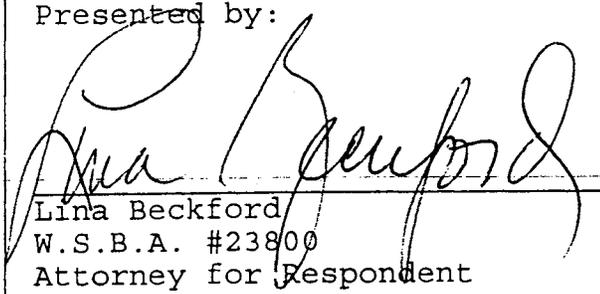
Dated: _____

Judge/Commissioner

Presented by:

Approved for entry:

Notice of presentation waived:



Lina Beckford
W.S.B.A. #23800
Attorney for Respondent

Gregory S. Smith
W.S.B.A. #
Attorney for Pro Se

FINDINGS OF FACT AND CONCLUSIONS OF LAW
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Does not apply.
3.5 ATTORNEY'S FEES AND COSTS.

Does not apply.

3.6 OTHER:

Does not apply.

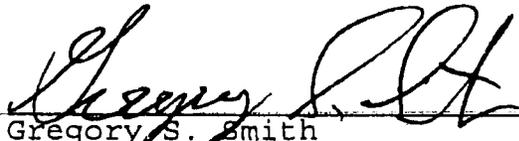
JAMES H. LANDO
COURT COMMISSIONER

Dated: _____

Judge/Commissioner

Presented by:

Approved for entry:
Notice of presentation waived:



Lina Beckford
W.S.B.A. #23800
Attorney for Respondent

Gregory S. Smith
W.S.B.A. #
Attorney for Pro Se

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2010 JAN 29 10:11 AM
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COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II
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**THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION II**

GREGORY SMITH)
) NO. 39188-1 II
Plaintiff,)
)
vs.) **AFFIDAVIT OF SERVICE**
)
TAMMY SMITH)
Respondent.)
_____)

STATE OF WASHINGTON)
) ss:
County of Pierce)

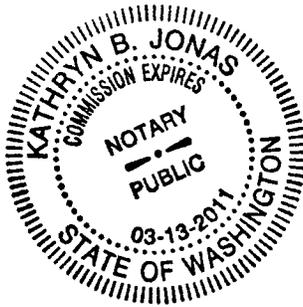
THE UNDERSIGNED, being first duly sworn, on oath, deposes and says:

I am a resident of the State of Washington, a citizen of the United States of America, over the age of majority, not a party hereto but competent to be a witness herein. That on the 29th day of January, 2010 this Affiant sent via ABC Legal Messenger a copy of Brief of Respondent Tammy Sisch, Motion for Order on the Merits, Respondent's Supplemental Designation of Clerk's Papers, and Affidavit of Service to:

Keith Stump, Attorney
102 West Main Street Suite 303
Auburn, WA 98001


DOLORES SCHEIFLEY

SUBSCRIBED AND SWORN TO before me this 29th day of
January, 2010.




NOTARY PUBLIC in and for
the State of Washington, residing at Edgewood.
My Commission expires: 3-13-11.