

Case No. 41040-1

COURT OF APPEALS, DIVISION II  
OF STATE OF WASHINGTON

FILED  
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COURT OF APPEALS  
DIVISION II  
SEATTLE, WA  
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JAMES W BOWMAN JR

Respondent/Appellant

VS.

KRISTINE L BOWMAN

Petitioner/Respondent

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APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR PIERCE COUNTY

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**APPELLANT'S OPENING BRIEF**

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**1. The Trial Court Erred when it did not vacate the Temporary Orders and Judgments of December 18, 2008**

**a. The Trial Court erred knowing that Kristine provided false, fraudulent, misrepresentative income information for James which makes the orders voidable and revocable under CR 60 (a),(b)(1)(4)(5)(6) and RCW 26.09.060 (10)**

**b. The Trial Court Erred in not vacating the December 18, 2008 after admitting that the Superior Court Clerk erred when it advised James and he relied on the Courts direction when the Court on December 17, 2008 informed him that there was nothing more to do and there were no hearings to attend. RP14.**

**2. The Trial Court Erred by over-ruling the findings and facts of the Federal bankruptcy Court in violation of the Supremacy Clause of the US Constitution**

- a. The Trial Court erred when issuing an unlawful order requiring James to embezzle corporate funds from an innocent third party, Pacific Real Estate Management, Inc. (PREMCO)**
- b. The Trial Court Erred when it unjustly awarded 401(k) money that did not exist at the time of separation and had no value as concluded by the Federal Bankruptcy Court ruling. James testified that the 2007 401(k) was used to pay community obligations prior to the separation and Kristine does not refute it.**
- c. The Trial Court erred in awarding James the Assets of PREMCO that were under the control and jurisdiction of the Federal Bankruptcy Court Case No. 09-15880**

**3. The Trial Court Abused its discretion by not granting James a fair trial**

- a. The Trial Court Abused its discretion by denying James his constitutional right to due process when it unlawfully abrogated right to a fair trial after James requested 2-3 days and the Court says "No. I guarantee it won't be that."RP 12-18-09 pp 12-13**
- b. The Trial Court Abused its discretion by denying James his constitutional right**

**to due process when it unlawfully  
abrogated his property rights**

- c. The Trial Court Abused its discretion by denying James his constitutional right to due process when it failed to compel discovery from Kristine that was necessary for trial**

- 4. The Trial Court Erred in awarding an amount of “undifferentiated spousal maintenance and child support” that the Court knew exceeded James’ ability to pay and exceeded the Bowman family’s average annual combined adjusted gross income from 2005-2009**

- a. The Trial Court abused its discretion by awarding said family support, attorney’s fees, and other awards to Kristine based on untenable reason because the facts do not meet the correct standard under RCW 26.09.071**
- b. The Trial Court Erred in not applying the correct standard for calculating James’ income for child support from December 2008 through March 2010**
- c. The Court erred in failing to determine the ability of James to pay spousal maintenance RP12 The**
- d. Trial Court erred in determining that James’ gross income was \$5,320 per month without supporting the means for calculating contrary to the requirements of RCW 26.09.071**

**5. The Trial Court erred in stating that James did not file a Motion to Modify which was in fact properly filed on February 18, 2010 pursuant to the Courts direction**

**6. The Trial Court Erred in awarding postsecondary education expenses when the wife admitted that the parties did not intend to pay for them nor was there any evidence of savings or ability to pay.**

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## I. INTRODUCTION

This case comes before the Appeals Court because the husband, James, is seeking relief from the Trial Court's final orders that appear to be based on multiple instances of reversible error, fraud, abuse of discretion based on untenable grounds, and capricious and arbitrary rulings, awards, conclusions and finding of facts. The result of the Trial Court orders has been to create extreme financial hardship and emotional distress for James' family and himself. He is requesting the case to be justly, fairly, and lawfully corrected and adjudicated. He is requesting that the Appellate Court vacate the temporary orders of December 18, 2008 and the final orders of July 2, 2010.

Of primary importance is the determination of James' income and ability to pay child support and spousal maintenance awards beyond his means and whether or not Kristine and her attorney committed fraud in perpetuating false and misleading statements about James' income while hiding her income and assets.

After 18 months of litigation, the Court never determined the income of the husband thus the Court never determined the child support due from December 2008 through March 2010 – a period of 14 months. The Court modified the temporary orders from December 18, 2008 after determining, the income reported by the wife for the husband was false. The wife admitted it was false. And, the Family Court admitted on numerous occasions that James's income was far less than the amount that the wife filed and used to calculate family support.

James contends that after the Trial Court modified the temporary orders, the Court abandoned the legal statutory requirement for determining income and child support and created a non-codified category of “undifferentiated spousal maintenance/child support” and the modified amounts of temporary monthly support still exceeded James net monthly income, his assets and resources, and his ability to pay.

On their original financial disclosures, both parties' listed monthly obligations that exceeded their incomes- the husband asserted that he too had a need for financial support and that he did not have the ability to pay spousal maintenance. Based on

paystubs and tax returns, the husband's income was less than the wife's income. Also, there is a question of how much more income the wife actually made since she did not produce discovery requested by the husband.

Further, the parents had no college savings plan for the children, and the wife admitted that there was no intention by the parents to pay for their adult children's college education.

James is also requesting review of the property distribution since both parties filed bankruptcy protection during the litigation and the husband had no liquid assets, savings, or retirement accounts. However, the Court awarded money to the wife from a 401(k) that does not exist. The Court awarded to the wife 100% of the household property (with the exception of a few items in the husband's possession), the family home without alleviating the husband of the debt, and awarded the wife assets of a third person, corporation that was in bankruptcy, along with attorney's fees and other awards to the wife.

The wife has approximately five years of college and an associate's degree completed during the marriage. The wife works as a food service director, and owns and operates a

pastry/wedding cake/catering business. The husband, acquired before the marriage, his Bachelor of Science degrees, worked in the mortgage industry for over twenty years, was a principal in a company that is bankrupt and whose function was to manage branches for other mortgage companies. The husband is currently unemployed.

James and Kristine currently have three adult children. James "JT" Bowman III - born 1988, Katarina Bowman - born 1990, and Austin Bowman - born 1993. JT, graduated from the University of Southern California with a B.S. Neuroscience and Commissioned 2<sup>nd</sup> Lieutenant in the U.S. Army. He is employed as a laboratory assistant in Los Angeles, CA. He was awarded an R.O.T.C. scholarship and received a monthly stipend along with his entire education, room board, meals, books, and fees. Katarina is a sophomore at the University of San Diego, where she received a full academic scholarship and received monthly work study income along with her entire education, tuition, room board, meals, books, and fees. Austin is graduating from Bellarmine Preparatory School in June, 2011. Austin plans on attending Santa Monica Community College in Los Angeles, living with his brother, then plans on transferring to UCLA film

school after meeting his two year residency requirements in California. All adult children have a history of employment.

The wife, Kristine, filed for divorce on December 1, 2008, trial was March 12, 2010, and the Trial Court did not sign final orders until July 2, 2010.

Both James and Kristine filed for personal bankruptcy during the litigation. James filed Chapter 7 Bankruptcy on June 9, 2009 and, as president of Pacific Real Estate Management Company Inc. a Washington State Corporation (PREMCO), filed Chapter 7 Bankruptcy on June 16, 2009 on behalf of the corporation.

## **II. Assignments of Error**

- 1. The Trial Court Erred when it did not vacate the Temporary Orders and Judgments of December 18, 2008**
  - a. The Trial Court erred knowing that Kristine provided false, misrepresentative income information for James which makes the orders voidable and revocable under CR 60 (a),(b)(1)(4)(5)(6) and RCW 26.09.060 (10)**
  - b. The Trial Court erred when issuing an unlawful order requiring James to embezzle corporate funds from an innocent third party, Pacific Real Estate Management, Inc. (PREMCO)**
  - c. The Trial Court Erred in not vacating the December 18, 2008 after admitting that the Superior Court Clerk erred when it advised James and he relied on the Courts direction when the Court on December 17, 2008 informed him that there was nothing more to do and there were no hearings to attend. RP14.**
  
- 2. The Trial Court Erred by over-ruling the findings and facts of the Federal bankruptcy Court in violation of the Supremacy Clause of the US Constitution**
  - a. The Trial Court Erred when it unjustly awarded 401(k) money that did not exist at the time of separation and had no value as concluded by the Federal Bankruptcy Court ruling. James testified that the 2007 401(k) was used to pay community obligations prior to the separation and Kristine does not refute it.**

**b. The Trial Court erred in awarding James the Assets of PREMCO that were under the control and jurisdiction of the Federal Bankruptcy Court Case No. 09-15880**

**3. The Trial Court Abused its discretion by not granting James a fair trial**

**a. The Trial Court Abused its discretion by denying James his constitutional right to due process when it unlawfully abrogated right to a fair trial after James requested 2-3 days and the Court says “No. I guarantee it won’t be that.”RP 12-18-09 pp 12-13**

**b. The Trial Court Abused its discretion by denying James his constitutional right to due process when it unlawfully abrogated his property rights**

**c. The Trial Court Abused its discretion by denying James his constitutional right to due process when it failed to compel discovery from Kristine that was necessary for trial**

**4. The Trial Court Erred in awarding an amount of “undifferentiated spousal maintenance and child support” that the Court knew exceeded James’ ability to pay and exceeded the Bowman family’s average annual combined adjusted gross income from 2005-2009**

**a. The Trial Court abused its discretion by awarding said family support, attorney’s**

**fees, and other awards to Kristine based on untenable reason because the facts do not meet the correct standard under RCW 26.09.071**

- b. The Trial Court Erred in not applying the correct standard for calculating James' income for child support from December 2008 through March 2010**
  - c. The Court erred in failing to determine the ability of James to pay spousal maintenance RP12 The**
  - d. Trial Court erred in determining that James' gross income was \$5,320 per month with supporting the means for calculating contrary to the requirements of RCW 26.09.071**
- 5. The Trial Court erred in stating that James did not file a Motion to Modify which was in fact properly filed on February 18, 2010 pursuant to the Courts direction**
- 6. The Trial Court Erred in awarding postsecondary education expenses when the wife admitted that the parties did not intend to pay for them nor was there any evidence of savings or ability to pay.**

**b. Issues Pertaining to Assignments of Error**

**1. Did the trial court err in not vacating the orders and judgments of December 18, 2008?**

**(Assignment of Error 1, 1a, 1b, 1c)**

**2. Did the Washington State Supreme Court Err in overruling the United States Bankruptcy Court?**

**(Assignment of Error 2, 2a, 2b)**

**3. Did the Trial Court abuse its judicial discretion in not granting James a fair trial?**

**(Assignment of Error 3, 3a, 3b)**

**4. Did the trial court err and abuse its discretion in awarding “undifferentiated spousal maintenance and child support” from December 1, 2008 through March 31, 2010 that amounted to \$15,361.57 month in family support when James was bankrupt, the Court concluded that James made less than \$10,000 per month, and James actual net income was around \$3,000 per month?**

**(Assignment of Error 4, 4a, 4b, 4c)**

**5. Did the trial court err in stating that James did not file a motion to modify family?**

**(Assignment of Error 5)**

**6. Did he Trial Court Err in awarding postsecondary education expenses when the wife admitted that the parties did not intend to pay for them nor was there any evidence of savings or ability to pay?**

**(Assignment of Error 6)**

## **TABLE OF AUTHORITIES**

### **CASES**

Pope v. University of Washington, 121 Wn.2d 479, 490, 852 P. 2d 1055 (1993).

Marriage of Spreen, 107 Wn.App 341, 346, 28 P.3d 769 (2001);

re Marriage of Thomas, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991)

Independent School Dist. v. Independent School Dist., 170 N.W.2d 433, 440 (Minn. 1969)

Marriage of Williams, 84 Wn. App. 263, 270, 927 P.2d 679 (1996), review denied, 131 Wn.2d 1025 (1997)

GRAYSON v. NORDIC CONSTR. CO. 22 Wn. App. 143, 589 P.2d 283 (1978)

FRIGIDAIRE SALES CORP. v. UNION PROPERTIES, INC., 88 Wn.2d 400, 405, 562 P.2d 244 (1977)

In Re Marriage of Sarbrek 100 Wn. App 444, 445 P7 (2000).

## ***STATUTES and OTHER AUTHORITIES***

Revised Codes of Washington 26.09  
Revised Codes of Washington 26.09.060  
Revised Codes of Washington 26.09.060(2)(a)  
Revised Codes of Washington 26.19.035  
Revised Codes of Washington 26.19.035(2),(3),(4)  
Revised Codes of Washington 23B.03.020  
Washington State Superior Court Rule 26  
Washington State Superior Court Rule 34  
Washington State Superior Court Rule 37  
Washington State Superior Court Rule 60(a)  
Washington State Superior Court Rule 60(b)(1),(4),(5),(6)  
Washington Business Corporation Act as amended, under HB  
1068. SL section 3(d)  
Washington State Constitution – Article XII  
Washington State Child Support Schedule: Definitions and  
Standards, Instructions, Economic Table  
US Supremacy Clause

### **III. Statement of the Case**

James W Bowman Jr. (born 3/1/64) and Kristine L Bowman (born 10/9/66) were married on December 18, 1987 in Federal Way, WA. They bought a home and resided in Tacoma, Washington in 1998 until their separation in 2008. They have three children James (III) (born 12/14/1988), Katarina (born 12/14/1990) and Austin (born 5/30/1993).

In 2008, James was working as a branch manager making commission only for Sierra Pacific Mortgage, headquartered in Folsom, CA. (CP 5) and was President of Pacific Real Estate Management Company, Inc. (PREMCO) a Washington Corporation formed in October 1999. The principal function of PREMCO was to procure and lease office space, equipment, phones, office supplies, etc. and to recruit and recommend loan officers and support staff for hire, and manage the daily branch operations for various Mortgage Brokers who wished to operate mortgage lending business in the State of Washington. The last company that PREMCO contracted with was CMG Mortgage, Inc. PREMCO sued CMG in 2007 after CMG withheld over \$80,000.00 in income

and reserves (CF 42) that PREMCO was owed under terms of various Facility Agreements. EX 61.

Kristine was privy to all the business decisions and received copies of all the tax returns. She admitted there were multiple shareholders and that PREMCO was a corporation. RP 112-113. Kristine's input was required to complete the tax returns. She created a folder labeled "2007 Tax Return". RP 121 3/112/10. James contends that Kristine submitted copies of the tax returns to the University of Southern California (where James III was attending on an ROTC scholarship) and to Bellarmine Preparatory School where Kristine was working and Katarina and Austin were attending in the hopes of getting financial aid for the couples' children. CP 40 and EX 85-86. Kristine admits that the 2007 tax returns were delivered to Bellarmine Preparatory School where Kristine was employed at that time. RP 106 3-12-10.

James encouraged her to complete her degree and she enrolled several times but always lost motivation. CP41. In 2003, James paid for her Associates Degree from the

Kristine attended over three years at the University of Washington. Both James and Kristine were students at the

University of when they met. Kristine dropped out of school after getting married RP 44 3/12/10.

The couple separated on October 12, 2008 after Kristine threatened James and he was forced to leave the family home. CP 42 and EX 74.

Kristine filed for divorce on December 1, 2008 and served all papers pertinent to the divorce proceedings, with the exception of a notice of hearing, to him in his office. Kristine falsely imputes James income at \$10,000.00 gross, \$10,000.00 net and marks income as "Unknown". James files his responses, Pro Se, on December 17, 2008 and states that he cannot afford an attorney. CP47. Income of James was submitted on December 17, 2008 showing the family's 2007 Tax Return, and James' total 2008 W2 earnings with Sierra Pacific Mortgage to be \$16,305. CP 4-16.

The trial concluded on March 12, 2010, the judge issued oral decisions on June 16, 2010, and the wife's attorney wrote the orders that where signed by the Trial Court on July 2, 2010

#### IV. ARGUMENT

1. **The Trial Court Erred when it did not vacate the Temporary Orders and Judgments of December 18, 2008**
  - a. **The Trial Court erred knowing that Kristine provided false, misrepresentative income information for James which makes the orders voidable and revocable under CR 60 (a),(b)(1)(4)(5)(6) and RCW 26.09.060 (10)**
  - b. **The Trial Court Erred in not vacating the December 18, 2008 after admitting that the Superior Court Clerk erred when it advised James and he relied on the Courts direction when the Court on December 17, 2008 informed him that there was nothing more to do and there were no hearings to attend. RP14.**

#### Income Issue

Findings of fact are reviewed under the substantial evidence standard. *Pope v. University of Washington*, 121 wn.2d 479, 490, 852 P. 2d 1055 (1993). Evidence is substantial if it persuades a fair-minded, rational person to the truth of the finding. *In re Marriage of Spreen*, 107 Wn.App 341, 346, 28 P.3d 769 (2001); *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991).

On December 1, 2008 and several other occasions, Kristine filed child support worksheets and stated that James made

monthly \$10,000 gross income, \$10,000.00 net income, and “Unknown” income. On December 18, 2008, the Trial Court entered temporary orders of, spousal maintenance of \$4,500.00 per month, child support of \$1,395.00 per month, judgments and attorney’s fee to the wife of \$19,000.00 based on this information. Trial Court admitted on several occasions that James never made that income. Kristine admitted that James did not make that income. James filed all tax returns, paystubs, employment contracts, and accounting of all income on several occasions that verified his net income averaged per month was less \$3,000.00 for the past three years. Despite that and during this time, the Court never corrected the error, vacated, modified or revoked the orders based on the false information; and never made a determination of the Father’s income- ~~ever~~ over a period of 19 months.

Trial Court erred in determining that James’ gross income for determining child support as of April, 2010 forward was \$5,320 per month with a substantial explanation and written findings of fact to support the decision which is contrary to the requirements of RCW 26.09.071. James can only guess that the Court used one paystub from the March 9, 2010 filing that

showed year to date income through 2/15/10 of only \$4,059 gross per month based on 100% commission since this paystub showed one two week period of \$2,658.00. However, that method for determining income falls short of the Requirements under Washington State Law.

RCW 26.19.071 (2) Verification of Income. Tax returns for the preceding two years and current paystubs **shall** be provided to verify income and deductions. Other verification shall be required for income and deductions which do not appear on tax returns.

RCW 26.19.071 (6) Imputation of income. (last line) In the absence of records of each parent's actual earnings, the Court **shall** impute a parent's income in the following order of priority:

- (a) Full-time earnings at the current rate of pay;
- (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
- (c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
- (d) Full-time earning at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off assistance, disability lifeline benefits, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;
- (e) **Median net monthly income of year-round full-time workers as derived from the United State bureau of census, current population reports, or such replacement report as published by the bureau of census** (emphasis added)

Definition of **Shall** (*USLegal.com*):

An imperative command; has a duty to or is required to. For example, the notice shall be sent within 30 days. Usually 'shall' used here is in the mandatory sense.

When used in statutes, contracts, or the like, the word "shall" is generally imperative or mandatory. [Independent School Dist. v. Independent School Dist., 170 N.W.2d 433, 440 (Minn. 1969)]

Although Kristine and the Court admit that James income is not \$10,000.00 per month, net, gross or otherwise, this number was used to induce the Court to create an extreme economic hardship on James by creating untenable family support demands and awards of judgments in favor of Kristine, and contempt charges and sanctions against James. Kristine on the day of trial completed Child support worksheets stating again the fraudulent income for James of \$10,000. If she admitted at trial that the income was obviously less than that then she willfully attempted to influence the outcome of the trial by knowingly misrepresenting James income. The Court had already relied on her false testimony in determining temporary orders for family support that never got corrected by the Court after 19 months until the Court only slightly modified the support by reclassifying it as "undifferentiated" family support without ever determining James income.

Definition of ***Fraud*** (*USLegal.com*):

Fraud is generally defined in the law as an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity and for the purpose of inducing the other person to act, and upon which the other person relies with

resulting injury or damage. Fraud may also be made by an omission or purposeful failure to state material facts, which nondisclosure makes other statements misleading.

To constitute fraud, a misrepresentation or omission must also relate to an 'existing fact', not a promise to do something in the future, unless the person who made the promise did so without any present intent to perform it or with a positive intent not to perform it. Promises to do something in the future or a mere expression of opinion cannot be the basis of a claim of fraud unless the person stating the opinion has exclusive or superior knowledge of existing facts which are inconsistent with such opinion. The false statement or omission must be material, meaning that it was significant to the decision to be made. Sometimes, it must be shown that the plaintiff's reliance was justifiable, and that upon reasonable inquiry would not have discovered the truth of the matter. For injury or damage to be the result of fraud, it must be shown that, except for the fraud, the injury or damage would not have occurred.

To constitute fraud the misrepresentation or omission must be made knowingly and intentionally, not as a result of mistake or accident, or in negligent disregard of its truth or falsity. Also, the plaintiff must prove that the defendant intended for the plaintiff to rely upon the misrepresentation and/or omission; that the plaintiff did in fact rely upon the misrepresentation and/or omission; and that the plaintiff suffered injury or damage as a result of the fraud. Damages may include punitive damages as a punishment or public example due to the malicious nature of the fraud.

**2. The Trial Court Erred by over-ruling the findings and facts of the Federal bankruptcy Court in violation of the Supremacy Clause of the US Constitution**

- a. The Trial Court erred when issuing an unlawful order requiring James to embezzle corporate funds from an innocent third party, Pacific Real Estate Management, Inc. (PREMCO)**

- b. The Trial Court Erred when it unjustly awarded 401(k) money that did not exist at the time of separation and had no value as concluded by the Federal Bankruptcy Court ruling. James testified that the 2007 401(k) was used to pay community obligations prior to the separation and Kristine does not refute it.**
  
- c. The Trial Court erred in awarding James the Assets of PREMCO that were under the control and jurisdiction of the Federal Bankruptcy Court Case No. 09-15880**

In a dissolution action, the trial court must make a "just and equitable" distribution of the property and liabilities of the parties after considering all relevant factors, including the nature and extent of the separate and community properties and the duration of the marriage. RCW 26.09.080. The trial court's paramount concern when distributing property in a dissolution action is the economic condition in which the decree leaves the parties. In re Marriage of Williams, 84 Wn. App. 263, 270, 927 P.2d 679 (1996), review denied, 131 Wn.2d 1025 (1997); RCW 26.09.080.

**Property – Corporation: Pacific Real Estate Management  
Company, Inc. (PREMCO)**

In order to justify prior rulings in this case and despite the fact that there was no substantial evidence to support the Trial Courts final decision, no previous orders had ruled or even determined the nature, character or value of the corporation, or determined or established what interest the marital community had in the corporation and its settlement of a litigation with another corporation, CMG Mortgage Inc (CMG).; the Trial Court ignored the fact that PREMCO filed for bankruptcy on June 16, 2009, ignored the fact that the PREMCO/CMG settlement was part of the PREMCO bankruptcy; the Trial Court erred in its final ruling by categorizing a Corporation as Community Property, awarding the settlement funds to James, then awarding one half of the settlement to Kristine while ignoring the debts of the corporation. Decree of Dissolution (DCD) §1.4(C) Principal judgment amount: \$98,483.00. DCD Separate Property awards specifically – Husband §3.2(2), §3.2(4), §3.2(5), §3.2(6), Wife §3.3(1), §3.3(2), §3.3(3), §3.3(4), §3.3(5), §3.3(6), §3.3(7). Findings of Facts and Conclusions of Law Community Property, specifically – §2.8(2), §2.8(3), §2.8(6), §2.8(7), §2.8(8)

Findings of fact are reviewed under the substantial evidence standard. *Pope v. University of Washington*, 121 wn.2d 479, 490,

852 P. 2d 1055 (1993). Evidence is substantial if it persuades a fair-minded, rational person to the truth of the finding. *In re Marriage of Spreen*, 107 Wn.App 341, 346, 28 P.3d 769 (2001); *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991).

- On **October 12, 2008**, James and Kristine separated
- On **October 31, 2008**, PREMCO and CMG agree to a sealed settlement agreement.
- On **December 17, 2008** James files responsive pleadings to Kristine's Petition for Divorce with the Superior Court Clerk. He asks the Court to look up his case to see if there is anything else he needs to do, the Court advises James that there are no further requirements of him, no hearings for him to attend and James relies on the Court's direction.
- On **December 18, 2008**, The Court ordered James to transfer all proceeds (an indeterminable sum) of a settlement between Pacific Real Estate Management Company, Inc. (PREMCO) and CMG Mortgage Inc.
- The Court and Kristine acknowledge and admit that this is a business litigation

- Kristine presents no substantial evidence that this is community property, never presents an argument for it, shows no documentation to justify such a request and the Court makes no justification or written findings of fact explaining why a business settlement should be encumbered, and does not independently verify anything. The Court arbitrarily signs an order prepared by Kristine.
- James was not notified of the hearing and was in absentia
- On **December 24, 2008**, James is shocked and surprised to be served with Orders from the Court of a hearing on December 18, 2008
- James notes that there is no order for the corporation to transfer its settlement money
- James cannot comply with the order since he has no money
- James does not own the corporation or its assets
- The corporation has more debt than assets, is effectively insolvent and is teetering on bankruptcy

- On **May 28, 2009** there is a hearing to Vacate the December 18, 2008 orders, Modify Support, and Contempt
- James confirms that the settlement is substantially less than the corporation's outstanding debt of over \$180,000.00
- At the hearing the Court acknowledges that it is illegal for James to transfer assets from an insolvent Corporation
- PREMCO was not represented nor ordered to respond in any way
- PREMCO corporate litigations funds went directly to a corporate secured creditor
- PREMCO's settlement with CMG is sealed on Federal Court order, Kristine was aware of the Federal Court order and that only upon another Court order could it be revealed to a third party. Kristine never made an argument or requested the Court to issue such an order.
- However, the Court finds James in Contempt for failing to embezzle and fraudulently convey money from the corporation by stating he made a preferential payment to

his father who the sole-proprietor of JW Enterprises, a creditor of PREMCO

- The Court orders James to take \$17,000 from the corporation that it used to pay a corporate lienholder, JW Enterprises, and give it to Kristine and ordered him to pay sanctions of \$1,500.00.
- James has no money and no ability to pay the sanction of \$1,500.00 or the \$17,000.00 order by the Court
- The Court acknowledges that James does not make \$10,000.00 per month and his income is in substantial decline and acknowledges the enormous amount of debt.
- The Court asks James when he is going to file bankruptcy and suggests that a Trustee should determine the estate
- The Court reserves the Motion to Vacate for Trial
- On **June 9, 2009**, at the direction of the Court, advice of two attorneys, and advice of two CPAs, James files for personal bankruptcy, Chapter 7
- On **June 16, 2009**, on the advice of two attorneys, and advice of two CPAs the corporation, PREMCO, files for Chapter 7 bankruptcy

- On **July 17, 2009** both parties have a motion to revise the May 28, 2009 orders
- Despite the fact that the Court acknowledges James has no money and no ability to pay by stating “You can’t get blood from a turnip” and acknowledging that James personal income is \$3,200 per month, the Court does not revise in favor of James. Instead the court says it wants to “hold a gun to his head” and leaves all of the December 18, 2008 orders and judgments in place.
- On **September 18, 2009**, Kristine has a hearing to compel discovery despite the fact she was informed by James that all requested documents – 9 banker boxes with approximately 22,000 pages bank accounts, credit accounts, tax returns, accounting, creditors, and all other requests for James and PREMCO, are available with his attorney and she had already received the list of documents and the accounting of the PREMCO settlement funds.
- To avoid trial and further litigation costs, James re-files a Motion to Vacate the orders on December 18, 2008 in an attempt to clarify his income and assets and have them

determined on the basis of fact, prima facie, and exculpatory evidence instead of the undocumented, misrepresentative and unsubstantiated claims of Kristine.

- On **February 3, 2010**, a hearing to vacate is dismissed and the Court Commissioner says that Judge Cuthbertson is in charge
- On **Feb 19, 2010**, James at the direction of the Ex-Parte Court has a hearing to clarify and affirm that the Motion to Vacate and Motion to Modify Support will be heard.
- The Court acknowledges that a Motion to Modify is before the Court and re-affirms that the Court will hear the Motion to Vacate the December 18, 2008 orders and judgments
- The Court *never* hears the Motion to Vacate the December 18, 2008 Orders of judgments.
- On **June 11, 2010**, The Judge concludes that since this is a closely held corporation then it must be the alter ego of James and therefore it is community property

The Trial Court erred. James could never receive nor take the corporate assets under Washington State Law RCW 23B.06.400 Distributions to shareholders:

(1) A board of directors may approve and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (2) of this section.

(2) *No distribution may be made if, after giving it effect:*

(a) *The corporation would not be able to pay its liabilities as they become due in the usual course of business (emphasis added)*

The Trial Court erred. A corporation is not community property. The separate identity of a corporation from its stockholders must normally be honored. Although the likelihood that a court will disregard a corporate entity is greater in the case of closely held corporations than public ones, the mere fact that a corporation is closely held does not justify ignoring its separate legal identity. Assuming no fraud or manifest injustice is perpetrated upon third parties (*parties who have business dealings with the corporation*) a closely held corporation's separate identity shall be honored when its stockholders, officers, and directors manage its affairs separately from their personal affairs. GRAYSON v. NORDIC CONSTR. CO. 22 Wn. App. 143, 589 P.2d 283 (1978)

It's a matter of public record that PREMCO filed for Chapter 7 Bankruptcy No. 09-15880-SJS on June 16, 2009. This action was separate from James personal bankruptcy. The Federal

Bankruptcy Court Record shows that James W Bowman Jr. as President of PREMCO was issued a subpoena and commanded to produce and permit inspection of:

- 1) All check registers, bank statements and canceled checks of the debtor (*PREMCO*) for January 1, 2009 through January 30, 2009
- 2) The debtors tax returns for 2006, 2007, 2008 and
- 3) An accounting of all funds received in the settlement of Bowman/Pacific Real Estate Management Company v. CMG case No. C07-1340SI

The trustee for the Bankruptcy hired a law firm to address the issue of fraudulent conveyance at the insistence of Kristine since PREMCO used the CMG/PREMCO settlement funds to pay off the JW Enterprise lien of \$17,000.00 on the corporate vehicle, a 2003 Chevy Suburban. CP 211. Said vehicle was valued at \$11,000.00, recovered by the trustee and sold to Kristine L Bowman for \$6,000.00.

All accounting of the CMG/PREMCO settlement funds and any other requested documents were delivered to the Trustee and there was no finding of fraudulent conveyance, no finding of fraud, alter ego, bad faith, or other wrong doing on the acts of James W Bowman Jr., President or any corporate officer, director, board member, directors, or shareholder. James acted in good faith and

acted lawfully in his capacity of an Officer of PREMCO when segregating and accounting for PREMCO settlement funds, loans, income and expenses from the family's personal finances. No accounting of the PREMCO funds was included in James' personal bankruptcy.

Had James followed the unlawful orders of the Trial Court, he would have violated Washington Corporate Law RCW 23B, been found guilty of Fraudulent Conveyance, the Trustee on behalf of the Creditors would have sued to recover the money paid to his wife, Kristine, and she would have been forced to return the money or face legal consequences.

The law is that when the shareholders of a corporate, who are also the corporate's officers and directors, conscientiously keep the affairs of the corporate separate from their personal affairs, and no fraud or manifest injustice is perpetrated upon third persons who deal with the corporate, the corporate's separate entity shall be mandated. *FRIGIDAIRE SALES CORP. v. UNION PROPERTIES, INC.*, 88 Wn.2d 400, 405, 562 P.2d 244 (1977). There is nothing in the record to indicate that James did not conscientiously keep PREMCO's affairs separate from his personal affairs.

The orders and judgments of December 18, 2008 were erroneous. The Trial Court's decision to uphold the decision is reversible error. The Washington State Supreme Court's decision to overrule the United States Federal Court decision is a violation of the Supremacy Law and constitutes reversible error.

The Trial Court ruling that the Court Clerk erred in advising James that there was no hearing on December 18, 2008 resulted in James be completely shocked and *surprised* by the ruling, judgments and orders from the hearing in which he had no idea had taking place, that resulted in irregular orders and a default judgment in which he had no ability to defend.

Under CR 60 Relief from Judgment or Orders: 60(b) 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:

- (1) Mistakes, inadvertence, *surprise*, excusable neglect or irregularity in obtaining a judgment or order
- (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (5) The judgment is void;
- (6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

The Trial Courts error in denying of the Motion to Vacate and refusal to vacate the Judgments or Orders of December 18, 2008 constitutes reversible error.

In general, a trial Court's mischaracterization of community property requires remand when the court's division of the property was dictated by the mischaracterization. *In Re Marriage of Sarbrek* 100 Wn. App 444, 445 P7 (2000).

Under multiple conclusions stated above, the Appellate Court should vacate the December 18, 2008 orders and judgments.

**Property: Husband's 401(k) Retirement Account and 2007 Tax Refund**

Simply put, James does not have a 401(k), he did not have a 401(k) in 2008 when Kristine filed for divorce and he did not have a 401(k) at any time during the divorce proceedings yet the Trial Court awarded James his 401(k) for \$125,000.00 and awarded Kristine one-half of the pre-distribution gross amount of a non-existent 401(k) for \$62,500.00. James was also award about \$14,000 of the 2007 tax refund that went to pay family obligation and did not exist at the time Kristine filed. Kristine was awarded

her half for about \$7,000 of that tax refund. James was ordered to pay it to Kristine. Decree of Dissolution (DCD) §1.4(C) Principal judgment amount: \$98,483.00. . DCD Separate Property awards specifically – Husband §3.2(2), §3.2(4), §3.2(5), §3.2(6), Wife §3.3(1), §3.3(2), §3.3(3), §3.3(4), §3.3(5), §3.3(6), §3.3(7). Findings of Facts and Conclusions of Law Community Property, specifically – §2.8(2), §2.8(3), §2.8(6), §2.8(7), §2.8(8)

The existence of the 401(k) is unsubstantiated. James admits he liquidated the account, loaned about half of it to PREMCO, used the other half to pay community debt, PREMCO restructured its debt and repaid the money to James. James used 100% of the 401(k) funds to pay his family obligations until he ran out of money in September 2008. James used a separate personal account to pay for all the family obligations because the wife asked him to since he is a financially responsible person as she admitted at trial. RP 3-12-10. James never hid or tried to control money at Kristine's expense and always discussed the finances with Kristine, she participated in tax preparation, filed and signed tax returns and admitted her participation at Trial. Kristine further admits that James told her that they were suffering financially. RP 3-12-10. Unbeknownst to James, Kristine took \$4,000.00 of community

property (cash) and paid a retainer to a divorce attorney, Jeffrey Robinson in August 2008. She then continuously promulgated specious arguments in Court that James purposely withheld support, hid the finances from her, and never informed her of their financial situation or contributed in anyway.

Kristine claims one-half of the 2007 401(k) by stating it went into James account but nowhere in the record does Kristine refute or deny that James used 100% of the 401(k) to pay for family obligations. James filed for Federal Bankruptcy Chapter 7 on June 9, 2009. There was no 401(k) to declare. The bankruptcy was granted and the Federal Bankruptcy Court ruled that James had NO assets. Despite James testimony and rebuttal evidence showing the use of the 401(k) for family obligations and despite the fact that Kristine never challenged the use of the 401(k), the Trial Court abused its discretion on untenable grounds by awarding James \$125,000 that did not exist and then awarding half of that to Kristine. James was awarded \$14,000 for the 2007 tax refund that did not exist and James was ordered to pay Kristine \$7,000. The effect was James got \$0.00 and Kristine got \$69,500.00 from nothing. James had no money, no cash, no assets, and no ability

to pay. The Supreme Court overruled the United States Federal Bankruptcy Court.

To reiterate what was stated in a previous argument, findings of fact are reviewed under the substantial evidence standard. *Pope v. University of Washington*, 121 Wn.2d 479, 490, 852 P. 2d 1055 (1993). Evidence is substantial if it persuades a fair-minded, rational person to the truth of the finding. *In re Marriage of Spreen*, 107 Wn.App 341, 346, 28 P.3d 769 (2001); *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991).

The Trial Court resurrected assets worth \$0.00 and awarded them to James and then ordered him to pay Kristine. This is truly an abusive use of judicial discretion and an untenable, capricious, and arbitrary judgment. The Trial Court's ruling constitutes reversible error.

**3. The Trial Court Abused its discretion by not granting James a fair trial**

- a. The Trial Court Abused its discretion by denying James his constitutional right to due process when it unlawfully abrogated right to a fair trial after James requested 2-3 days and the Court says "No. I guarantee it won't be that." RP 12-18-09 pp 12-13**

- b. The Trial Court Abused its discretion by denying James his constitutional right to due process when it unlawfully abrogated his property rights**
- c. The Trial Court Abused its discretion by denying James his constitutional right to due process when it failed to compel discovery from Kristine that was necessary for trial**

Kristine violated PCLSPR 94.04(b) by failing to serve James pretrial information two (2) court days prior to the scheduled final trial and pursuant to CR26, Kristine and her attorney were dilatory with discovery response, refused to turn over discovery, refused to confer in good faith. See also Motion to Compel Discovery filed by James March 10, 2010. The Court refused to hear his motion. James objected at trial that he was unfairly disadvantaged and wants all Kristine's trial evidence thrown out and wants sanctions and compensatory damages.

Further James was allowed less than 45 minutes to present his case. He asked 2-3 times, stated he needed more time for the missing discovery, and he needed 1-2 days but was repeatedly denied by the Court. The trial Court had already made up its decision and guaranteed that James would not get sufficient time to present his case.

- 4. The Trial Court Erred in awarding an amount of “undifferentiated spousal maintenance and child support” that the Court knew exceeded James’ ability to pay and exceeded the Bowman family’s average annual combined adjusted gross income from 2005-2009**
  - a. The Trial Court abused its discretion by awarding said family support, attorney’s fees, and other awards to Kristine based on untenable reason because the facts do not meet the correct standard under RCW 26.09.071**
  - b. The Trial Court Erred in not applying the correct standard for calculating James’ income for child support from December 2008 through March 2010**
  - c. The Court erred in failing to determine the ability of James to pay spousal maintenance RP12**
  - d. Trial Court erred in determining that James’ gross income was \$5,320 per month with supporting the means for calculating contrary to the requirements of RCW 26.09.071**
  
- 5. The Trial Court erred in stating that James did not file a Motion to Modify which was in fact properly filed on February 18, 2010 pursuant to the Courts direction**
  
- 6. The Trial Court Erred in awarding postsecondary education expenses when the wife admitted that the parties did not intend to pay for them nor was there any evidence of savings or ability to pay.**



## V. CONCLUSION

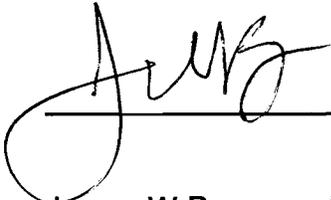
The Trial Court erred in not vacating the orders of December 18, 2008 when it failed to independently determine the father's income and assets available for child support and spousal maintenance as required under chapter 26.19 RCW. The Court further erred in attempting to modify said ruling under 26.09.060 (10) RCW. The Court abused its discretion when it decided a manifestly unreasonable amount of "undifferentiated" spousal maintenance and child support in the amount of \$79,500.00 which consisted of \$4,500.00 per month from January 2009 through July 2009 and \$4,000.00 per month from August 2009 through July 2010 plus an additional amount of \$9,119.38 based on untenable grounds since there is no evidence to support James' ability to pay this amount. The family at the time of the ruling had a net loss of income in 2007 and 2008 and the husband's 2008 W2 wages through December was gross \$1,358.75 per month and the family's annual adjusted gross income from 2005 through 2009 was \$40,236 per year or \$3,345 gross per month. The Husband's gross income of \$41,469 in 2009 was not sufficient to pay the \$51,500.00 for 2009 that the Court ordered in "Undifferentiated Spousal

Maintenance and Child Support” for this period of time. The Husband had no other source of income and no assets and because of Bankruptcy, he had no credit available to borrow such untenable sums. The Court did not consider the economic condition of James after the dissolution.

James is respectfully asking the Court of Appeals

- 1) Vacate to orders of December 18, 2008
- 2) Instruct the Court to calculate James income based on his actual pay stubs and tax returns
- 3) Order the Court to determine how much James has over paid for family support and have Kristine reimburse him
- 4) Sanction Kristine and her attorney for failing to provide timely discovery and award James compensatory damages
- 5) Vacate the trial courts decisions from the trial of March 12, 2010 in its entirety and remand it back to trial court with a new judge

Respectfully submitted this 15<sup>th</sup> day of June 2011



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BY [Signature]

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

In re the Marriage of:

JAMES W BOWMAN JR.

Appellant,

and

KRISTINE L. BOWMAN ,

Respondent,

No.

41040-1-II

Declaration of Service:

Appellant Brief

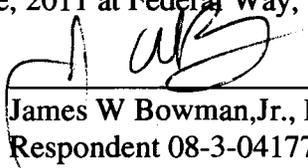
James W Bowman declares, I am over the age of 18 years, I reside in Federal Way, Washington in the County of King and under penalty of perjury under the laws of the State of Washington, as follows:

A copy of the Appellant Brief was sent VIA CERTIFIED MAIL on June 15, 2011 TO:

Jeffrey A. Robinson  
Law Office of Jeffrey A Robinson  
4700 Pt. Fosdick Drive NW #301  
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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 15th day of June, 2011 at Federal Way, Washington

  
James W Bowman, Jr., Pro Se  
Respondent 08-3-04177-7, Appellant 41040-1-II