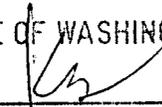


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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY   
DEPUTY

COURT OF APPEALS NO. 43190-4-II  
PIERCE COUNTY SUPERIOR COURT NO. 09-3-01481-6  
IN THE COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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In Re the Matter of:

GWENDOLYN KASEBURG,

Respondent,

vs.

JEFFREY KASEBURG,

Appellant.

---

**BRIEF OF APPELLANT**

---

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## **ASSIGNMENTS OF ERROR**

1. Because the lower Court did not have jurisdiction, the lower Court erred by failing to dismiss Gwendolyn Kaseburg's Motion to Clarify the Decree of Dissolution, relating to funds held by Jeffrey Kaseburg, in the sum of \$20,000.

2. Because the lower Court did not have jurisdiction, the lower Court erred by failing to dismiss Gwendolyn Kaseburg's Motion to Clarify, relating to the Internal Revenue Service Federal Tax Lien, which was levied against GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, the sole member/manager of GEF Enterprises, LLC.

3. Because Gwendolyn Kaseburg had not filed a Motion for Reconsideration, an Appeal or a Motion to Vacate the Decree of Dissolution, the lower Court erred by modifying the Decree of Dissolution, relating to the \$20,000 held by Jeffrey Kaseburg and relating to the award of the Internal Revenue Service lien to Jeffrey Kaseburg, as his debt.

4. The Motion filed by Gwendolyn Kaseburg on November 10, 2011 was specifically designated as Motion for Post-Decree Clarification/Release, but because the Motion related to a alleged undisposed of property and undisposed of debt, the lower Court abused its discretion by failing to dismiss the Motion without prejudice.

5. The lower Court abused its discretion by failing to

address the Court's original Findings of Fact and Conclusions of Law and Decree of Dissolution, wherein Jeffrey Kaseburg was awarded cash of \$382,000.

6. The lower Court abused its discretion by failing to acknowledge the sales of personal property and the uncontroverted evidence relating to funds that had been placed into Jeffrey Kaseburg's safe.

7. The lower Court abused its discretion by ordering Jeffrey Kaseburg to assume the Internal Revenue Service lien, which was levied against GEF Enterprises, LLC, a defunct limited liability company.

8. The lower Court abused its discretion by refusing to make Gwendolyn Kaseburg, the sole member/manager of GEF Enterprises, LLC. responsible for the Internal Revenue Service lien levied against GEF Enterprises, LLC, as its sole and separate liability.

9. The lower Court abused its discretion by failing to consider its Findings of Fact, Conclusions of Law and Decree of Dissolution entered on June 3, 2011, and by failing to enter findings of fact to support its Orders.

10. In its Order dated February 10, 2012, the lower Court erred by amending/clarifying the Decree of Dissolution, thereby ordering Jeffrey Kaseburg to be fully responsible for any and all debt

associated with Mad Dogs Diner and any of the limited liability corporations, especially GEF Enterprises, LLC, under which it has operated, including all IRS debts, 941/Employee taxes from the inception of the business to the date of entry of the Decree of Dissolution.

11. In its Amended/Clarification of the Decree of Dissolution, dated February 10, 2012, the lower Court abused its discretion by awarding Gwendolyn Kaseburg the \$20,000 currently held by the Pierce County Clerk of the Court.

12. The lower Court abused its discretion by denying Jeffrey Kaseburg's Motion for Reconsideration of the Order entered on February 10, 2012, with the Court's Order Denying Respondent's Motion for Reconsideration being entered on March 9, 2012.

13. The lower Court erred in entering the Pierce County Sheriff's Department to pay the \$20,000 owned by Jeffrey Kaseburg to the Pierce County Clerk, by Order entered December 16, 2011.

14. The lower Court erred in reserving the clarification issue regarding the Internal Revenue Service lien against GEF Enterprises, LLC, until further information is presented concerning details of the lien, by Order dated December 16, 2011.

15. The lower Court erred by failing to provide any findings of fact, supported by substantial evidence, which would support the Court's Orders.

## **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the lower Court abuse its discretion by failing to dismiss the Motion filed by Gwendolyn Kaseburg on November 10, 2011, which was specifically designated as Motion for Post-Decree Clarification/Release and which related to assets and liabilities not disposed of by the Decree of Dissolution, requiring the filing an independent action?

2. Did the lower Court abuse its discretion by failing to consider the Findings of Fact, Conclusions of Law and Decree of Dissolution, entered on June 3, 2011, and by failing to enter findings of fact, based upon substantial evidence, to support the Court's post-decree Orders?

3. Did the lower Court abuse its discretion by amending/clarifying the Decree of Dissolution, as provided in its Order, dated February 10, 2012?

## **STATEMENT OF THE CASE**

The lower Court conducted a dissolution trial, in this matter, commencing April 21, 2011, and concluding on April 28, 2011. CP 76. A Decree of Dissolution of Marriage was entered on June 3, 2011. CP 62 - 67.

The separate property awarded to the parties was outlined in Exhibit A to the Decree of Dissolution of Marriage. CP 66. The only separate property that was valued by the Court was Jeffrey

Kaseburg's 2010 Toyota Sequoia, which had a value of \$40,000, and was subject to an existing loan of \$44,000. CP 66-67.

As to community property, Gwendolyn Kaseburg was awarded the Burnett home, valued at \$700,000, CP 134, subject to a Columbia Bank mortgage, in the sum of \$387,500. CP 66-67. Gwendolyn Kaseburg was also awarded the 2006 Saab automobile, valued at \$20,000. CP 66.

In the Decree of Dissolution, Jeffrey Kaseburg was awarded Mad Dogs Restaurant, which the Court valued at \$100,000, subject to the \$18,000 owed on the Promissory Notes to his parents. CP 66 - 67, 134. Jeffrey Kaseburg also received the proceeds from the sale of the Vandermark property, less raw land purchase, which the Court valued as a \$382,000 cash award to Jeffrey Kaseburg. CP 66. Jeffrey Kaseburg received other miscellaneous personal property valued by the Court at \$9,000.

Gwendolyn Kaseburg had separate obligations incurred after the date of separation, with the debt totalling \$19,500. CP 67. In addition to the balance owed on the 2010 Toyota Sequoia, Jeffrey Kaseburg had a separate debt for his First Bank credit card, in the sum of \$12,000, which card was obtained after the date of separation. CP 67.

Jeffrey Kaseburg was ordered to pay all of the Promissory Notes and loans from his parents, totalling \$636,000. Even though

the Promissory Notes were executed and the loans were taken out prior to the date of separation, all of the Promissory Notes and loans were determined by the lower Court to be Jeffrey Kaseburg's separate debt. CP 67.

As to community debt, beyond the Columbia Bank mortgage, which was to be assumed by Gwendolyn Kaseburg, Jeffrey Kaseburg was ordered to pay the Promissory Notes for remodel and liquor license for Mad Dogs Diner and Pub, a Washington Limited Liability Company known as Doggie Style Enterprises, LLC, in the sum of \$18,000. CP 67. No other separate or community debts were identified in Exhibit B to the Decree of Dissolution, which was entered on June 3, 2011. CP 67.

On November 10, 2011, Gwendolyn Kaseburg filed a Motion for Post Decree Clarification/Release. CP 74. Gwendolyn Kaseburg's Motion requested relief as follows:

1. That the Decree of Dissolution be clarified, indicating that Mr. Kaseburg is responsible for any and all taxes, including Employee 941 Taxes, income tax, corporate taxes and all other forms of taxes on the business known as Mad Dogs Restaurant.
2. For release of Jeffrey Kaseburg's \$20,000 that was being held by the Pierce County Sheriff's Department.
3. For attorney's fees in the amount of \$1,000.

In his Declaration, dated December 12, 2011, Jeffrey Kaseburg addressed the Court by noting that Gwendolyn Kaseburg had not filed a Motion for Reconsideration of the Decree of Dissolution, had not appealed the Decree of Dissolution and had not made a Motion to Vacate the Decree of Dissolution. CP 76. The only financial issue that had been reserved by the lower Court for future determination, in its Order dated May 20, 2011, was the issue of the \$20,000 commandeered by the Pierce County Sheriff, from Jeffrey Kaseburg's home, on April 29, 2011. CP 72-73.

On April 29, 2011, Jeffrey Kaseburg's home was raided by the Sheriff's Department, based upon a handwritten "tip" that Jeffrey Kaseburg was growing marijuana at his home. CP 77. The Sheriff found no marijuana growing in Jeffrey Kaseburg's home. CP 77. The Sheriff's department did find some medical marijuana that was stored in Jeffrey Kaseburg's home, but he had a valid medical authorization for the amount of marijuana discovered. CP 77. As a result of claims made by Gwendolyn Kaseburg, the bail for Jeffrey Kaseburg's release was raised from \$10,000 to \$120,000, even though there had been no prior domestic violence charges, or any other issues regarding violence. CP 78. The criminal charges were subsequently reduced to a misdemeanor, and Jeffrey Kaseburg did not receive a fine, jail time, and his property was not forfeited. CP 78.

In regard to Gwendolyn Kaseburg's alleged claim to the

\$20,000 located in Jeffrey Kaseburg's home safe, Jeffrey Kaseburg affirmed that he had sold his snowmobile, gear and custom trailer on April 25, 2011, and had received \$13,000 in cash from Lonny Hutchinson. CP 79, CP 90 through 100. Jeffrey Kaseburg stated that the 1987 Chevrolet dump truck had been sold to Jim Hyatt, for \$10,000 cash. CP 79. The supporting documentation for the sale was filed with the Court. CP 102 - 104. Jeffrey Kaseburg's girlfriend, Audrey Carter, had \$3,659 in her safe in the upstairs portion of Jeffrey Kaseburg's home, and she had \$4,500 in Jeffrey Kaseburg's office safe, in the family home, which was reserved for her children's orthodontia. CP 79 - 80, 105 - 107. Jeffrey Kaseburg also affirmed that the safe contained a check for \$5,500 for his wages from Doggie Style Enterprises, LLC. CP 80, 108 through 113. Additionally, as outlined in Exhibit A to the Decree of Dissolution, allegedly the trial Court determined that Jeffrey Kaseburg had \$382,000 in cash, identified as the proceeds from the sale of Vandermark property, less raw land purchase. CP 66.

Gwendolyn Kaseburg requested clarification of the Decree of Dissolution, relating to a federal tax lien issued against GEF Enterprises, LLC, which was recorded on May 11, 2010. CP 60. GEF Enterprises, LLC stood for Gwen's Entrepreneurial Future Enterprises, and was filed with the Secretary of State on January 30, 2003. CP 83. The sole member and the registered agent for the LLC

was Gwen Kaseburg. CP 83. Gwen Kaseburg ran GEF Enterprises, LLC, dba Mad Dogs Family Diner for approximately two years, and the new company was only in her name. Gwendolyn Kaseburg handled all of the money for the business, during 2004 and 2005. CP 84. During the two years that Gwendolyn Kaseburg ran the business, the business had losses of \$39,872, in 2004, and \$47,308, in 2005. CP 84. In its findings, the lower Court found that Gwendolyn Kaseburg managed the parties' restaurant business twenty-four hours a day, while the husband built first the Vandermark home, then the Burnett home. CP 134. Because the Burnett property was solely in the name of Jeffrey Kaseburg, the federal tax lien against GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, would not attach to the Burnett property. The Burnett property was transferred to Gwendolyn Kaseburg, pursuant to the Decree of Dissolution. CP 85 - 86.

The federal tax lien against GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC. is for the company contributions to 941 taxes, which taxes were not paid by GEF Enterprises, LLC, in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC., which was defunct. CP 88. All mandatory trust account payments were made to the IRS for GEF Enterprises, LLC, and the remaining taxes were a corporate liability that would not personally attach. CP 88.

Gwendolyn Kaseburg made no effort to resolve the issue with the Internal Revenue Service, and because Jeffrey Kaseburg was not the responsible party, the Internal Revenue Service refused to discuss the issue with him. CP 88.

Since Gwendolyn Kaseburg was not able to continue the company under GEF Enterprises, LLC, Jeffrey Kaseburg opened a new company to operate a restaurant. Jeffrey Kaseburg organized a new LLC, under the name of Doggie Style Enterprises, LLC, on November 25, 2005, with Jeffrey Kaseburg being the only member. CP 84.

In 2009, the Internal Revenue Service investigated Jeffrey Kaseburg, and the business known as Mad Dogs Café, Inc., based upon a tip that Jeffrey Kaseburg was defrauding the government and had not paid taxes. CP 85. The Internal Revenue Service investigation lasted approximately four months, and a determination was made that no taxes were owed. CP 85.

On December 16, 2011, the lower Court entered an Order providing that the \$20,000 held by the Pierce County Sheriff's Department was to be paid to the Pierce County Clerk, under the dissolution proceeding. CP 206 - 207. The lower Court also ordered that the clarification issue was reserved regarding the Internal Revenue Service lien, until further information was presented concerning the details of said lien. CP 207.

Gwendolyn Kaseburg renewed her Motion for Post-Decree Clarification/Release on February 9, 2012. CP 146. In response to Gwendolyn Kaseburg's renewed Motion, Jeffrey Kaseburg stated that Gwendolyn Kaseburg had not provided any additional information as to her efforts to extinguish the Federal Tax Lien and discharge her personal liability, which only she could accomplish. CP 140. Jeffrey Kaseburg reaffirmed that all of his 941 Federal Employment Taxes had been paid, and that he was current with the Internal Revenue Service. CP 141. Jeffrey Kaseburg reiterated that Gwendolyn Kaseburg had testified, at trial, that the value of the Burnett property was \$1,200,000, with the Court ruling that the fair market value was \$700,000 and then awarding the Burnett property to Gwendolyn Kaseburg. CP 142, CP 62 - 67. Jeffrey Kaseburg also noted that he had received the restaurant, valued at \$100,000, subject to a long-term lease, in his name personally, executed a personal guarantee for the lease and was also awarded additional debt of \$681,000. CP 62 - 67.

On February 10, 2012, the lower Court entered an Order identified as Amended/Clarification of the Decree of Dissolution, which provided that Jeffrey Kaseburg was responsible for any and all debt associated with the business known as Mad Dogs Diner and any of the limited liability corporations, especially GEF Enterprises, LLC, including all IRS debts, 941/Employee taxes from the inception of the

business through the date of entry of the Decree of Dissolution. CP 208. Additionally, the lower Court awarded the \$20,000 held by the Pierce County Clerk of the Court to Gwendolyn Kaseburg. CP 208.

On February 17, 2012, Jeffrey Kaseburg filed a Motion for Reconsideration of the lower Court's February 10, 2012 Order. CP 155 - 156. Jeffrey Kaseburg's Motion addressed the following issues:

1. Because the Motions by Gwendolyn Kaseburg dealt specifically with undistributed property and debt, an independent action was required by law.
2. Although the lower Court did not have jurisdiction to hear the Motions, a formal hearing was necessary to address the issues before the Court.
3. The lower Court erred in failing to address its own findings of fact, based upon the evidence presented to the Court, as to the \$20,000 in possession of Jeffrey Kaseburg, and the IRS lien owed by GEF Enterprises, LLC.
4. That the Internal Revenue Service obligation was the sole obligation of GEF Enterprises, LLC. Gwendolyn Kaseburg as the sole member/manager of the limited liability company had not taken any steps to discharge or abate the Internal Revenue Service lien.
5. The lower Court erred by failing to provide a release to

Jeffrey Kaseburg, which would have allowed him to compromise, vacate or discharge the Federal Tax Lien owed by GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC. CP 155 - 156.

Jeffrey Kaseburg reaffirmed that all of the notices from the Internal Revenue Service were for the time that Gwendolyn Kaseburg owned and operated GEF Enterprises, LLC, dba Mad Dogs Family Diner. CP 160, 165 - 171. The notices were delivered to GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC., prior to the date of separation, and Gwendolyn Kaseburg took no steps to ensure that the obligations to the Internal Revenue Service by GEF Enterprise, LLC were discharged. CP 160. Curtis Stebbins, C.P.A., was the certified public accountant for GEF Enterprises, LLC, during the period of time that the business was operated by Gwendolyn Kaseburg. CP 175. During the period of time that Gwendolyn Kaseburg was operating GEF Enterprises, Curtis Stebbins verified that all trust account payments were made to the Internal Revenue Service, relieving Gwendolyn Kaseburg of personal liability. CP 175 - 186.

On March 9, 2012, Mr. Kaseburg's Motion for Reconsideration of the lower Court's February 10, 2012 Order was denied. CP 209.

On March 12, 2012, Jeffrey Kaseburg filed his Notice of Appeal, appealing the lower Court's Order regarding Post-Trial Motion, entered on December 16, 2011, the Amended/Clarification of Decree of Dissolution, entered on February 10, 2012, and the Order Denying Motion for Reconsideration, entered on March 9, 2012. CP 204 - 209.

## **ARGUMENT**

### **A. Standard of Review.**

The Appellate Court reviews Superior Court jurisdiction rulings de novo, when the underlying facts are undisputed. *Hein v. Taco Bell, Inc.* 60 Wn.App. 325, 803 P.2d 329 (1991). It is the party asserting jurisdiction that has the burden of proof. *Hein*, Wn.App. at 328.

The trial Court has broad discretion under RCW 26.09.080, to evaluate and distribute the parties' property and liabilities. *In re Marriage of Brewer*, 137 Wn. 2d 756, 976 P.2d 102 (1999). The Appellate Court applies a manifest abuse of discretion standard to the trial Court's dissolution rulings. *Brewer*, 137 Wn. 2d at 769. The lower Court manifestly abuses its discretion if it makes an untenable or unreasonable decision. *In Re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989).

As a general rule, findings of fact which are supported by substantial evidence, will not be disturbed on appeal. See, e.g.

*Western Nat's Assur. Co. v. Hecker*, 43 Wn. App. 816, 719 P.2d 954 (1986). However, an exception to this rule is made in cases where the Court's findings are not based on oral testimony. *Hecker*, 43 Wn. App. at 823. In such cases, the Appellate Court stands in the same position as the lower Court, and it should independently review the record. *Hecker*, Wn. App. at 823.

**B. The lower Court abused its discretion by failing to dismiss the Motion filed by Gwendolyn Kaseburg on November 10, 2011, which was specifically designated as Motion for Post-Decree Clarification/Release and which related to assets and liabilities not disposed of by the Decree of Dissolution, requiring the filing an independent action.**

The general rule is that community assets that are not disposed of by a Decree of Dissolution of Marriage become property of the parties as tenants in common. Undisposed community debts become joint debts.

It is a long-standing rule in the State of Washington that community property not disposed of by a divorce decree is owned thereafter by the former spouses as tenants in common. *Yeats v. Estate of Yeats*, 90 Wn. 2d 201, 580 P2d, 617 (1978). Although Jeffrey Kaseburg was awarded proceeds from the sale of the Vandermark property totalling \$382,000 (CP 66), Gwendolyn Kaseburg's Motion for Post-Decree Clarification/Release, dated

November 10, 2011, purports to claim that an alleged additional \$20,000 existed above and beyond the \$382,000 in cash awarded to Jeffrey Kaseburg. CP 74 - 75.

If the Appellate Court determines that based upon the record, the \$20,000 maintained by Jeffrey Kaseburg, in his home safe, is undisposed community property, the proper procedure for seeking adjudication of rights and assets not distributed by the Decree of Dissolution is an independent action for either partition or for declaratory relief. *In Re Marriage of Tang*, 57 Wn.App. 648, 789 P.2d 118 (1990); *Devine v. Devine*, 42 Wn. App. 740, 711 P.2d 1034 (1985); *In Re Marriage of Molvik*, 31 Wn. App. 133, 639 P.2d 238 (1982). Therefore, a Motion in the original action to adjudicate rights in assets not disposed of by the Decree of Dissolution must be dismissed, without prejudice, to allow the filing of an independent action.

As stated by Jeffrey Kaseburg in his Declaration dated December 12, 2011, the Motion for Post Decree Clarification/Release was either a Motion to Vacate the Decree of Dissolution or a Motion to have the lower Court reconsider its decision. CP 76. A Motion to Vacate a Decree of Dissolution is governed by Civil Rule 60. (CR 60). Once a Judgment is final, a Court may re-open the Judgment only when specifically authorized by statute or Court rule. *In Re Shoemaker*, 128 Wn. 2d 116, 904 P.2d 1150 (1995). Pursuant to

RCW 26.09.170, the provisions as to property distribution may not be revoked or modified, unless the lower Court finds the existence of conditions that justify the reopening of a judgment under the laws of the State of Washington. An action to vacate a Decree of Dissolution must be initiated by Motion, Affidavit and an Order to Show Cause personally served on the opposing party. CR 60(e). Clearly, no Motion to Vacate the Decree of Dissolution was filed by Gwendolyn Kaseburg.

Civil Rule 59 also permits a party to file a Motion for Reconsideration of the Court's final ruling. CR 59. A Motion for Reconsideration or a Motion to alter or amend a Judgment, i.e., the Decree of Dissolution, shall be filed not later than ten (10) days after the entry of the Judgment. CR 59(b), (h). A Motion for Reconsideration of the trial Court's Decree of Dissolution was not filed by Gwendolyn Kaseburg.

The requirement that an independent action be filed for assets that are not disposed of by the Decree of Dissolution also applies to liabilities that are not disposed of by the Decree. Community debts that are not disposed of by the Decree of Dissolution become the joint debts of the parties. *Hanson v. Hanson*, 55 Wn. 2d 884, 350 P.2d 859 (1960). The Kaseburg debts as outlined in Exhibit B to the Decree of Dissolution do not include the Internal Revenue Service obligation owed by GEF Enterprises, LLC, a defunct limited liability

company in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC. CP 67. As stated in *Hanson*, the lower Court cannot change the terms of the Decree of Dissolution, and its jurisdiction extends only to the enforcement of the Decree. *Hanson* at 887. Provisions in a decree of dissolution regarding the payment of community indebtedness, are dispositions of property rights that become fixed at the time of the Decree. Community indebtedness is not a proper subject for modification of the Decree and can only be challenged by appeal. *Sessions v. Sessions*, 7 Wn. App. 625, 501 P.2d 629 (1972). Gwendolyn Kaseburg did not appeal the Decree of Dissolution and was fully aware of the obligation that GEF Enterprises, LLC owed to the Internal Revenue Service as the result of her sole ownership of GEF Enterprises, LLC. CP 160, 175.

Based upon the evidence provided to the Court, Jeffrey Kaseburg requested that the Motions of Gwendolyn Kaseburg be dismissed. CP 160 - 161. Because the Motion filed by Gwendolyn Kaseburg purported to address assets and liabilities that were not disposed of by the Decree of Dissolution, Gwendolyn Kaseburg was required to file an independent action, and the lower Court abused its discretion by refusing to dismiss the Motions, without prejudice.

**C. The lower Court abused its discretion by failing to consider its Findings of Fact, Conclusions of Law and Decree of Dissolution entered on June 3, 2011, and by failing to enter**

**findings of fact, based upon substantial evidence, to support its Orders.**

On June 3, 2011, the lower Court entered its Findings of Fact and Conclusions of Law and Decree of Dissolution of Marriage. CP 62 - 67. In both the Findings of Fact and Decree of Dissolution, the award of assets and debts to the parties was incorporated into the Findings and Decree by mention of Exhibit A. CP 66. The liabilities of the parties and liabilities to be paid by the parties were incorporated into the Findings of Fact and Decree of Dissolution by motion of Exhibit B. CP 67. Findings of Fact and Conclusions of Law should be sufficient to suggest the factual basis for the ultimate conclusions of the Court. *Groff v. Department of Labor and Industries*, 65 Wn. 2d, 35, 395 P. 2d, 633 (1994). A trial Court is required to create an adequate record of the proceedings for Appellate Review. *In Re Berg*, 47 Wn. App. 754, 737 P.2d 680 (1987). Moreover, a trial Court must establish and set forth the existence or non-existence of determinative factual matters, for appellate review. *In Re LaBelle*, 107 Wn. 2d, 196, 726 P.2d 138 (1986). Inadequate written findings may be supplemented by the trial Court's oral decision or the Court's statements in the record. *LaBelle*, 107 Wn. 2d at 219.

In looking at the factual issue of the \$20,000 confiscated from Jeffrey Kaseburg's safe, allegedly, at the time of the trial, Jeffrey Kaseburg had the sum of \$382,000, in cash. CP 66. Moreover,

Jeffrey Kaseburg explained, in detail, the rationale for the funds that were in his safe, at the time the funds were confiscated by the Pierce County Sheriff's Department. CP 79 - 81. CP 91 - 115.

In the Order entered on December 16, 2011, the trial Court did not issue any findings of fact. The only mention made by the Court in its oral ruling is that the \$20,000 should be paid into the registry of the Court and held pending further decision of the trial Court once the Internal Revenue Service issue is resolved. The Court's oral ruling is not helpful because the trial Court did not explain how it reached its conclusion. RP 11, December 16, 2011.

In regard to the federal tax lien issued by the Internal Revenue Service against GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC. CP 60, GEF Enterprises, LLC is not listed as an asset of the parties in Exhibit A of the Decree of Dissolution. CP 66. Moreover, the tax liability owed to the Internal Revenue Service is not identified as an obligation of the parties in Exhibit B of the Decree of Dissolution. CP 67. GEF Enterprises, LLC. is not mentioned in any fashion in either the Findings of Fact or Decree of Dissolution. CP 62 - 67. If the Appellate Court takes the lower Court's approach in obligating Jeffrey Kaseburg for the 941 taxes owed by GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC., Mad

Dogs Restaurant would have a substantial negative value, based upon the tax lien of \$94,396.88, plus interest, and the debt owed on the Promissory Notes for remodel and liquor license, in the sum of \$18,000. CP 66 - 67. In its oral ruling on December 16, 2011, the only statement made by the Court, relating to the federal tax lien was that the Court would be reserving ruling on the Internal Revenue Service information and that the Court wanted information from the Internal Revenue Service, which information was to be pursued by Gwendolyn Kaseburg, because the obligation was in the name of GEF Enterprises, LLC. RP 11, December 16, 2011.

On February 10, 2012, the lower Court entered its Amended/Clarification of the Decree of Dissolution. CP 208 - 209. No findings of fact were issued by the lower Court at the time of the Amended/Clarification of the Decree of Dissolution. The trial Court, in its oral ruling, merely states that it was granting the request of Gwendolyn Kaseburg with regard to the tax lien and the \$20,000 cash taken by the Sheriff. The trial Court then reverts to testimony allegedly presented at the time of trial, relating to GEF Enterprises, LLC and by entering specific findings of fact February 10, 2012. RP 10. Again, the trial Court has not adequately explained its ruling by addressing specific factual information before the Court.

At the hearing held on March 9, 2012, the Court was provided with information from the certified public accountant for GEF

Enterprises, LLC, indicating that all taxes, for which Gwendolyn Kaseburg would have been personally liable had been paid to the Internal Revenue Service. CP 175 - 185. The certified public accountant for GEF Enterprises, LLC, confirmed that Gwendolyn Kaseburg was the sole member of GEF Enterprises, LLC. In the trial Court's Order denying Respondent's Motion for Reconsideration, no findings of fact were entered by the lower Court. CP 209. In its oral decision, the trial Court indicated that it had a right to rely on the trial testimony of Mr. Kaseburg as to issues of ownership and tax liability and that it was an easy matter to make a ruling granting the clarification and denying reconsideration.

As stated above, the lower Court must establish and set forth the existence or non-existence of determinative factual matters, based upon the evidence provided to the Court. It is uncontroverted that the federal tax lien against GEF Enterprises, LLC, was never presented at the time of trial. Information relating to contact from the Internal Revenue Service regarding taxes owed by GEF Enterprises, LLC was submitted by way of Exhibit 85. CP 142. If the Appellate Court does not dismiss the Motions of Gwendolyn Kaseburg, due to her failure to file an independent action, this matter should be remanded to the lower Court for the entry of Findings of Fact and Conclusions of Law sufficient to suggest the factual basis for the lower Court's ultimate conclusions.

**D. The lower Court abused its discretion by amending/clarifying the Decree of Dissolution, as provided in its Order dated February 10, 2012.**

The provisions as to property disposition may not be revoked or modified, unless the Court finds the existence of conditions that justify the re-opening of the judgment under the laws of this State. RCW 26.09.170(1). Gwendolyn Kaseburg's Motion for post-Decree Clarification/Release purported to address assets and liabilities that had not been distributed in the Decree of Dissolution. CP 74.

If a Decree of Dissolution is ambiguous, a Motion to Clarify is a proper procedure to bring the Decree of Dissolution back before the trial Court. *In Re Marriage of Monaghan*, 78 Wn. App. 918, 899 P.2d 841 (1995). A clarification of a Decree of Dissolution explicitly defines the rights and obligations that were previously granted under the Decree. *In Re Marriage of Jarvis*, 58 Wn. App. 342, 792 P.2d 1259 (1990). In order to permit clarification of the Decree of Dissolution, it is necessary to review the Decree of Dissolution to determine whether any ambiguity exists in the distribution of assets and the distribution of debts. Construction of a decree is a question of law to be determined by examining the document itself to determine its intended effect. *In Re Marriage of Bocanegra*, 58 Wn. App. 271, 792 P.2d 1263 (1990). In utilizing the general rules of construction, the Decree of Dissolution reveals that there is no ambiguity in the award

of property or debt, as outlined in Exhibits A and B to the Decree of Dissolution. CP 66 - 67.

A clarification of a Decree by the trial Court is a definition of rights already given, spelling them out more completely, if necessary. *In Re Marriage of Thompson*, 97 Wn. App. 873, 988 P.2d 499 (1999). A decree is modified when rights given to one party are extended beyond the scope originally intended, or reduced. *Marriage of Thompson*, 97 Wn. App. at 878. In *Marriage of Thompson*, the Court of Appeals re-stated the well-settled principal that a trial Court does not have the authority to modify even its own decree in the absence of conditions justifying the re-opening of the judgment. *Marriage of Thompson*, 97 Wn. App. at 878. As stated above, Gwendolyn Kaseburg never established conditions that justified re-opening of the judgment by way of a Motion to Vacate the Decree of Dissolution. CR 60.

In its Order, entitled Amended/Clarification of the Decree of Dissolution, dated February 10, 2012, the Court awarded additional property to Gwendolyn Kaseburg and obligated Jeffrey Kaseburg to pay an additional Internal Revenue Service obligation of approximately \$100,000. CP 208. The February 10, 2012 Order goes into even greater detail in describing all of the debt associated with Mad Dogs Diner and other entities, which obligations were not identified in Exhibit B of the Decree of Dissolution. CP 67. By

awarding Gwendolyn Kaseburg an additional \$20,000 and by requiring Jeffrey Kaseburg to assume the Internal Revenue Service obligation owed by GEF Enterprises, LLC, a defunct limited liability company in care of Gwendolyn Kaseburg, the manager of GEF Enterprises, LLC., the lower Court expanded the rights given to Gwendolyn Kaseburg and reduced the rights given to Jeffrey Kaseburg in the Decree of Dissolution. Because the lower Court did not have authority to modify the Decree of Dissolution, this action should be remanded to the Superior Court, with instructions to dismiss Gwendolyn Kaseburg's Motion for Clarification of the Decree of Dissolution.

**E. Jeffrey Kaseburg should be awarded his attorney's fees on appeal.**

Jeffrey Kaseburg should be awarded his reasonable attorney's fees and statutory costs incurred in the course of this appeal, pursuant to RAP 18.1.

RCW 26.09.140 provides in pertinent part, as follows:

Upon any appeal, the Appellate Court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs. *Choate v. Choate*, 143 Wn. App. 235, 177 P.3d 175 (2008).

Generally, in determining whether to award fees, the Appellate Court should consider the parties' relative ability to pay and arguable merit of the issues raised on appeal. *In Marriage of Muhammad*, 153

Wn. 2d 795, 105 P.3d 779 (2005). On the other hand, Because Gwendolyn Kaseburg improperly filed a Motion to Clarify the Decree of Dissolution, when an independent action was mandated, Jeffrey Kaseburg should be awarded his reasonable attorney's fees and costs on appeal RAP 18.1. RCW 26.09.140.

**F. Relief requested by Jeffrey Kaseburg.**

Based upon the foregoing, Jeffrey Kaseburg requests that this action be remanded to the lower Court for dismissal of Gwendolyn Kaseburg's Motions. If the Motions are not to be dismissed, Jeffrey Kaseburg requests that this action be remanded to the Superior Court for the entry of findings of fact, based upon the evidence before the Court to support its decision. Jeffrey Kaseburg also requests an award of his reasonable attorney's fees and costs.

RESPECTFULLY SUBMITTED this ~~28th~~ day of November, 2012.



Stephen W. Fisher, WSBA#7822  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I certify that on the 28th day of November, 2012, I mailed a true and accurate copy of the foregoing Opening Brief of Appellant, by first class mail, postage prepaid, to:

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