

No.: 46298-2-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON



TIMOTHY PUTMAN, *Appellant*,

v.

DEANNE PUTMAN, *Respondent*.

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APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERROR &  
ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in concluding what is fair and equitable is a defense to a family law case. CP 148.
2. The trial court erred in concluding it was excusable neglect for Deanne not to respond to the action. CP 148.
3. The trial court erred in concluding negotiations had been going on. CP 148.
4. The trial court erred in concluding no substantial hardship will result to Tim other than the case is going to have to be litigated. CP 148.
5. The trial court erred in granting Deanne's Motion to Revise the Order Denying the Motion to Vacate Default Judgment and Order of Default. CP 149.
6. The court erred in restoring the parties to their previous status as a married couple. CP 149.
7. The trial court erred in finding that there are assets, debts; the IRS debt for \$100,000 that is sitting out there that is not dealt with in the decree. CP 148.

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B. Issues Pertaining to Assignments of Error

1. Did the trial court abuse its discretion in vacating the order of default and default judgment? (Assignments of Error #5 & #6)
2. Did the Respondent fail to assert or illustrate a prima facie defense to the claim asserted? (Assignment of Error #1)
3. Was Respondent's failure to timely appear in the action, and answer the opponent's claim the result of excusable neglect? (Assignments of Error #2 & #3)
4. Will the Petitioner suffer substantial hardship if the default judgment is vacated? (Assignment of Error #4)
5. What is the proper legal method by which to distribute assets and debts not previously distributed in a Decree of Dissolution? (Assignment of Error #7)

II. STATEMENT OF THE CASE

1. On April 9, 2013, Tim commenced an action for dissolution of the parties' marriage by filing a Petition for Dissolution of Marriage in the Lewis County Superior Court. CP 1-4.
2. On April 10, 2013, Deanne signed an Acceptance of Service of the Summons, Petition for Dissolution of Marriage, Notice re: Dependent of Person in Military Service, and Proposed Parenting Plan. CP 7-9.

3. On April 15, 2013, Tim's attorney mailed a conformed copy of the Acceptance of Service to Deanne at her home address, which is known to Tim to be 166 David Hill Road, Centralia, WA. CP 56, 72. The mail was not returned to Tim's attorney as undelivered. CP 56.
4. At no time did Deanne file or serve a Notice of Appearance in this dissolution action. CP 56, 147.
5. The parties had one conversation about the divorce between the time Deanne signed the Acceptance of Service and July 16, 2013. CP 103. Deanne left in the middle of the conversation. CP 104.
6. On July 16, 2013, Tim's attorney mailed Tim's first offer of settlement to Deanne wherein the attorney requested the courtesy of a response by July 31, 2013. CP 74-75.
7. Deanne did not respond to Tim's attorney by any means of communication. CP 56, 147.
8. Deanne called Tim after receiving the first offer and told him she could no longer go to Spokane to watch their son play ball that week because she needed to say behind and find an attorney. CP 104. Because he did not want her missing their son's games, Tim suggested to Deanne that she should go to the tournament and find

an attorney when she got back. CP 104. She went to the tournament, CP 104.

9. Deanne insisted on speaking with Tim directly, and not his attorney, regarding the first offer of settlement. CP 104, 147.
10. Deanne told Tim the judgment request was too high. CP 104.
11. In response to Deanne's complaint about the judgment request, Tim told Deanne to get an attorney or call Ms. Johnson<sup>1</sup> herself. CP 104. Tim also offered for Deanne to tell him exactly what she wanted and if he agreed he would have Ms. Johnson draft it up. CP 104. Deanne refused all three options. CO 104.
12. Tim asked Deanne multiple times to contact his attorney or get an attorney. CP 104. She refused to do either. CP 147.
13. On November 4, 2013, Tim's attorney mailed a second offer of settlement to Deanne. CP 77.
14. Deanne did not respond to Tim or his attorney by any form of communication as to the second offer of settlement. CP 104, 147.
15. On November 13, 2013, Tim filed a 1<sup>st</sup> Amended Petition for Dissolution of Marriage and Proposed Final Order of Child Support/Order Re: Post-Secondary Education Support. CP 10-15.

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<sup>1</sup> Ms. Johnson was and remains his attorney and is the scribe hereof.

16. On November 14, 2013, Deanne was personally served with the 1<sup>st</sup> Amended Petition for Dissolution of Marriage and Proposed Order of Child Support/Order Re: Post-Secondary Education Support at her residence. CP 16-17.
17. Upon service of the amended petition, Deanne did not appear or respond to the amended action. CP 147.
18. Upon service of the amended petition, Deanne did not make contact with Tim's attorney. CP 147.
19. Upon service of the amended petition, Deanne did not make any contact with Tim regarding the dissolution action or anything associated therewith until December 1, 2013. CP 105.
20. On November 27, 2013, Tim presented a Motion and Declaration for Default without notice to Deanne. CP 18-22. The motion was granted, and an Order on Motion for Default (hereinafter "default order") was entered the same day. CP 23-24.
21. On November 27, 2013, Tim noted presentation of final orders on the December 11, 2013 9:00 a.m. final dissolution docket. CP 25.
22. On December 1, 2013, the following text exchange took place between the parties:

Deanne: We need to talk next week. I would say this week but first of the month Very busy at work

Tim: Let me know when you have time

Deanne: I am trying to meet with an attorney this week. Not sure if I will like him

Tim: Ok

Deanne: I know u want this done and behind u. I am ready to get an attorney now to make it happen. I have not wanted that but it is apparent I need to as we will not come to terms without one.

CP 105.

23. Deanne never did mention an attorney again or bring up the case or contact Tim's attorney. CP 105. There is no indication that Deanne ever consulted with an attorney. CP 105.

24. On December 11, 2013, Tim appeared in court and gave testimony as to the Court's jurisdiction, the irretrievably broken state of the parties' marriage, the fairness and equity of his proposed asset and debt distribution, the dependency of the parties' son, and the son's need for post-secondary education support. CP 58. Upon entering the necessary and appropriate findings of fact and conclusions of law, CP 26-31, a decree of dissolution of the parties' marriage, CP 32-36, and final order of child support/order re: post-secondary educational support<sup>2</sup> were entered the same day.

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<sup>2</sup> The order of child support was not provided in the Clerk's Papers as they do not appear to contain information relevant to the issue before the Court.

25. On December 12, 2013, conformed copies of the final orders were mailed to Deanne at her home address. CP 79.
26. On February 3, 2014, Deanne filed a Motion and Declaration for Order to Show Cause Re: Vacation of Judgment/Order. CP 37-52.
27. On May 2, 2014, the trial court entered an Order On Motion to Revise Order Denying Motion to Vacate Default Judgment and Order of Default which vacated the final orders entered December 11, 2013 and restored the status of the parties to that of a marital couple. CP 146-149.
28. This appeal ensued.

### III. ARGUMENT

#### A. Standard of Review

Higher Courts “review a trial court’s decision on a motion for default judgment for abuse of discretion.” *Morin v. Burris*, 160 Wn.2d 745, 753, 161 P.3d 956 (2007) *citing* *Yeck v. Dep’t of Labor & Indus.*, 27 Wn.2d 92, 95, 176 P.2d 359 (1947). “A trial court abuses its discretion when its decision is manifestly unreasonable, or based on untenable grounds, or exercised for untenable reasons.” *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006). As stated in *Mayer*:

A discretionary decision rests on “untenable grounds” or is based on “untenable reasons” if the trial court relies on unsupported facts or applies the wrong legal standard; the

court's decision is "manifestly unreasonable" if "the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take."

*Id.* (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Lewis*, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990))).

B. The court abused its discretion in vacating the default judgment and order of default.

"Any discussion of default judgments begins with the proposition that they are not favored in the law." *Johnson v. Cash Store*, 116 Wn.App. 833, 840, 68 P.3d 1099 (Div. III, 2003), *citing Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979). "The overriding policy is that controversies should be determined on their merits, not by default." *Johnson*, at 840, *citing Griggs*, 92 Wn.2d at 581 (*quoting Dlouhy v. Dlouhy*, 55 Wash.2d 718, 721, 349 P.2d 1073 (1960)). "On the other hand, the need for a responsive and responsible legal system mandates that parties comply with a judicial summons." *Johnson*, at 840-841, *citing Griggs*, 92 Wn.2d at 581. "In determining whether a default judgment should be vacated, the court applies equitable principles to ensure that substantial rights are preserved and justice is done." *Johnson*, at 841, *citing Griggs*, at 581-82. "Justice is not done if hurried defaults are allowed, but neither is it done if continuing delays are permitted." *Johnson*, at 841, *citing Griggs*, at 582.

In considering an application to set aside a default judgment, the trial court must consider “two primary and two secondary factors which must be shown by the moving party.” *White v. Holm*, 73 Wn.2d 348, 352, 438 P.2d 581 (1968). These factors are:

(1) That there is substantial evidence extant to support, at least prima facie, a defense to the claim asserted by the opposing party; (2) that the moving party's failure to timely appear in the action, and answer the opponent's claim, was occasioned by mistake, inadvertence, surprise or excusable neglect; (3) that the moving party acted with due diligence after notice of entry of the default judgment<sup>3</sup>; and (4) that no substantial hardship will result to the opposing party.

*Id.* “The first two are the major elements to be demonstrated by the moving party, and they, coupled with the secondary factors’ [sic] vary in dispositive significance as the circumstances of the particular case dictate.” *Id.* “Thus, where the moving party is able to demonstrate a strong or virtually conclusive defense to the opponent’s claim, scant time will be spent inquiring into the reasons which occasioned entry of the default, provided the moving party is timing with his application and the failure to properly appear in the action was not willful. On the other hand, where the moving party is unable to show a strong or conclusive defense, but is able to properly demonstrate a defense that would, prima facie at least, carry a decisive issue to the finder of the facts in a trial on the merits,

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<sup>3</sup> Tim concedes that Deanne acted with due diligence in seeking to vacate the default judgment.

the reasons for his failure to timely appear in the action before the default will be scrutinized with greater care, as will the seasonability of his application and the element of potential hardship on the opposing party.” *Id.*, at 352-353. “Where a party fails to provide evidence of a prima facie defense and fails to show that its failure to appear was occasioned by mistake, inadvertence, surprise, or excusable neglect, there is no equitable basis for vacating judgment. It is thus an abuse of discretion.” *Little v. King*, 160 Wn.2d 696, 706, 161 P.3d 345 (2007).

1. The Respondent failed to assert or illustrate a prima facie defense to the claim asserted.

The first factor for the court to consider is whether the defendant has provided substantial evidence extant to support, at least prima facie, a defense to the claim asserted by the opposing party. *White*, at 352. The present case involves a cause of action for dissolution of marriage pursuant to RCW 26.09. The defenses to a cause of action for dissolution of marriage in Washington State are very limited because it is a “no fault” state. RCW 26.09. The two defenses to a cause of action for dissolution of marriage are set forth in RCW 26.09.030. First, the other party may allege that the petitioner was induced to file the petition by fraud, or coercion, in which case the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition. RCW 26.09.030(b).

Second, the other party can deny that the marriage is irretrievably broken, in which case the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:

- i. Make a finding that the marriage or domestic partnership is irretrievably broken and enter a decree of dissolution of the marriage or domestic partnership; or
- ii. At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing...

RCW 26.09.030(c)(i),(ii). Additional defenses include:

- (1) lack of jurisdiction over the subject matter,
- (2) lack of jurisdiction over the person,
- (3) improper venue,
- (4) insufficiency of process,
- (5) insufficiency of service of process,
- (6) failure to state a claim upon which relief can be granted, and
- (7) failure to join a party under rule 19.

CR 12(b).

In the present case, Deanne failed to identify any defense to the cause of action in her Motion and Declaration for Order to Show Cause Re: Vacation of Judgment/Order. CP 37-52. Further, she provided no evidence whatsoever to support a defense had one been raised. CP 37-52. There was simply no evidence for the court to consider as it pertains to the element of “meritorious defenses.” Further, the trial court made no

findings of fact with respect to any possible defenses to the cause of action. CP 146-148. Nor did the trial court conclude there was substantial evidence to support, at least prima facie, a defense to the cause of action. CP 148.

Instead, the trial court made a finding that “[T]his is a family law case.” CP 148. From this finding the trial court summarily concluded, “There is always a defense in a family law case; what is fair and equitable is the issue.” CP 148. While Tim agrees there is always a defense in a family law case, Deanne neither asserted a defense nor offered evidence to support a defense in her application to set aside the default judgment. And, while Tim agrees that “just and equitable” is the legal standard by which the court must distribute the assets and debts of the parties, “what is fair and equitable” is not a defense to a cause of action to dissolve a marriage.

Deanne is unable to show a strong or conclusive defense. She is also unable to properly demonstrate a defense that would, prima facie at least, carry a decisive issue to the finder of the facts in a trial on the merits. In fact, she has failed to illustrate a defense at all. The trial court abused its discretion in implying otherwise.

2. The trial court erred by finding Respondent’s failure to timely appear in the action, and answer the opponent’s claim was the result of excusable neglect.

The second factor for the court to consider is whether “the moving party's failure to timely appear in the action, and answer the opponent's claim, was occasioned by mistake, inadvertence, surprise or excusable neglect.” *White*, at 352. Where a defendant makes only a weak showing of a meritorious defense, the court will more closely scrutinize the defendant’s reasons for her failure to timely appear in the action. *White*, at 353. “Excusable neglect” is determined on a case-by-case basis. *Norton*, 99 Wn. App. at 123.

There are several Washington cases that address excusable neglect; however, the facts of each case and the outcomes greatly differ. In reviewing the cases, it is apparent that excusable neglect generally refers to the defendant’s failure to act as a result of the inaction of defendant’s agent, insurer, or attorney or misunderstandings between defendant the defendant’s insurer causing the defendant not to act. “[A] default judgment is normally viewed as proper only when the adversary process has been halted because of an essentially unresponsive party.” *Norton*, at 126, citing *Gage v. Boeing Co.*, 55 Wn. App. 157, 160-61, 776 P.2d 991 (citing *H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689, 691 (D.C.Cir.1970)), review denied, 113 Wash.2d 1028, 784 P.2d 530 (1989). *Norton* contemplates default judgment bringing properly upheld in case where the defendant completely fails to

respond to the action and the adversarial process grinds to a halt due to the defendant's intransigence. See *Norton v. Brown*, at 126. Such is the situation in the instant case.

The present action was commenced on April 9, 2013. CP 1. Deanne accepted service of the original petition on April 10, 2013. CP 7. Deanne never appeared in the action nor filed a Response to Petition. CP 147. Deanne chose not to ever make contact with Tim's attorney, CP 38, 147, despite having received a Summons, with very explicit directions as to what her obligations were to avoid default, CP 7-9, and two separate settlement offers via U.S. mail, CP 74-75, 77, the second of which warned that the offer represented a "final attempt to resolve the final distribution without court action", CP 77.

Additionally, Tim made multiple requests to Deanne that she either make direct contact with his attorney or have an attorney contact his attorney. CP 104. He also offered for her to tell him what she wanted and if he agreed he would have his attorney draft the agreement. CP 104. She refused all options. CP 104. At one point in July 2013, after having received the first offer of settlement, she informed Tim that she was going to forego a weekend trip to watch their son play ball because she had to

stay behind and get an attorney<sup>4</sup>. CP 104. She ended up attending the tournament; however, she made no effort to obtain an attorney upon her return. CP 104.

Simply put, Deanne willfully refused to appear or participate in the action in any regard. This went on for more than six months before Tim finally amended his petition to provide comprehensive specificity so there was no question in Deanne's mind as to how he wanted everything divided. CP 104. Deanne was personally served with the Amended Petition and accompanying documents on November 14, 2013. CP 16. Still, Deanne refused to appear or respond.

A default order was entered on November 27, 2013. CP 23-24. On December 1, 2013, Deanne sent Tim a text indicating she was "ready to get an attorney now to make it happen." CP 48. Tim and his attorney waited an additional 10 days to hear from her or her attorney. Deanne sent no further texts and made no further contact with Petitioner regarding an attorney or appearing or responding to the action. CP 147. Final default orders were entered on December 11, 2013, after almost eight (8) full months of waiting for Deanne to engage in the process. CP 32-36.

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<sup>4</sup> This information was not in Deanne's affidavit. Tim provided this information in response to her motion to show that she talked about getting a lawyer but never followed through.

The trial court concluded, “It was excusable neglect for Ms. Putman not to respond to the action given the negotiations such as they were that had been going on.” CP 148. The trial court abused its discretion in reaching this conclusion because the “facts” on which this conclusion is based are unsupported. To support its conclusion, the trial court found, “Throughout this process Mr. Putman has been talking to Mr. Putman about the case.” CP 146. He also implied in the conclusion that there were negotiations going on. CP 148. However, there is no credible evidence before the court to suggest that the parties were talking about the case or negotiating in any way.

The evidence shows Tim was trying to get her to respond to the action or at least contact his attorney, but Deanne refused to make an offer or counter-offer, so it cannot be correctly stated that there were negotiations. Deanne alleges the parties were in communication with each other, but provides no dates, times or contents as these alleged communications. The parties met once shortly after the original petition was filed to discuss the case, but it ended abruptly when Deanne left the restaurant in the middle of their meal. CP 103-104. There were no further discussions of the action thereafter. There were comments here and there intended to guilt Tim, but no discussions of substance and certainly nothing that would afford her a determination that her complete and total

inaction was excusable neglect. Furthermore, she admits, “Mr, Putman and I continue to talk to each other. There was no discussion about any court action.” CP 39. Last, the text messages she provides show that Tim and she continued to be civil toward one another. CP 41-52. Tim’s willingness not to have a nasty disposition toward his estranged wife surely cannot be the basis for her inaction.

Deanne’s inactions do not constitute excusable neglect. They constitute willful, inexcusable neglect and intransigence designed to halt the process. The trial court erred in concluding otherwise.

3. Tim will suffer substantial hardship if the default judgment is vacated.

Tim will suffer substantial hardship if the default judgment is vacated because the trial court restored the husband and wife to the status of married couple, CP 149, after having deemed him a single man by virtue of the Decree of Dissolution. CP 33. There can be no greater prejudice than to force a person to be married after determining that the person is single. The decision bars him from remarrying. Further, there will likely be federal income tax consequences as he is now barred by federal law from filing his federal individual income tax return as a single man and must either file jointly with his wife, who has chosen not to pay her business taxes in the past, or file married filing single, which carries

with it the least tax advantages. Additionally, he has incurred the added expense of retaining Mr. Kee to secure the judgment entered December 11, 2013.

C. The Decree of Dissolution incorporates all assets and debts of the parties and does not leave any issues unresolved.

The trial court made a finding that “[t]here are assets, debts; the IRS debt for \$100,000 that is sitting out there that is not dealt with in the decree.” CP 148. The trial court, thus, rationalized, “It’s a case where there’s going to be ongoing litigation. Something is going to have to happen to clear some of these things. And I can see this case is going to have to come back in any event.” CP 14.<sup>5</sup> This appears to be the real crux of the trial court’s basis for vacating the final orders; however, the trial court is in error on two fronts: (1) The evidence does not support the court’s finding; and (2) even if the finding was supported by the evidence, having assets and debts not addressed in a decree of dissolution of marriage is not a ground to vacate a default judgment.

Deanne asserts in her application to set aside default judgment that “the final dissolution documents contain misstatements, ambiguity, and

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<sup>5</sup> CP 123 – 145 is a copy of the Verbatim Report of Proceedings (VRP) on the motion for revision argued and decided April 18, 2014 before the Honorable James W. Lawler, Superior Court Judge. Because the VRP was filed with the trial court for purposes of argument at presentation, it was designated and transmitted with the Clerk’s Papers as opposed to being designated as VRP.

are incomplete as to the property and debt disposition.” CP 38. However, Deanne provides no evidence in her application to substantiate her conclusory statement. Tim declared, “To my knowledge, all of our assets and debts are set forth in the documents.” CP 101. She indicates the parties are “officers and shareholders in an insurance brokerage (a corporation.) CP 38. While this is true, she does not allege that this asset is not addressed in the decree of dissolution. In truth, the parties actually have two insurance brokerage corporations, Putman Insurance Agency, Inc. and Deanne Putman Insurance Agency, Inc. and one insurance brokerage LLC, Twin City insurance, LLC. Each of these three assets is specifically listed as a community asset in the Findings of Fact and Conclusions of Law. CP 27. Each of these three assets is specifically awarded to Deanne in the Decree of Dissolution. CP 34.

Deanne indicates the insurance brokerage “corporation owes almost \$100,000 to the IRS,” CP 38. With an S-Corporation election, the debt of the corporation, the IRS debt flows through to the parties, becoming a personal debt arising from the corporation, which is specifically identified in the Findings of Fact and Conclusions of Law, which lists, “Any and all personal debts for which the parties or either of them may have a responsibility to pay with regard to main [sic] Street Plaza, LLC; Twin City Insurance, LLC; Deanne Putman Insurance

Agency, Inc.; and Putman Insurance Agency, Inc. CP 27. This debt is also specifically distributed to Deanne in the Decree of Dissolution. CP 34.

Deanne next asserts the parties are part owners of commercial building that has two mortgages guaranteed by the insurance brokerage. CP 38. She provided no evidence of the mortgages, but also did not make any allegation that the building and the mortgages were not addressed in the decree. The building is actually owned by Main Street Plaza, LLC and thus the debt belongs to the LLC. Their interest in the LLC was properly identified in the Findings of Fact and Conclusions of Law. CP 27. Deanne was awarded any and all interest the parties or either of them may have in Main Street Plaza, LLC. CP 33. She was also awarded the insurance brokerages that guaranteed the two mortgages<sup>6</sup>.

Deanne also asserts that as an insurance agent she is subject to very strict rules about money. CP 38. She makes no mention of what those rules are or how the decree of dissolution results in a violation of those rules. She only offers that the unwinding of the obligations must be done carefully so that she is in compliance with those rules. CP 38. She makes no assertion that the distribution of assets and debts in the decree

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<sup>6</sup> Deanne has not actually provided any evidence of these debts.

results in noncompliance or any detriment to her whatsoever. She goes on to alleges there is no rational plan that unwinds each of the parties from the obligations associated with the assets. Again, she offers no evidence to support her assertion, and the distribution of the assets and debts itself is evidence of the most rational plan possible: She was awarded all of the parties' interest in each and every business entity in which the parties or either of them had an interest. The entity debts belong to the entities as they sit as separate parties. The personal debts arising from the businesses were distributed to her as well. There is nothing to "unwind". Tim simply had to resign as an officer of each entity. There is no more rational plan than the one set forth in the decree.

The trial court made a substantial error of fact. The finding of fact as to the assets and debts is not substantiated by the record and is completed unsupported, making it untenable. His rational being based on this unsupported finding makes his conclusion and decision untenable as well.

#### D. Petitioner Requests Attorney Fees

Tim seeks an award of attorney fees pursuant to RCW 26.09.140, which states, "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 an attorney fees in addition to statutory costs." The trial court

abused its discretion in setting aside the default judgment and this action was necessary to the interests of justice.

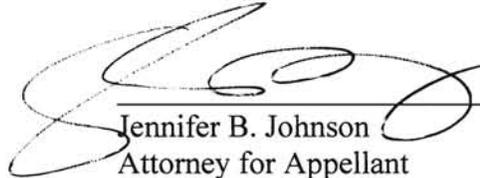
Tim also seeks an award of attorney fees based on Deanne's intransigence. A trial court may award a party legal fees caused by the other party's intransigence. *In re Marriage of Greenlee*, 65 Wn.App. 703, 708, 829 P.2d 1120, *review denied*, 120 Wn.2d 1002 (1992). Intransigent conduct includes "foot-dragging" or obstructionist behavior. *Greenlee*, 65 Wn.App. at 708. The party's ability to pay the fee is irrelevant. *In re Marriage of Foley*, 84 Wn.App. 839, 846, 930 P.2d 929 (1997). The evidence substantiated Deanne's willful intent to drag her feet as long as possible and refusal to appear or respond to the action. Her actions necessitated Tim incurring fees in responding to her application to set aside the default judgment as well as this appeal.

#### V. CONCLUSION

Tim respectfully requests that the Court of Appeals reverse the trial court's order vacating the final orders entered December 11, 2013, reinstate the Decree of Dissolution, Findings of Fact and Conclusions of Law, and Final Order of Child Support/Order Re: Post-Secondary Education Support entered December 11, 2013, and award attorney fees to Tim in total.

//

Respectfully submitted this 8<sup>th</sup> day of August 2014.



Jennifer B. Johnson  
Attorney for Appellant  
WSBA #28227

CERTIFICATE OF SERVICE VIA PERSONAL DELIVERY

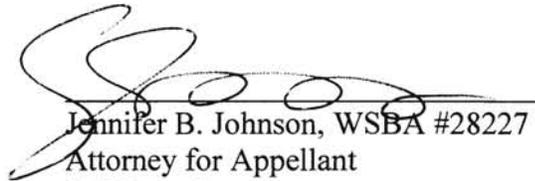
I hereby certify that on August 8, 2014, I personally delivered a true and correct copy of the foregoing APPELLATEANT'S OPENING BRIEF to the following attorney of record:

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8/8/14



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