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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 298396

WASHINGTON STATE COURT OF APPEALS

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In RE the Marriage of

SUE SHAPIRO

Respondent

v.

MARTIN SHAPIRO

Appellant

AMENDED RESPONDENT'S BRIEF

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I. INTRODUCTION

The Respondent, hereafter referred to as Sue, offers the argument that the lower court ruling was correct. The trial court is given the authority to grant what is an equitable remedy in cases. The ruling was certainly reasonable given the facts before the Court. The Appellant, who asserts the ruling was made do to error or abuse of discretion has the burden of proving the assertion through clear and convincing evidence. From testimony and evidence referenced below you will see that the Judge was fair and professional, and his ruling at the trial court level should be upheld.

I do not list a Table of Authorities. Mr. Kennedy refers to the Borghie case and several others which may have similar aspects, but a different set of facts (CP 94:3-9). Every marriage is different and so is every case. I am going to tell you what I know, documented by the records herewith. I am relying on the Court to see that my brief supports the conclusion that justice was done at the lower court level. The record does not show the errors the Appellant complains of.

II. STATEMENT OF FACTS

Marty and I started dating when we met at WSU in the fall of 1974, I was 19 years old (RP Volume I, 17:16). Marty graduated from WSU in 1976, moved to Yakima and bought the 501 Dahl rd. house on 2 acres for \$14,000. (RP Volume II, 273:15-20). When I graduated from WSU in 1977, with a General studies degree in Psychology, I moved in with Marty (RP Volume III, 369:18). Exhibits 45, 46, 47 are pictures of the house I moved into. Marty was working for his dad at Chicago Junk and I was working as a teacher's aide in an Alternative school (RP Volume I, 17:23). Our first child was born in 1979 our second in 1982. You can see by my Social Security statement I worked outside of the home almost every year except when I was nursing our baby (Exhibit 10). In addition to being a mom and housekeeper, I was the family book-keeper. Marty and I never discussed family money. He would deposit his check in the bank and I would pay the bills (RP Volume I, 29:18 - page 31). I could have been building a career, but instead built a home and a family.

In January, 1985 Marty's dad died. Marty told me Chicago Junk was deeply in debt so I went to work full time at Chicago Junk and Marty went to work at Washington Fruit (RP Volume I, 81:13-19, 83:15-25 and 101: 3-9). Chicago Junk was a corporation at the time and the Articles of Incorporation states that it takes 2 or more people for the corporation to function (Exhibit 16 page 3 #7). With Marty's dad gone, I became the second officer of Chicago Junk in 1985, and was listed as an officer until 2007 (Exhibit 2 page 16 and RP Volume II, 223:13-22). I managed Chicago Junk for over 2 years while Marty worked at Washington Fruit (RP Volume I, 102:9-15). Marty and I changed things from how his father had done them, and we were able to handle much more business. In 1987 Chicago Junk started to become profitable, and Marty was able to quit working at Washington Fruit and return to work at Chicago Junk.

By the early 90's Chicago Junk was doing well. Marty and I purchased the Umptanum property in '90, the Terrace Heights property in '91, the Naches river property in '94 and the cabin in '95. We added a large pool and pool house between 1996 and 1998. We traveled a lot and were living the dream (RP Volume I, 40:23-25).

In 1992 I went back to school. I earned a Master's degree in Education, not with a teaching certificate but with a specific certification as a School Counselor. Due to the budget cuts many schools are now sharing counselors. The school I helped create no longer exists. Currently I am a 57 year old woman who was basically a stay at home mom. With so many teachers out of work and not being bi-lingual in Yakima, I feel very fortunate to have my job substitute teaching (RP Volume I, 16:17).

In January, 2000 Marty and I bought a home on 28th Ave as a rental home investment (RP Volume I, 36). In 2002 we wanted to buy the 23rd Ave house as a rental for our daughters (RP Volume I 23:6-10). At this point we already had two mortgages (501 Dahl rd. and 215 28th Ave). We took advantage of a lower interest rate and a larger mortgage tax deduction by refinancing and putting all of the mortgages on the 501 Dahl rd. home (RP Volume I, 37:10). Marty never mentioned to me that he intended the home to be his separate property (RP Volume III, 356:14-17).

In August, 2006 our marriage problems intensified so when the 28th Ave rental house became vacant I moved into it. Marty and I maintained a joint account and all the bills were paid jointly. In February,

2007 I realized we were not going to reconcile. To make the split from Marty I took one half of what we had in our checking account, which was \$25,000 and an additional \$5,000 which was a portion of what we had in a safety deposit box in Kauai.

That is the money I lived off of for 7 months, until my \$2,000 maintenance started in September, 2007. Many expenses were paid out of that original \$30,000. On top of my monthly expenses, I had to pay \$3,500 to retain an attorney and \$800 for Mr. Rowland's appraisal. I hadn't moved any of my things out of the 501 Dahl rd. house yet and had to pay for a u-haul and movers. In addition, a large portion of the money went into making the 28th Ave rental house a home for me. I moved out of a very large home into a much smaller home (RP Volume I, 47:3). My 501 Dahl rd. bedroom and bathroom alone was 1300 square feet (RP Volume I, 61:23). In the basement of the 28th Ave house I had the walls sheet rocked and painted, and put in carpeting to give myself more living space. Additionally, I paid \$600.00 to insulate my attic because my oil bills were too high (RP Volume I, page 46). I also had to buy a washer and dryer and had unexpected medical bills to pay.

I had \$4,000 to my name when my \$2,000 maintenance started September 2007 (RP Volume I, 107:5-21). I had to borrow money from my family to help me pay for a new roof. They also loaned me money for Mr. Pettersen's appraisal of Chicago Junk (RP Volume I 34:9-23). You will notice I was cut off by Mr. Kennedy before I was able to finish my sentence. I would have ended that with "but --- I do have to pay them back what I borrowed". My family paid for me to go and see my dad before he died, but I did pay them back the other money I owed them. I would not expect my family to pay for half of my roof or for an appraisal. Before the reconsideration hearing my attorney Bob Velikanje, was given copies of the checks I wrote to my family to pay them back. From my original interrogatories Mr. Velikanke also had my bank statements from 2007 proving my financial situation.

In June, 2007 Marty had our personal properties appraised by Mr. Korn and the Chicago Junk land appraised by Mr. Timms. I didn't agree with the personal property values and had them appraised by Rich Rowland in October, 2007. Matt Petersen did the Appraisal of Chicago Junk Corporation.

For the record, if you look at page 6 of Mr. Korn's appraisal (Exhibit 23) the values he gives mirror what Marty had given me six months earlier when we were discussing the values of the properties. Again, this was before the appraisal was done (RP Volume IV, 409:11, Exhibit 77). Parcels 2, 3 and 4 are the "River property" which equals the \$90,000 Marty has listed, the only difference being the 28th Ave. property. If Marty had written this note after he received the appraisal why would he have crossed out the \$175,000 which was Mr. Korn's appraised value for the 28th Ave house and write \$180,000? And why would he have given me this hand written note knowing I would be given a copy of the appraisal?

The Appellant is making an issue over my not working the three years during separation, so I am going to explain. After our separation August, 2006 I suffered what is called situational depression. I was so depressed I couldn't leave the house let alone get a job. I thought Marty and I would get back together and I thought I was going to be married the rest of my life (RP Volume I, 115:19, 105:2-9). On the recommendation of a doctor I started treatment for depression. Over time I was showing signs of decreased muscular function and coordination, particularly in my

legs. My symptoms were mimicking MS. In May, 2007 I tested positive for an Auto Immune Disease. In June, of 2007 I was sent to Virginia Mason Hospital in Seattle where I found out that in rare cases too much of the wrong medication can cause symptoms such as I was exhibiting (RP Volume I, page 15). My medication was adjusted and slowly my strength and coordination improved. I was just getting better when in February, 2008 my father became gravely ill. That spring I went to see him. He was living in North Carolina at the time. My family paid for me to go to my dad again in the November so I could spend time with him before he died. He passed that December, 2008. During this whole time Marty was helping financially (RP Volume I, 34:3). He never said "you need to go get a job". In the course of those three years my relationship of 32 years ended, I thought I might have MS and my father died.

Again, I never dreamed I would be in the position I was in. "At this stage in my life, I didn't think that I would be working full time" (RP Volume I, 118, 23-24). I thought Marty and I would be enjoying our retirement years together (RP Volume I, 126:7-9). Marty had other plans for his semi-retirement. In 2008 alone Marty went to Kauai 5 times for 3

or 4 weeks at a time (RP Volume III 361:12-362:12). He wasn't exactly working much either.

Around February, 2009 I started the process of being recertified for substitute teaching. As I tried to explain to Mr. Kennedy this is a process that takes time and has to be renewed every 2 years. At the time of trial I was waiting for my certificate so I could start substitute teaching in September, 2009.

On July 31, 2009 the Trial Court found a fair and reasonable outcome based on the information it was provided. It followed both the RCW 26.09.090 and RCW 26.09.080 codes which Mr. Kennedy cites. At the Reconsideration Hearing May 3, 2010 more money was awarded to Marty at my expense. The divorce should have been settled then. This is a community property state, and a 50/50 split is normal for long term marriages. Anything other than upholding the trial court ruling would be unfair.

III. ISSUES ON APPEAL

1. Marty lacks the cash flow to make additional lien and maintenance payments.

2. The Trial court abused its discretion when it failed to make an equitable division of the property, including the business.

3. The Trial Court abused its discretion when it improperly valued the business known as Chicago Junk as of the date of separation and not the date of trial.

Again, the burden is on the Appellant to prove that the Trial Court misinterpreted the law or abused the discretion permitted the Judge by the law.

IV. ARGUMENT

I) Marty's inability to pay maintenance and lien:

Marty has the ability to pay the maintenance and lien. Except as otherwise provided in the RCW 26.09.070, "the provisions of any decree respecting maintenance or support may be modified only ***upon showing substantial change of circumstances***". The Appellant has failed to prove a substantial change in circumstances.

In fact, it was Marty's accountant who provided the evidence that Marty was drawing \$15,400 in salary and \$2,000 in rent, per month, from Chicago Junk from 1/09-5/09 (Exhibit 58, page 3). The note and security agreement from US bank indicates the Gross Annual Sales of Chicago Junk were \$2,400,000.00. Therefore, Chicago Junk represented 2.4 million dollars to US Bank April of 2009 (RP Volume III, 358:5-9). Chicago Junk also had 2 CD's valued at \$225,000, totaling \$450,000. One held by US Bank one at Yakima Valley Credit Union (RP Volume III, 359:6-12). The Court stated, "In 2009 the evidence I had was in the first five months he (Marty) had been paid \$77,000 which is \$15,400 a month" (CP,

101:24). In addition to what Marty received from Chicago Junk he was collecting \$600.00 in rent from one of two trailers on the Naches river property (CP, 97:24).

I want to remind the court that I was married to Marty for 27 years and was the family bookkeeper for at least the last 15 of those years (RP Volume I, 30:20-25). I have a better idea of what the family finances were than Mr. Kennedy. The Appellant has provided a slanted version of the facts, which when correctly described, will make the trial court outcome seem fair and reasonable.

The Appellant claims "the Court failed to review Sue's monthly expenses". I am sure the Court reviewed both of the expense accounts that were presented (CP 380:20-381:4). We talked about them at trial (RP Volume I, pages 38-40). The first expense account was done in September, 2007 when Marty was paying most of the bills (CP 7-12). The updated version, which is more accurate as to what I am paying now, was provided to the Court by Mr. Vellikanje July 6, 2009 (Exhibit 1). Even this updated version was understated (RP Volume I, 52:17-23). On the other hand when you see Marty's monthly expense account you will notice it was overstated.

Looking at Marty's living expenses you will see selective and incomplete statements about the evidence (Exhibit 68). Adjustments could be made to increase his cash flow and decrease his debt. First he lists his house payment as \$3,409. Considering his mortgage balance is \$147,756, he can refinance over 30 years and make that payment less than \$1,000 per month. He's claiming \$500 for heat each month. That must be a typo. The \$200 Kauai utilities I now pay. The \$1,100 health insurance was covering me too. This bill has been cut in half. The \$2,479 Kauai Mortgage is now paid by me. He lists a \$7,000 IRS bill. On the Appellant's Appendix "A1" he lists his IRS bill at \$3,140. My IRS bill was never considered to figure into my debts. The \$10,000 farm expense is an investment in his future. It is not a living expense. The student loan for our daughter was paid a long time ago. In 2008, I got a loan so my daughter could go to school in Seattle, and only getting \$2,000 a month from Marty I was having trouble making the payments. Marty gave me \$6,000 cash towards it (Volume III, 321:19-22). As you can see this monthly expense account is not quite accurate.

As I stated, during separation, before the divorce Marty was paying many of the bills. Since the divorce he has transferred at least \$3,500 in debt to me by way of the Kauai mortgage and associated Kauai bills, my health insurance, and other property taxes (CP 372:19, RP Volume I, 43:7, RP Volume III, 320:15-19). He was giving me \$2,000 in maintenance. That totals over \$5,500 he was already paying. The difference out of his pocket each month is minimal. Even when Marty made less money, he was able to pay all of his bills and travel frequently. One year he paid \$20,000 "lump sum" on the Kauai property to pay down the mortgage (Volume III, 350:15-25). When you look at all of the things we have purchased over the years it is evident that there is money available.

Marty claimed he was short on funds May, 2009 and yet he spent \$10,000 on more Cherry trees, irrigation etc. (RP Volume III, 352:20-25). Chicago Junk (Marty) gave each of our daughters \$5,000 that first quarter (RP Volume III, 330:18-20). Both of those were unnecessary expenses. I know there is enough money to make this work. However, Marty just wants to spend the money his way, to his benefit and at my expense.

Marty has the ability to reduce his monthly expenses by refinancing the 501 Dahl rd. house. Exhibit 34 is a GMAC mortgage statement for the 501 Dahl rd. property. In 2009 it shows a principle balance of \$224,660. Considering more than two-thirds of the payment was going to principle one can assume that three years later the principle balance is much less. His monthly payments are \$3,409. The maturity date on the loan is 2019 which is in six years. I believe there is a way he could reduce this monthly payment.

As Mr. Kennedy stated in his opening brief Marty is collecting \$500.00 a month from the one trailer at the Naches river property (RP Volume I, 9:21). Marty could put some effort into the other trailer, which is vacant, and rent it out for more money (RP Volume I, 74:19-25). He could collect \$500.00 in rent from our daughter each month. I don't have the option, per divorce decree, to cohabit to share expenses, but Marty could rent his pool house to make extra money. He has Christmas trees and cherries to sell (RP Volume III 359:18-360:1). He has several vintage cars (RP Volume I 89:14-25 Vol.III 314:7-14). He also has large construction equipment that the value of was not considered because it wasn't on the first depreciation schedule (RP Volume III 304:15-17 &

Volume IV 421-422:3). The entire second floor of Chicago Junk is full of antiques Marty could auction off. All I have to sell is land, and if I sold any land now I would loose money.

The Appellant wants “the Courts to allocate alimony with the intention of permitting a spouse to maintain the standard of living to which the spouse has become accustomed” (Appellant’s Brief 13). That is exactly what I asked for when I asked the court “to award me maintenance so that I can live in the lifestyle that I’ve lived in for the last ten years, the lifestyle Marty continues to lives in currently” (RP Volume I, 119:3). My life has changed considerably, starting with moving from a 6,500 square foot home to a 2,000 sq. ft. home. Things change when you get divorced.

Considering all of the relevant factors the Court granted maintenance that was fair and reasonable. It considered the length of time we were married and Marty’s ability to pay. The Court addressed the standard of living code RCW 26.09.090 (CP, 374:17-24). Even if a spouse is capable of working, the court has the discretion to award maintenance so that spouse can enjoy the standard of living that was

usual during marriage or at least not end up much poorer than the other spouse.

When considering maintenance the Court can consider unearned income as well as earned income (CP, 370:1-4). Marty is a resourceful man and has many assets. I am sure he can find a way to increase his cash flow. When asked how long I wanted maintenance to last I stated "I don't know.....I thought I was going to be married the rest of my life!" (RP Volume I, 105:2-9). The maintenance amount and duration, and lien amount should remain the same. The trial court ruling should be upheld.

2) Property division Issues

A) 501 Dahl rd. Property

The Appellant is claiming there was error in the characterization of the 501 Dahl rd. Property. In a long term marriage joint ownership of property is automatically presumed by the law in the absence of specific evidence to the contrary. As you will see below, the 501 Dahl rd. Property was correctly characterized as community property.

Marty bought the 501 Dahl rd. Property in 1976 for 14,000 dollars (RP Volume III, 339:23-25). I moved in with him in 1977 (RP Volume I, 18:3). I took care of the house (RP Volume I, 131:6-13). I helped remodel the house (RP Volume I, 60:18-23 & Volume II, 342:19-21). The fact that Mr. Kennedy stated I am not due any compensation from the increase in the value of the 501 Dahl rd house because I got to live there "rent free" is not only ridiculous, but insulting (Appellants Brief page 21). Equal contributions of both parties go to the creation and operation of a family unit.

As stated in the introduction, in 2000 we purchased the 28th Ave house as an investment. In 2002 we wanted to buy the 23rd Ave house. In order to save money we mortgaged it to 501 Dahl rd Property (RP Volume I, 38:4-16). Marty mortgaged the 501 Dahl house willingly. He didn't have to refinance. The 28th Ave home, which was purchased in 2000, already had a mortgage and we didn't have to purchase the 23rd Ave home.

I read the Borghie case and the Hurd case which Mr. Kennedy cites, and they are nothing like my case. Marty and I had been together for 26 years when we refinanced our home (Volume I, 56:6). For Mr.

Kennedy to state in his Brief that “Marty never intended to have the Dahl Road property become community property” is again, ridiculous (Appellant’s Brief 17). When Marty was asked if he had a discussion with me about ownership of the 501 Dahl rd. Property he said no. (RP Volume III 356:14).

Mr. Kennedy states in his brief “No evidence was presented as to how much the remodeling increased the value of the house.” If you look at the following exhibits you can see what the remodeling did to increase the value of the house (Exhibits 45,46,47,50,51,52,53,54,55 & RP Volume I, 58:22-62:25). The small house I moved into looked nothing like the large home I left. In Mr. Kennedy’s Brief he states “Marty does not argue that there were not contributions made by the community, but there has been no such evidence offered in this case” (Appellant’s Brief page 19). The testimony from Marty and myself and the exhibits listed above should be enough evidence that I contributed to the increase in value of the 501 Dahl rd. house.

Interestingly enough Marty's appraiser Mr. Korn, separates the 501 Dahl road house from the land it sits on when he did his appraisal. As many times as our house has been appraised it, has never been done like that before. It is common practice for the house and the land it sits on to be valued together. Furthermore, Mr. Korn values the 2 acres the house sits on at \$30,000 an acre, or \$60,000. This is the property the Appellant is claiming would be Marty's separate property. Why weren't those two acres appraised at \$5,700 like the other 17 acres joining our 2 acre home plot? (Exhibit, 23). Valued at \$30,000 an acre the 17 acre community property would have been worth more.

I would ask the court to wonder why the 2 acres were separated out and valued at \$60,000. And if indeed this is to be Marty's separate property, why would it be worth more than the \$14,000 Marty paid for the house and land the year before I moved in. For the record when Marty was asked about the community lien on the property he stated he was unaware of any lien (RP Volume III, 348:11-15).

In 2001, Marty and I purchased 17 acres of land with 22 shares of water, which joins the 2 acres the 501 Dahl rd house sits on. Together with the help of our friends and others Marty and I planted 265 Fir trees

around the perimeter of the land, 1,000 Nobel Fir trees for resale, and 1,000 Cherry trees (RP Volume I, 111:9-13 & Exhibit 56). Although I moved into the 28th Ave house in August, 2006, I didn't move my things out of 501 Dahl rd house until June, 2007. These trees were there when I moved (RP Volume I, 68 &69). In June, 2007 the 17 acres were incorrectly valued as vacant land (RP Volume IV 380:15, Exhibits 23 and 8). My appraiser told me I would have to get an agricultural appraiser to asses the value of the Cherry orchard and Fir trees. Lacking the funds I did not hire an agricultural appraiser. In Mr. Korn's appraisal you will see photos of some of the trees. He states there are Cherry trees on the property, but he gives them no value (RP Volume II, 203:14- page 204, Volume IV, 389:7-390, Exhibit 23 page 2). Neither Mr. Korn's nor Mr. Rowland's appraisal took into account the value of the harvestable trees, therefore they were given no value.

Since 2007, Marty has put in several more acres of Cherry trees (RP Volume II 291:2-12). They are an investment in his future (RP Volume III 359:18-360:1). I don't think you need an appraisal to know that there is value in 10 acres of Cherry trees and 800 Noble Fir trees (RP Volume II, 204:23-25, RP Volume III, 360:18-361). Although I helped clear the land

and plant trees, I did not get monetary credit for any of their value or potential earnings (RP Volume I, 67-page70, Volume I, 111:9-16, Exhibits 52, 56). During the three year separation Marty has had the ability to invest in his future. Receiving just \$2,000 a month I was unable to pay all of my bills and had to borrow money from my family.

The court should affirm the ruling on the characterization of 501 Dahl rd. Property as community property. In the Verbatim transcript of July 31 hearing the Court stated that "he (Marty) voluntarily deeded the property to the community. If he didn't want to he could have refused." When we refinanced I took the liability for the debt so it's really quid pro quo (CP 93:19-25). I would not have agreed to sign the loan if I had thought 501 Dahl rd. was Marty's separate property.

The preference in Washington State is to find community property not separate property. The record shows there was no abuse of discretion. The ruling was reasonable and fair and therefore, should be upheld. The 501 Dahl rd property was community property in it's entirety.

B) 23rd Ave house

The Trial Court's ruling that the 23rd Ave house be awarded to Marty should be upheld. When Marty and I first purchased the 23rd Ave house, my daughter, Jessica, was to pay rent. When I was living with Marty and doing our books I collected rent from her (Exhibits: 3,4,5,6 around page 5 or 6 depending on the year). "Marty's position at the time of trial was for the parties to give to their daughter the 23rd Ave residence," (Appellant's Brief page 23). I didn't want to give the house to our daughter. I believed she needed to pay for it in the form of rent (RP Volume I, 23:24, 24:1-6). Mr. Kennedy clearly states that "Marty does not or would not charge our daughter rent" and yet he wants me to have the house and charge her \$1,250 a month (Appellant's Brief page 24). How can I do that without being the bad guy? (CP 381:25-382:1-2)

In addition to the reasoning used by the trial court alternative grounds exist to support the judgment that Marty should receive the 23rd Ave house. Chicago Junk started giving our daughters money right before Marty and I separated (RP Volume III, 331:6-9, 332:1 & Exhibit 32). In

2007 they each received \$12,000, and in 2008 they each received \$20,000 from Chicago Junk (RP Volume III, 329:23). Amanda and Jessica were twenty-six and twenty-nine at the time and Marty was paying them both “just to support them” (Volume III, 370:21-25). In my book children who are 26 and 29 should be supporting themselves. My older daughter drives a 2004 Suburban that was purchased new for her through Chicago Junk (RP Volume III, 353:14-25). I drive a 1996 Infinity (RP Volume I, 41:19-21). Marty spoiled our daughters and now wants me to pay for it.

Marty wanted to give the 23 rd. Ave house to our daughters so the Court gave it to him so he could (CP, 381:19-21). The Court has the discretion to use cash payment with equitable division of property when it is practical. The trial court exercised sound discretion in awarding the 23 rd. Ave house to Marty. Therefore the ruling should be affirmed.

C) CHICAGO JUNK

The Appellant is claiming there was abuse of discretion when it failed to make an equitable division of property, including the business. I agree that there was an error made. The trial court characterized Chicago Junk as being Marty's separate property because he inherited it in 1985 from his father. We had been married for six years by then. Marty claimed Chicago Junk was worth \$125,000 when he inherited it (RP Volume II, 272:18). Chicago Junk's appraised value at the date of separation was \$827,000 (Exhibit, 9). The \$700,000 increase in value should have been community property with a community lien (RP Volume IV, 431:9-19). Marty could not have made that business what it was without me (RP Volume I, 134:20-135 & RP Volume I, 126:21-127).

Under the RCW 26.09.080, the main goal of the division of property is that it is equitable regardless of separate or community. An equitable division would have given me a community lien on the \$700,000 increase in value of Chicago Junk.

3) CHICAGO JUNK VALUATION DATE

In Washington State the trial court has the discretion to determine the appraisal valuation date for each asset. The Appellant is claiming that Chicago Junk should have been valued at the time of trial as opposed to the time of separation. The only appraisal entered into trial was Matt Petersen's. That was the appraisal the Court used (CP, 93:8-10). Mike Moriarty has been Marty's personal and business accountant for over twenty years (RP Volume II, 209:11). His analysis of the Chicago Junk business was not an appraisal (CP 372:6). It was a financial statement that he and his accounting firm prepared. It declared that Marty had earned \$77,000 in salary from 1/09 to 5/09 (Exhibit 58 page 3). The Court states "The fact that even in the hardest of times in 2009, he (Marty) can take at a rate of \$160,000 a year out of the business and still break even indicates that this is not a failing business" (RP Volume IV, 442:12). This financial statement also showed that Chicago Junk was paying \$2,000 a month in rent. This was during a time when the Appellant claimed there was a severe decrease in the market. I would ask the court to Google the copper market to see what the metal market has done since 2008.

Chicago Junk had two CDS worth close to \$500,000 in April 2009. When Marty went to borrow against them US Bank's Note and Security Guaranty stated Chicago Junk's Gross Annual sales were 2.4 million. Marty stated that was what Chicago Junk was worth to them at that time (Volume III, 358:5-9 & Exhibit 27).

Furthermore, when an appraisal is done on a corporation it is standard practice to consider the average of the prior 4 years Equity or Net Worth (RP Volume II, 225:13). This is generally determined by the corporate tax returns. Knowing Marty and I separated in August, 2006 the appraiser, Mr. Petersen, used the 2002, 2003, 2004, and 2005 corporate taxes. When you add the net income of these years together and divide by four you get an average Net Worth of \$403,439. Had the Appellant gotten an appraisal on the date of trial, July, 2009, an appraiser would have used the 2005, 2006, 2007 and 2008 corporate tax returns'. The average net worth of those years is \$508,862 opposed to \$403,439 which is \$100,000 more. Why is the appellant arguing the appraisal date when the average net worth would have been more in 2009? All of the

values written on Appendix I come from exhibit 9 page 10 and exhibit 2 pages 1 & 15.

In Washington State, the trial court is given broad discretion to choose an evaluation date that is equitable to both parties. New information should only be used if it makes the old appraisal obsolete. If anything the Appellant's financial statement proves that Chicago Junk is a profitable business. The only true appraisal the Court had was Mr. Petersen's. The Appraised value of \$827,000 for Chicago Junk should be upheld given the evidence presented.

For the record, the entire second floor of Chicago Junk is full of antiques. Anything that was collectable went upstairs. Obviously, since Marty is a metal dealer most things were made of copper or brass (RP Volume I, pages 96 & 97). In 2007 there was no one in Yakima that appraised antiques. I talked to an antique appraiser in Seattle and she said to give an accurate appraisal of the antiques she would have to come over and itemize each article. Again, I didn't have the money to pay for an appraisal so I didn't get one (RP Volume IV, 417:17-418:7). What Marty presented is not an appraisal of antiques. It is a letter from Gary Versteeg. His credentials as an appraiser were never established in

court and an appraisal was never provided. There is a reason why they didn't want my attorney to question him (RP Volume III, 367:1-368:18). It is ridiculous to say that over twenty years worth of brass and copper collectibles have no value. Even at scrap prices a fifty pound brass bell has value. If they had no value why wouldn't Marty give them to me?

Again, because I was unable to afford an appraiser I lost money. Marty was awarded twenty five years worth of antiques with no offsetting value going to me.

V. CONCLUSION

The provisions as to property and maintenance may not be revoked, or modified, unless the Court finds the existence of conditions that justify the reopening of a judgment under the laws of the state. Abuse of discretion happens when the trial court ruling is arbitrary, unreasonable or because it makes absolutely no sense. The facts of this case fit easily into rules of established law. The trial court made its decision within the range of acceptable choices.

Regarding maintenance the trial court made its findings according to the RCW code 26.09.090. It considered the length of our marriage, standard of living established during our marriage, my ability to find gainful employment and Marty's ability to pay. Marty's income was established by way of his own testimony, his accountant's report and his tax returns. The Appellant's exhibit 58 is evidence to the fact that even in a depressed economy Marty was making money.

By dividing the assets equitably a judge tries to effect the final separation of the parties to enable both parties to start their post-marital lives with some degree of self sufficiency. I need what I am getting. I have very little in the form of retirement (RP Volume I, 85:8-25). When I would ask Marty why he didn't invest in a retirement plan he told me several times that the antiques were our retirement. Well that works for him because he got all the antiques! Being a stay at home mom I have very little in social security, a small IRA and no other retirement benefits. I need to be able to pay my bills, and save for retirement.

Mr. Kennedy complains Marty will have to work past his retirement. According to the social security office Marty and I are at the age where we can't retire until we are 66. Marty is required to pay me

until he is 67. Marty has Billy and Rich Reighfield, who are like sons to him and run the business with minimal supervision (RP Volume II, 279:2-6, 324:22-25). Why would he retire and collect a nominal social security check when he can collect a larger check from Chicago Junk even while on Kauai? Marty only has seven and a half more years to pay. In my book that is not nearly enough after I gave him 32 years. If Marty handles his finances properly, in less than eight years he could be debt free. Marty will own a business worth over a million dollars not including the land it sits on. Marty's house will be paid for and he will be harvesting 10 acres of cherries. Marty will also have the ability to sell off the antiques for his retirement. I will still have mortgage payment and be living off of a social security check. Clearly, the maintenance amount and duration, and lien should remain the same.

The ruling on the 501 Dahl rd property and the 23rd Ave property should remain the same. The trial court's ruling was based on facts supported by the record. The facts met the requirements of the correct standard. Therefore the trial courts decision was within the range of acceptable choices and legal standards.

The trial court erred when it characterized Chicago Junk as separate property. I would ask the court to consider that there was a \$700,000 increase in value of Chicago Junk from the time of inheritance, 1985, to the time of separation. This should have been characterized as community property. I should at least be entitled to some sort of community lien (RP Volume IV, 431: 9-19).

There is no question about the Chicago Junk evaluation date. The ruling should be upheld.

Things have been skewed to make it look like Marty is a victim here. As stated by Mr. Kennedy, "This is a long term marriage. We are not disputing that" (RP Volume I, 5:8). When I moved in with Marty in 1977, we were living in a 900 square foot fruit picker's house out in the middle of an orchard. When Marty's father died in 1985 we inherited Chicago Junk which was in debt. Everything we have has come from equal contributions. This is a community property state which means things are to be divided equally. I have worked just as hard as Marty and I am entitled to half (RP Volume II, 200:3-5).

Although Marty has gotten more than half, he is still Appealing. Not only did he get twenty five years worth of antiques, Marty is getting,

and will get for many years to come the proceeds from the 10 acre Cherry orchard and the 800 Christmas trees which my efforts contributed to. There was also a lot of big equipment that was not listed that has tremendous value (RP IV, 421:12-19). If you include all the equipment not listed, over a thousand harvestable trees and the many antiques they would easily exceed \$100,000. This all went to Marty with no offsetting value going to me.

In addition to all of this, Marty has access to considerable amounts of cash. Appendix II shows the total amount of checks written to Marty above and beyond his monthly paycheck and rent check in addition to the amount of cash taken out of Chicago Junk for the years 2006-2009. These amounts are taken directly from Exhibits 12,13,14,15. They clearly indicate a tremendous cash flow (RP Volume I, 4:5-10). There is an explanation for the large cash withdrawals. As Marty explains he pays some of his larger accounts in cash (RP Volume III, 307:19-25, and pages 333-334). Not the best book-keeping, but it makes for a happy client (RP Volume IV, 423 & 424). Even the Appellants own accounting firm states that there were "several departures from generally accepted accounting principles" (Exhibit 58 page 1). Even the Court asks Marty to

explain these cash withdrawals (RP Volume II, 240 & 241). The Court needs to consider this evidence when rendering a judgment. An equitable division involves an allocation that is fair after considering all of the circumstances (RP Volume IV, 430:2-15).

This Appeal is frivolous and has no merit. In my opinion Mr. Kennedy took advantage of a man with deep pockets. The RCW, 11.96.150 authorizes this Court to award the respondent costs and reasonable fees in defending this appeal. Therefore, I am asking the court to award me \$10,000. I want five thousand dollars to pay for my time, labor and associated fees for having to defend this Appeal. And another \$5,000 for what I should have gotten at the trial court level. I requested attorney fees at the trial court level (RP Volume I, 4:13). The Judge stated I was to have some attorney's fees and the need is determined at date of separation, (CP, 99:14-25). I testified to the fact that I only had \$4,000 to my name that I had to borrow money from my family and that I had no cash reserves, (RP Volume I, 107:5-12 & page 35). I proved a need for attorney's fees and yet received nothing. I am still paying off my former attorney Mr. Velikanje. Again, my income is

limited and all costs pertaining to this trial are subtracted from a fixed budget which I depend on. I am requesting \$10,000 in relief.

There has been substantial evidence provided to persuade a fair minded, rational, person of the truth that this case should have been settled at the trial court level. It has been a waste of the Court's time and money and a waste of tax payer's dollars. Unquestionably, the trial court ruling should be upheld.

The issue of maintenance and lien should not be allowed to be readdressed. Marty has complete control over the major asset and can justify what he wants. He received more than fifty percent of our net worth. His voluntary lack of prudent financing should not be at my expense. The trial court ruling should be upheld and final, with no chance for revision.

Dated this 1st day of July 2012

A handwritten signature in cursive script that reads "Sue Shapiro".

Sue Shapiro

APPENDIX I
GROSS ANNUAL PROFITS
OF
CHICAGO JUNK
TAKEN FROM EXHIBITS 2 & 9

CHICAGO JUNK'S

DATE & EQUITY/NET WORTH 2001-2005

12/31/02	12/31/03	12/31/04	12/31/05
\$347,574	\$321,264	\$436,529	\$508,389

AVERAGE NET WORTH \$403,439

DATE & EQUITY/NET WORTH 2004-2008

12/31/05	12/31/06	12/31/07	12/31/08
\$508,389	\$550,226	\$435,271	\$541,564

AVERAGE NET WORTH \$508,862

VALUES FOR 2001-2006, (Exhibit 9, page 10)

VALUES FOR 2007 & 2008 (Exhibit 2, pages 1 & 16)

APPENDIX II

CASH WITHDRAWALS

AND

CHECKS WRITTEN TO MARTY

TAKEN FROM EXHIBITS

12,13,14,15

Exhibit 12 2006

Cash withdrawals

January	\$ 58,000	page 1 lines; 1,4,17,25 page 2 lines; 9,15
February	\$ 65,000	page 3 lines; 4,6,16,25 page 4 lines; 6,11,13
March	\$ 73,000	page 5 lines; 1,4,5,19,20,23 page 6 lines; 6,11,14,20
April	\$ 80,000	page 7 lines; 1,3,5,16,18,21,22, page 8 lines; 2,11
May	\$107,000	page 9 lines; 8,11,14,16 page 10 lines; 2,3,4,10,12
June	\$105,000	page 11 lines; 1,3,11,13,24 page 12 lines; 2,7,21,22
July	\$ 95,000	page 14 lines; 1,5,7,8,9,10,11, 12,16
August	\$105,000	page 16 lines; 1,6,7,11 page 17 lines; 1,3,4,9,12

September	\$ 92,000	page 18 lines; 1,8,11,20 page 19 lines; 5,6,9,12
October	105,000	page 20 lines; 5,15,16,25 page 21 lines; 8,15 page 22 lines; 1,5,10
November	\$ 85,000	page 23 lines; 2,9,16,18 page 24 lines; 1,5,10
December	\$ 90,000	page 25 lines 2,4,23 page 26 lines; 4,12,16 page 27 line 1

\$50,000 Bonus to Marty the month after I moved out
page 19, line 23

Exhibit 13, 2007 Cash withdrawals

January	\$75,000	page 1 lines; 9,11,15,22,23, page 2 lines; 7,19
February	\$85,000	page 3 lines; 1,11,14,19 page 4 lines; 7,17
March	\$110,000	page 5 lines; 3,13,15,16,21,23 page 6 lines; 7,12
April	\$115,000	page 7 lines; 1,4,13,15,23,24 page 8 line 5
May	\$140,000	page 9 lines; 1,9,10,14,23 page 10 lines; 2,8
June	\$125,000	page 11 lines; 8,18,19,21 page 12 lines; 15,21,25
July	\$125,000	page 13 lines; 1,11,18,20,24 page 14 lines 7,8,15 page 15 lines; 1,4

August	\$118,000	page 16 lines; 3,10 19 page 17 line page 18 lines; 2,12,17
September	\$100,000	page 19 line 17 page 20 lines; 13,14,19 page 21 line 4
October	\$105,000	page 22 line3 page 23 lines; 6,7 page 24 lines; 2,4,11,23
November	\$110,000	page 26 line 18 page 27 lines; 10,12,16 page 28 lines; 6,10
December	\$85,000	page 29 lines; 5,9,16 page 30 lines; 3,18

Checks written to Marty above and beyond salary and rent:

\$60,000 page 12 line 10, page 13 line 12, page 21 line 1,
page 30 line 16.

Exhibit 14 2008 Cash withdrawals

January	\$90,000	page 1 lines; 5,9,25 page 2 lines; 1,5 page 3 lines; 1,2
February	\$55,000	page 4 lines; 2,9 page 5 lines; 24,25
March	\$120,000	page 7 lines 13,17,21 page 8 line 9, page 9 lines; 2,13,15,17
April	\$190,000	page 10 lines; 2,5,13 page 11 lines; 6,22 page 12 lines3,15 page 13 line 7
May	\$120,000	page 14 lines; 4,12,18 page15 lines; 5,9,20
June	\$120,000	page 17 lines; 6,16,22,25 page 18 line 19
July	\$100,000	page 20 lines; 3,9,16 page 21 lines; 3,9,11,12,24

August	\$116,000	page 23 lines; 1,3,20 page 24 lines; 3,4,17,18,19,22 page 25 line 4
September	\$103,000	page 26 lines; 4,20 page 27 lines; 6,22 page 28 lines; 4,6,7
October	\$65,000	page 29 lines; 3,13,23 page 30:15
November	\$20,000	page 32 line 1 page 33 line 1
December	\$13,000	page 34 line 1 page 35 lines; 11,16

Checks to Marty totaling \$120,000 above salary and rent:

page 6 line 5, page 8 line 10, page 9 line 18, page 11 line 23,
page 20 line 12, page 27 line 9, page 30 line 14, page 34 line
14.

I received \$24,000 in maintenance that year (Volume I page
33:22-25).

Exhibit 15, 2009 Cash withdrawals

January	\$10,000	page 1 line 19 page 2 line 11
February	\$10,000	page 3 lines; 15,22
March	\$15,000	page 5 lines 3,20 page 6 line 3
April	\$30,000	page 7 lines 1,2,11,19 Page 8 lines; 1,7
May	\$27,000	page 9 lines; 6,11,16,21 page 10 line 5

\$45,000 in checks written to Marty above and beyond salary and rent: page 1 line 20, page 2 line 24, page 3 line 12 page 6 line 18, page 9 line 1.

I, Sue Shapiro, being first duly sworn on oath, depose and say:

On July 2, 2012, I did serve a signed copy of my Amended Brief for the Court of Appeals Division III, to Martin Shapiro, by way of his attorney Mr. Kennedy, by placing a copy of said document in the United States Mail, First class postage, to 101 SOUTH 12th AVE, P.O. BOX 1410 YAKIMA, WA 98907-1410.

Dated this 2nd day of July , 2012

A handwritten signature in black ink that reads "Sue Shapiro". The signature is written in a cursive, flowing style.

Sue Shapiro