

**FILED**

DEC 24 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

IN THE COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

<b>In re the Marriage of:</b>  Debra M. Aldridge  <b>Petitioner/Respondent,</b> <b>and</b>  Willard D. Aldridge, Jr.  <b>Respondent/Appellant.</b>  Chelan County No. 09-3-00572-7	<b>No. 315975</b>  <b>Respondent's</b> <b>Brief</b>
--	--

Kathleen E. Schmidt, WSBA #7803  
Attorney for Petitioner/Respondent  
427 Douglas Street  
Wenatchee, WA 98801  
(509) 663-8100  
[kes@kathleeneschmidt.com](mailto:kes@kathleeneschmidt.com)

## TABLE OF CONTENTS

I. APPELLANT'S ASSIGNMENT OF ERROR	1
II. ISSUES PRESENTED AS STATED BY APPELLANT	8
III. CORRECTIONS TO STATEMENT OF THE CASE	9
IV. RESPONDENT'S STATEMENT OF CASE	12
A. Cohabitation, Marriage and Separation	12
B. Wife	13
C. Husband	15
D. Summary of Relevant Real Estate Transactions	17
1. Deaconess Building	17
2. Poolside Apartments	19
3. Satterlee Road	20
4. 408 Commercial/Squilchuck	22
5. Gibraltar Road Rental	23
E. Temporary Order Issues	24
1. Wife's Motion 11/23/09 Hearing	24
2. Order to Enforce/Motion to Reconsider	26
F. Post Dissolution Motions	27
1. Husband's Motion to Reconsider	27
2. Wife's Order on Motion to Amend/Clarify	27
3. Order on Motion re Post Dissolution	27
V. LEGAL AUTHORITIES	28
A. Community Property Statutory Scheme	28
B. What is Community Property?	28
C. What is Separate Property?	29

D. What is Community-Like Property	29
E. Community and Community Like Presumptions	29
1. Acquired	30
2. Commingling	31
F. Division of Assets	31
1. Statutory factors	31
2. Other factors	32
3. All property before the court	33
G. Attorney Fees	33
VI. ARGUMENT	34
VII ATTORNEY'S FEES AND COSTS ON APPEAL	38
VIII. CONCLUSION	40

## TABLE OF AUTHORITIES

### Cases

<i>Arnold v. Dep't of Retirement Sys.</i> , 128 Wn.2d 765, 912 P.2d 463 (1996)	32
<i>Connell v. Francisco</i> , 127 Wn.2d 339, 898 P.2d 831 (1995)	30
<i>Estate of Madsen v. Commissioner</i> , 97 Wn.2d 792, 650 P.2d 196(1982)	30
<i>In re Estate of Borghi</i> , 167 Wn2d 480, 219 P.3d 932 (2009)	35
<i>In re Marriage of Ayyad</i> , 110 Wn. App. 462,467, 38 P.3d 1033, <i>review denied</i> , 147 Wn. 2d 1016 (2002)	34
<i>In re Marriage of Chavez</i> , 80 Wn. App. 432, 909 P.2d 314, <i>review denied</i> , 129 Wn.2d 1016 (1996)	32
<i>In re Marriage of Davison</i> , 112 Wash. App. 251, 48 P.3d 358 (2002)	30
<i>In re Marriage of Dessauer</i> , 97 Wn.2d 831, 650 P.2d 1099 (1982)	33
<i>In re Marriage of Estes</i> , 84 Wn. App. 536, 929 P.2d 500 (1997)	34
<i>In re Marriage of Foley</i> , 84 Wn. App. 839, 846, 930 P.2d 929 (1997)	34
<i>In re Marriage of Gillespie</i> , 89 Wn. App. 390, 948 P.2d 1338 (1997)	32

<i>In re Marriage of Griswold</i> , 112 Wn. App. 333, 347-48, 48 P.3d 1018 (2002), <i>review denied</i> , 148 Wn. 2d 1023 (2003)	33
<i>In re Marriage of Harrington</i> , 85 Wn. App. 613, 929 P.2d 1159, 935 P.2d 1357 (1997)	32,33
<i>In re Marriage of Janovich</i> , 30 Wash. App. 169, 632 P.2d 889 (1981)	30
<i>In re Marriage of Knight</i> , 75 Wn. App. 721, 730, 880 P.2d 71 (1994), <i>review denied</i> , 126 Wn.2d 1011 (1995)	34
<i>In re Marriage of Konzen</i> , 103 Wn.2d 470, 693 P.2d 97, <i>cert. denied</i> , 473 U.W. 906 (1985)	33
<i>In re Marriage of Lindemann</i> , 92 Wash. App. 64, 960 P.2d 966 (1998)	30
<i>In re Marriage of Pearson-Maines</i> , 70 Wash. App. 860, 855 P.2d 1210 (1993)	31
<i>In re Marriage of Nuss</i> , 65 Wn. App. 334, 828 P.2d 627 (1992)	32
<i>In re Marriage of Sanborn</i> , 55 Wn. App. 124, 130, 777 P.2d 4 (1989)	34
<i>In re Marriage of Schweitzer</i> , 81 Wn. App. 589, 915 P.2d 575 (1996), <i>remanded</i> , 132 Wn.2d 318 (1997)	33
<i>In re Marriage of Skarbek</i> , 100 Wash. App. 444, 997 P.2d 447 (2000)	31
<i>In re Marriage of Stachofsky</i> , 90 Wn. App. 135, 147-48, 951 P.2d 346, <i>review denied</i> , 136 Wn. 2d 1010 (1998)	33

*In re Meretricious Relationship of Long & Fregeau*, 158 Wash. App. 919, 244 P.3d 26 (2010) 30

*Marriage of Zahm*, 138 Wn.2d 213, 978 P.2d 498 (1999) 30

*Pennington v. Pennington*, 142 Wn. 2d 592, 14 P.3d 764 (2000) 29

*Soltero v. Wimer*, 159 Wn2d 428, 150 P.3d 552 (2007) 30

**Statutes**

RCW 26.09.080 31,32,33

RCW 26.09.140 34

RCW 26.16.010 28

RCW 26.16.020 28

RCW 26.16.030 28

**Court Rules**

CR 59(a) 2

RAP 18.1 38

**Other**

*Weber 19 Washington Practice: Family and Community Property Law*, Section 11.13.3 31

## **I. APPELLANT'S ASSIGNMENTS OF ERROR**

Following the November 23, 2009 hearing on the Motion of Debra M. Aldridge for temporary orders, the Court determined that Mr. Aldridge would be required to return \$9,500.00 of \$11,500.00 of which she had withdrawn from the joint bank account relating to the Poolside Apartments and \$4,500.00 from the Skagit State Bank Savings Account. Trial Court did not err in making a determination that Willard D. Aldridge Jr. would be required to return the sums so that the wife would have operating capital at the Poolside Apartments that she was managing and she would have access to some savings. The trial court did not abuse its discretion.

The Court did not err when it made a determination at the November 23, 2009 hearing, which was subsequently incorporated into the November 28, 2009 temporary order, that Mr. Aldridge who was residing in the Satterlee Road home in Anacortes should be responsible to continue to make the monthly mortgage payment, and to pay for homeowner's insurance and real estate taxes as they became due.

After consideration of the financial resources and income streams available to both parties while the court case was pending, it was not an abuse of discretion to determine that Mr. Aldridge be

responsible for the obligations relating to the family home, which he had chosen to occupy.

The Court did not err by the entry of an Order to Enforce the Temporary Order, which was filed on December 15, 2010, based on finding Mr. Aldridge's failure to provide information per CR 59(a) to justify the Court's reconsideration of its earlier ruling. The Court did not err when it refused to consider Mr. Aldridge's claim that he had "spent" the \$14,000.00, which he had been previously ordered to return to the use of the wife. The Court did not err when it determined that Mr. Aldridge had the past and present ability to comply with the Court's order relating to the return of joint funds and that he had intentionally failed to comply with the Court's order.

No additional information had been submitted that would justify the Court's reconsideration of the earlier ruling that Mr. Aldridge would be responsible for all obligations relating to the parties' residence on Satterlee Road. The Court did not err or abuse its discretion re the issues identified re Order to Enforce.

With respect to the various assignments of error relating to the Findings of Fact and Conclusions of Law that were filed along with the parties' Decree of Dissolution on December 12, 2012, the Court had sufficient evidence before it to make a determination that Debra

Aldridge had left her job as a nurse to devote her efforts to the parties' real estate projects; an abuse of discretion with regard to this finding did not occur.

The Court had sufficient evidence that the Poolside Apartments, acquired by the parties via a Deed in both of their names in May of 2002 was a community asset; an abuse of discretion with respect to this finding did not occur.

The Court's determination that the parties' residence on Satterlee Road in Anacortes was a community asset was not an abuse of discretion. Sufficient evidence was presented at the time of trial indicating that the parties used joint funds and borrowed jointly to acquire the Satterlee Road property, which was acquired by a Deed in both parties' names in November of 2006 to support the conclusion the property was community in nature.

The Court did not err when it awarded the Poolside Apartments to Debra Aldridge as part of a fair and equitable division of the assets and debts of the parties, both separation and community; the Court did not abuse its discretion.

The Court did not err in awarding 11% of Willard Aldridge's Civil Service Retirement to Debra Aldridge, as representative of Debra Aldridge's interest in the Civil Service Retirement for those years of

service that occurred while the parties were in an equity partnership and during marriage; an abuse of discretion did not occur.

The Court did not err or fail to account for the use of funds during separation by both parties; an abuse of discretion with respect to the finding of the Court did not occur.

The Court did not “force” the sale of the parties’ residence, but rather gave the parties the option for Debra Aldridge to receive the residence, provided that she pay Willard Aldridge for his proportional share of the value of the home or Mr. Aldridge was given the same option to buy out Ms. Aldridge. Both parties determined they were not interested in “buying” each other out and that the home should be sold; the Court did not force a sale. The issue presented is an inaccurate statement of the actual Findings and Conclusions of Law and the Decree filed on December 12, 2013. The Court did not abuse its discretion by listening to the decisions that the parties had made after they had been informed of the Court’s ruling. The Court merely determined a mechanism by which the home would be sold and who would be responsible for the terms of the sale; this does not constitute an abuse of discretion.

The Court did not commit err when it determined a division of the total assets and debts of the parties and awarded to Debra

Aldridge a greater share of the community assets in light of the separate assets to be awarded to Willard Aldridge. The Court properly considered all evidence which was before the Court and the Findings that had been made by the Court related to the future economic circumstances of both parties. The Court did not abuse its discretion in the award of assets and debts.

The Findings of Fact and Conclusions of Law and Decree did award \$10,000.00 in attorney's fees to Debra Aldridge, but on a subsequent Motion for Reconsideration the fee was reduced to \$5,000.00.

The Court did not err when it determined that a china cabinet, which had belonged to Willard Aldridge's former mother-in-law, would be awarded to Ms. Aldridge. The evidence which was before the Court indicated the china cabinet had been purchased for a nominal fee and given to Debra Aldridge by her husband; an abuse of discretion did not occur.

With respect to the Order Granting in Part and Denying in Part Respondent's Motion for Reconsideration filed on March 28, 2013, the Court did not err in awarding \$5,000.00 in attorney's fees to Debra Aldridge. After consideration of the financial circumstances of the parties and the property distribution, the Court did not abuse its

discretion in making an award of fees. It is not necessary for the Court to determine that intransigence occurred in order to justify an award of attorney's fees.

Willard Aldridge failed to provide any additional information with regard to the characterization or distribution of the Poolside Apartments. The Court did not commit an error and did not abuse its discretion in continuing to characterize the Poolside Apartments as community property and distributing the asset to Debra Aldridge.

The Court did not err when it refused to consider Mr. Aldridge's claim that Ms. Aldridge had surplus "cash", which was not properly accounted for during the parties' separation. The Court did not abuse its discretion in refusing to recognize the argument made by Mr. Aldridge.

The Court did not commit an error when it refused to permit Mr. Aldridge to continue to remain in the parties' residence until such time as it would be sold. Based on the evidence that was before the Court at the time of the Motion for Reconsideration, it was obvious that Mr. Aldridge was interfering with the repairs that were necessary to "ready" the home for sale. The Court did not abuse its discretion in making a determination that Mr. Aldridge would be required to vacate the residence. The Court did not abuse its discretion in determining that

Mr. Aldridge would not be entitled to reimbursement for the window installation.

The Court did not err when it refused to change the award of the china cabinet from Debra Aldridge to Willard Aldridge. In light of the facts and circumstances developed at the time of trial and the additional information submitted with regard to the motion for reconsideration, the Court did not abuse its discretion in determining that the china cabinet would remain as the property of Ms. Aldridge.

The Court did not commit an err with regard to the terms and conditions of the Order on Motion to Amend filed March 28, 2013, when it denied Mr. Aldridge the right to continue to reside in the Satterlee home while the sale was pending. The Court did not abuse its discretion based on the facts and circumstances that were known to the Court at the time that the order was entered.

The Court did not err when it awarded attorney's fees on appeal to Debra Aldridge pursuant to an Order on Motion re Post-Dissolution Issues filed June 26, 2013. The Court did not abuse its discretion when it made a determination that Mr. Aldridge had the financial ability to assist Ms. Aldridge with fees that she would incur defending Mr. Aldridge's appeal of the orders of the court. The Court had statutory authority to award attorney fees to permit the former wife

to defend the appeal filed by the former husband and the financial circumstances that were known to the Court at the time of the entry of the order justified the award of said fees; an abuse of discretion did not occur.

## **II. ISSUES PRESENTED AS STATED BY APPELLANT**

- A. The Court did not determine that the Poolside Apartments had been purchased with separate funds, but noted that a “contribution” had been made by Mr. Aldridge to the total funds necessary to initially purchase the Poolside Apartments from a separate property source. At the time of the acquisition the parties did not use just the \$31,000.00 obtained from the sale of separate property of the husband. The funds to purchase were obtained with community credit and any funds contributed by Mr. Aldridge were co-mingled.
- B. The parties Satterlee Road home had been acquired with the use of funds obtained from the sale of the parties’ jointly owned Dogwood home and jointly borrowed funds. It is inaccurate to assert that the Court determined that the property had been acquired with separate funds, as that is not a finding of the Court.
- C. The Court did not award \$10,000.00 attorney’s fees to Debra Aldridge but rather \$5,000.00. It is not necessary for the Court to make a determination that intransigence occurred to award fees. Based on the overall property division, the Court determined that \$5,000.00 in fees would be appropriate. The Court had before it the fee declaration of Ms. Schmidt and the amended fee declaration of Ms. Schmidt indicating the amount of fees that had been incurred by Ms. Aldridge. It would be unnecessary for the Court to actually explain how it had calculated the fee award as it was well aware of the fact that the \$5,000.00 award was a small fraction of the fees and expenses paid by Ms. Aldridge.

- D. The Court did not err when it awarded attorney's fees on appeal to Debra Aldridge so that she would have a means by which to fund a defense of the appeal filed by Mr. Aldridge. The Court was aware of the parties' changed financial circumstances as presented at the time of the June 2013 order. Mr. Aldridge's financial circumstances had been improved significantly by the death of his mother. He had available to him a substantial amount of money that he had inherited as well as the forgiveness of a substantial debt related to his operation of the commercial side of the Deaconess. Ms. Aldridge had spent her cash to do repairs at the Poolside and Satterlee home. Mr. Aldridge did not submit an updated financial declaration; Ms. Aldridge did.
- E. The Court did not abuse its discretion when it made a division of the community and separate property that was before the court.
- F. The Court did not demonstrate partiality sufficient to require remand to a different judge. The facts and circumstances which have been described in the Appellant's Opening Brief misstate and mischaracterize what actually occurred. Judge Allan did not demonstrate any partiality towards either party in the case. If a remand is to occur with respect to any aspect of the case, as the trial judge who is familiar with all facts and circumstances of the case, she should be the judge to revisit any issue that may be returned to the court on remand.

### **III. CORRECTIONS TO APPELLANT'S STATEMENT OF THE CASE**

The Court did not make a finding that Mr. Aldridge spent a great deal of his own time and resources on developing real estate. Based on the Court's letter opinion dated October 24, 2012, page 3, finding #13, the Court made the following determination

*The respondent is an architect by training and experience. At the time the parties' resumed their relationship, he was still employed by the Federal Government at a Naval Yard near Anacortes, a position he had held since sometime in 1982. In addition, he had already undertaken the enterprise of buying, improving and selling various types of real estate. CP 283.*

Ms. Aldridge did not decide to retire in 2004. Based on the Court's October 24, 2012 letter opinion, page 3, finding #10, the Court made the following determination

*When the parties resumed their relationship, petitioner was working at the time as a nurse. She continued this employment at a variety of locations until 2003. At that time, she stopped working as a nurse in order to devote her efforts to the parties' real estate projects, which will be described below. CP 283.*

The parties did not divorce in 1986 but did dissolve their first marriage in 1994. CP 281. A "committed" relationship was determined to be effective March 1, 1999. CP 283. At the time the intimate partnership commenced and at the time that the parties remarried in 2001 they each owned property. CP 285. There is no support in the record that prior to marriage Willard Aldridge owned approximately \$1,651,772.00 in assets. RP 530-531. During the course of his trial testimony he offered no opinion as to the value of any item of property at the time that he married. He said he did not know. RP 530-531. It is also inaccurate to indicate that prior to marriage that Ms. Aldridge

owned assets that were worth \$91,857.42, the proceeds from the sale of the Peter's home.

The parties' committed intimate partnership commenced in March 1999 and there was no testimony or documentary evidence submitted to establish the value of the assets of Ms. Aldridge. When she sold the Peters home in 2002, she did receive proceeds of \$91,857.00 which were then invested into a community asset; the home owned by the parties on Dogwood. CP 285. RP 447. The parties' legal relationship spanned from March 1, 1999 to March 2001 when the parties married for the second time. This is an 8 year marriage and a 2 year committed relationship for a 10 year term.

The clerk of the court provided minutes of a hearing conducted November 23, 2009. CP 36. The minutes are merely reflective of the clerk's notes and contain an obvious error regarding reference to Mr. Aldridge's financial declaration. CP 19-25 is 7 pages in length. The only documentary evidence submitted to the Court for the November 23, 2009 hearing 143 pages in length, would have been the Sealed Financial Source Documents filed by Debra Aldridge which contained the parties' income tax returns for 2006, 2007 and 2008. The Court noted that it had not reviewed in detail the 3 years tax returns. The clerk's minutes are inaccurate. The Court determined at the time of

the temporary orders that, "If Mr. Aldridge wanted to make unilateral decisions about continued work on the Satterlee home then he would be responsible to pay for such work and he could seek reimbursement at the time of the final hearing." CP 39. Mr. Aldridge was ordered to return \$9,500.00 of \$11,500.00 to Ms. Aldridge which had been removed from the Poolside Apartment account and \$4,500.00 from the Skagit Bank Savings Account for a total of \$14,000.00 CP 40 not \$14,500.00. On April 20, 2011 Willard was ordered to pay \$12,000 to Debra by April 27, 2011. CP 109. The \$12,000 was paid 17 months after the first order and attorney fees were imposed. CP 109

#### **IV. RESPONDENT'S STATEMENT OF CASE**

***A. Cohabitation, Marriage and Separation:*** Debra Aldridge age 56 (RP 14) and Willard Aldridge, Jr. age 65 have been married twice. They lived together for a few years and were married in August 1986. RP 17, I.20. They separated in 1993 when Mr. Aldridge was arrested for domestic violence. RP 19 Their first marriage ended in divorce in June 1994 Skagit County Superior Court Case No. 93-3-00477-6. CP 281, RP 18 Pursuant to a negotiated settlement, the wife retained the family home at 4004 Peters in Anacortes and the husband retained real estate located at 408 Commercial in Anacortes. RP 19, CP 286. Each party retained their retirement accounts and other

personal property was awarded. RP 21, CP 283.

In June 1996 Ms. Aldridge was living at the 4004 Peters home and Mr. Aldridge was staying at a unit in a duplex that he had purchased at 1109 8<sup>th</sup> Street with a zero down VA loan. RP 22, RP 439 Mr. Aldridge bought a cabin in 1995 at 15729 Yokeko Drive RP 23, RP 439

Mr. Aldridge testified in his June 23, 2010 deposition at page 11 that he did not recall the details of the parties' reunification as a couple. RP 525. On page 13 of the deposition he stated, "I am just not much of a detail person." RP 526 He noted, "I don't have a specific recollection of when we got back together and I don't know whe4n that time period began." RP 436, 525-527.

The court determined that a committed intimate relationship commenced on March 1, 1999. CP 283 There is no dispute that Mr. and Ms. Aldridge got married for the second time on March 7, 2001 and have been living apart since September 21, 2009. CP 277

**B. Wife:** Debra Aldridge is a high school graduate with a nursing degree. RP 14, 15 During the parties' cohabitation and early years of the second marriage Ms. Aldridge had been at the Whidbey Naval Hospital. RP 15 She left the hospital and worked for s short time in a medical office until 2003. RP 15 Mr. Aldridge was agreeable to

this change. RP 445-446. Debra told the trial court she wanted to engage in full time property management and development with Mr. Aldridge. CP 283. They lived on the west side and they had big projects in Wenatchee. RP 16 When she stopped nursing in 2003 she was quite involved in the management and accounting work for the Poolside. RP 535, 660. She testified that her nursing skills would have to be updated in order to consider returning to work as a nurse but she did not intend to return to nursing. CP 283.

Since the parties' separation in 2009 the wife has been living in the manager's unit at The Poolside Apartments and managing the property RP 14 She has used the income that has been generated by the rental to meet her monthly living expenses after she paid the reasonable and necessary expenses of keeping up the property which included routine maintenance and some major work. RP 204 She anticipated a significant expense related to the boiler in the building and later had to do the work. CP 452

In 2009 the wife's 1040 income tax return (Exhibit 2D4) reflected gross income from The Poolside of \$127,522 with a net taxable income of \$24,027. In 2010 the wife's 1040 income tax return (Exhibit 2E1) reflected gross income from The Poolside of \$126,624, expenses of \$91,634 with a net taxable income of \$34,990. In 2011 the

wife's 1040 income tax return (Exhibit 2F1) reflected gross income from The Poolside of \$128,066, expenses of \$95,661 with a net taxable income of \$32,401. The wife had no other source of income.  
RP 199-200

**C. Husband:** Willard Aldridge Jr. is a college graduate with a Bachelor's degree and a Master's degree in architecture. RP 428-429. He retired (early retirement at age 56) in 2004 from working at the Naval Yard and he has been receiving Civil Service retirement benefits since retirement with a gross monthly payment of about \$2,700. CP 20. The husband did not offer a present value calculation of his retirement benefit and he did not provide an analysis of the component of the Civil Service plan that he now claims is in the nature of Social Security. From 1999 to 2004 when he retired, a period of 5 years, he contributed to the retirement account which means that about 22% of benefit is community CP 283 based on 22 years of service RP 627. When he retired he opted for a 15% reduction in his benefit for a surviving spouse option. RP 630.

From September 2009 until February 2013, Mr. Aldridge lived in the family home on Satterlee Road. He has received his Civil Service retirement benefit, worked as an architect (mostly without charge for family members per his testimony), managed the

Deaconess commercial side (Unit #1) and has had the rental income it produced to meet his living expenses RP 571-573, 652-653. Based on the information developed during Mr. Aldridge's trial testimony, he withdrew excess cash from the Deaconess Apartment side (Unit #2) of \$18,000 in 2011 and \$20,000 in 2012. RP 550.

Mr. Aldridge did not provide his 2010 1040 income tax return until the July 2012 court dates although from the date and signature on the return it had been completed in September 2011. RP 582-583 (Exhibit 46) He had not completed his 2011 1040 income tax return at the time of trial and has not submitted the return as part of any post-dissolution proceedings. RP 582-583, Respondent's Volume 1 and 2 (June 11, 2013) Clerk's Papers designated when brief prepared.

In 2009 the husband's 1040 tax return (Exhibit 2D1) reported gross income from the Deaconess Unit #1 of \$144,602 less expenses of \$111,611 for a net income of \$32,991. RP 666 In 2010 the husband's 1040 tax return (Exhibit 46) reported gross income from the Deaconess Unit #1 of \$ 146,982 less expenses of \$ 115,462 for a net income of \$ 31,520. Mr. Aldridge testified that he had not settled up with the apartment side of the Deaconess and had not paid the \$16,449 in utility expenses claimed on the 2010 1040 return as expenses. RP 684. The same is true for 2011 and 2012 despite Mr.

Aldridge's claims to the contrary in the monthly accountings that he submitted throughout the proceedings. RP 571, 684. Exhibits 3A1-12, 3B1-12, and 3C1-2.

Willard does not maintain a check register for any account and does not retain his bank statements. RP 529. He also noted "I don't keep track of detailed financial records. Once they're more than past - I think it's three years the IRS requires you to keep your records, I don't pay too much attention." RP 528 He pays his personal living expenses from the Bank of Pacific Account into which he deposits the rental income from the commercial side of the Deaconess. RP 572

***D. Summary of Relevant Real Estate Transactions.***

***1. Deaconess Building.*** While the parties were residing together in 1998 in the Peters Lane home of Ms. Aldridge, Mr. Aldridge became interested in the Deaconess property located in Wenatchee. RP 38 I.5-24. In February 1999 Willard Aldridge paid \$10 for the property located at 300 Okanogan Wenatchee WA more commonly known as the Deaconess. RP 538 In December 1999 Willard Aldridge transferred Unit #2 (apartments) of the Deaconess to the Deaconess Apartments LLC (he was the sole member of the LLC). RP 541, 592. An application was submitted to obtain low income tax credits and it was granted. RP 497 Unit #2 was developed into apartments that were

designated low income and will be in that status for a period of 40 years. RP 241. The "investors" who purchased the tax credits and provided funds to rehab the property will remain involved in the low income apartments for about 15 years but the tax credits will be consumed in about 11 years. RP 238. According to the trial testimony of attorney Mark Kantor, Mr. Aldridge developed the low income housing with the use of tax credits as a means by which to finance the project and to obtain payments to himself as the developer of the project. RP 247.

Mr. Aldridge confirmed that he was paid sums at the outset that allowed him to develop the commercial side of the building. RP 469, RP 497-498. His tax records for the years in question are not available ((RP 538) but he recalled that he earned about \$500,000 for architectural services, development services, demolition and abatement RP 469-471 Over time Mr. Aldridge has also been able to withdraw excess cash from Unit #2 and when the time comes, he will be entitled to 65% of the cash flow. RP 549-550

The low income housing apartments were occupied in 2002 and development of the commercial side (Unit #1) of the Deaconess (floor 1) continued with the use of additional private funds from Tryg Fortun and Eleanor Aldridge who loaned money to Willard Aldridge for

this purpose in 2001 and 2002. RP 472-473, RP 498 Later the third floor of the commercial side of the Deaconess was developed and Willard and Debra obtained a large loan from Wells Fargo Bank to undertake this work through a 2005 construction loan and a final loan in 2006 of \$461,440. RP 475, RP 502, Unit #1 was subject to the balance of the debt owed to Eleanor Aldridge of about \$280,000 which had been paid at the rate \$ 2112 per month until Mrs. Aldridge died in October 2012. RP 498-499, Exhibits 3A-3C, The debt was forgiven as part of Willard's share of his mother's estate. The balance of the debt owed to Wells Fargo Bank at time of trial was \$379,200 (non-revolving line of credit) payable at \$3,910 per month. Exhibits 3A-3C.

WD Aldridge owns .01% interest in Unit #2 or \$75 in value less a proportional share of debt at \$46 for a net value of \$29. The Court considered that Mr. Aldridge has the right to 65% of the excess cash flow and has other financial interests in this projects as noted in Exhibit 28. RP 550, 559, 620

**2. Poolside Apartments.** The 8<sup>th</sup> Street duplex located in Anacortes that had been purchased by Will Aldridge in 1995 was sold in 2001 after the parties were married and about \$32,068 (the net sale proceeds) was invested in the purchase of the Poolside Apartments a property that was acquired by deed in both parties' names in May

2002. RP 509 Tryg Fortun loaned Willard and Debra \$250,000 in May 2002 related to the acquisition of the Poolside and they paid him back in February 2005. RP 510, 536 In June 2007 Wells Fargo Bank loaned Willard and Debra \$571,278 (18 year term loan). RP 536 The Poolside at 101 N. Mission in Wenatchee has been titled in both parties' names since the 2002 deed. All funds borrowed were borrowed by the parties as husband and wife using community credit. The underlying mortgage debt due to Wells Fargo is the obligation of both parties personally. The parties used a joint bank account for the operation of the Poolside. RP 534.

Debra Aldridge estimated she would have to spend about \$30,000 to repair the boiler at the Poolside. RP 205 Subsequently, she did spend \$19,000 CP 452

**3. Satterlee Road.** Debra sold the 4004 Peters Home in June of 2002 (after marriage) and realized about \$92,000 from the sale with the net proceeds check being issued to Willard and Debra. RP 447. The cabin at Yokeko Drive was sold by Willard in September 2003 (after marriage) with net sale proceeds of about \$77,000 with the net sale proceeds being distributed to Willard and Debra. RP 447. In October 2003 the parties used the funds from the sales of their respective homes to purchase the 4000 Dogwood home in both

parties' names paying \$255,000 for the property. RP 447-448, RP 490. In December 2006 the parties sold 4000 Dogwood for \$382,500 and paid off Citi Mortgage of \$130,607 and paid \$224,425 to US Bank a debt related to Satterlee Road home. RP 448 Exh 10E & 10F

In November of 2006 Willard and Debra bought the Satterlee Road property for \$445,000 with money that they borrowed short term from Tryg Fortun which was paid back shortly by funds they borrowed from the bank. RP 449 Mr. Aldridge noted in his trial testimony that "we" bought the Satterlee Road home and "we" decided to build a house on the property. RP 449. In June 2009 when the parties refinanced the Satterlee Road home they borrowed \$300,000 from Alaska USA Credit Union to pay off the underlying mortgage debt which has been reduced from the original amount of \$445,000 to \$215,000 and they got cash of about \$80,774 that they used for continued construction costs to complete the Satterlee house. (Exhibits 11C1- 11C4) Before separation, Debra Aldridge had used about \$30,000 from a \$50,000 bank account for various expenses related to the Satterlee Road home construction. CP 33.

For the almost three years that the case had been pending at time of trial, Mr. Aldridge claimed that he needed to complete and/or repair the Satterlee home and that it would cost about \$20,000 to do

so. RP 453-455, 512. Mr. Aldridge did not work on or complete the repairs to the home despite the “defective” items which included the p-trap, hydronic heating system and rook leak. . RP 455, 457, 511, Exhibits 34b-34d (photos of damage.)

**4. 408 Commercial Sale/1031 Exchange/Squilchuck.** In March of 2006 Willard added Debra’s name to the 408 Commercial property he had been awarded in the 1994 dissolution. RP 504 Willard answered interrogatories and claimed that he had added Debra’s name to the Commercial property because she asked him to do so. RP 644. Later Mr. Aldridge testified at trial that he added Ms. Aldridge to the title to the property at the request of the 1031 exchange facilitator so that it would match with the names on the title to the property that was to be acquired with some of the funds. RP 504 He had previously answered interrogatories signed on June 4, 2010 in which he claimed that Ms. Aldridge had insisted that she be named on the title in case something happened to her husband and he gave in to her demands. RP644-646 The property was sold in March 2006 and funds were disbursed to three banks leaving net sale proceeds of about \$285,000 that were transferred to SEAS (1031 exchange) and subsequently used to buy the Squilchuck property by deed in both parties’ names in July 2006.. (Exhibit 10) At about the time SEAS

received the \$285,000 they also received other funds: \$185,000 12/30/05 from "loan proceeds" and \$235,761 on 1/20/06 from "acquisition deposit." SEAS repaid \$225,000 to Mr. Fortun on 1/11/06 and sent \$185,000 to an escrow closing on 1/10/06. Funds were paid out to Mr. Aldridge for various services and then a check was paid to Willard and Debra for \$151,766.07 as "return of exchange funds" on July 3, 2006. Mr. Aldridge has characterized the \$151,766 as the "boot" from the exchange. RP 490 There was no discussion with Debra Aldridge by Willard Aldridge of any repayment by the parties of funds to Willard from the "boot." RP 688-689 For use in excavation of the Squilchuck property, Mr. Aldridge bought equipment spending about \$28,620 for an excavator and additional money for a new engine for the excavator which he stated came from his "personal funds." RP 505

The Squilchuck properties were purchased for \$225,000. Mr. Aldridge was paid for services performed relating to the project. Per the parties 2006 joint income tax return, they paid tax on a \$99,280 capital gain as a result of this transaction and they reported as Schedule E income \$145,608 and \$49,792 as fees paid for services by Mr. Aldridge. Exh 2A1

**5. Gibraltar Road Rental-Post Separation Purchase.** With a loan from Mr. Fortun and the use of some of his personal funds, Mr.

Aldridge has also purchased another property at 14189 Gibraltar Road which was complete at the time of trial and being used as a rental. RP 458, 574

Mr. Aldridge did not have an opinion as to the value of the Gibraltar home but he told the court that he had paid \$290,000 for the property and invested \$75,000+ in renovations which did not include his sweat equity RP 573-574 A conventional loan would repay Mr. Fortun. Mr. Aldridge also noted in his trial testimony that he had used \$20,000-\$25,000 of his own money to work on this property due to cost overruns. RP 690 In post-dissolution filings with the Court Mr. Aldridge noted that the Gibraltar home had appraised for \$568,000. Response of Willard Aldridge Volumes 1 & 2 filed on June 11, 2013.

**E. Temporary Order Issues:**

**1. Wife's Motion for Temporary Orders (1123/09 Hearing).**

When Debra Aldridge filed the action to dissolve her marriage she sought by motion for temporary orders the return of money that Willard Aldridge had withdrawn from the joint bank account for The Poolside Apartments located in Wenatchee in the amount of \$11,500. CP 8 She also sought the return of \$4,500 from Skagit Savings Account. CP 9 Ms. Aldridge sought the return of the money from the Poolside account because the funds on deposit were used by Ms. Aldridge in her

management of The Poolside. CP 34 Ms. Aldridge had written checks on the account in the amount of \$6,900. CP 34 Without regard for the possibility there might be outstanding checks and without regard for the plight of Ms. Aldridge to have all of her operating capital withdrawn from the account, Mr. Aldridge took the funds and then refused to comply with the lawful order of the court to return the money. CP 49-50.

Mr. Aldridge had within his control the bank account funds related to the parties' operation of the commercial side of the Deaconess property. CP 20, RP 632. Mr. Aldridge also had within his control bank accounts associated with his personal banking, savings and the account into which his Civil Service retirement check was deposited. CP 20-21, RP 632 He paid \$5,000 in temporary attorney fees to Mr. Volyn from his checking account. CP, RP 639. After considering the evidence presented at the initial temporary hearing, the court correctly ruled that Mr. Aldridge would be required to return the funds that had been withdrawn less a check for \$2,000 that he had written to the roofer. Ms. Aldridge was restrained from the use of \$20,000 that had been moved from a joint savings account to an account in her name only.

Mr. Aldridge continued to live in the family home and he was ordered to pay the mortgage debt, taxes and insurance. CP 37-40 The decision of the court was based on Mr. Aldridge's income from his retirement \$ 2,679 and the Deaconess Commercial building \$12,000. CP 20

**2. Order to Enforce/Deny Motion to Reconsider (12/15/10**

**Order):** Mr. Aldridge filed a motion to reconsider on January 7, 2010 and continued his argument that all of the funds belonged to him or where related to his "separate property." CP 42-44 On February 2, 2010 Ms. Aldridge had to file a motion to enforce the order which required the return of the funds taken from the Poolside bank account. CP 49-50. The husband responded that he had spent the money on tax preparation fees, real estate taxes and construction invoices. CP 54 The wife provided proof that husband had received \$2,729 for the 2008 income tax refund. CP 59

At trial the husband claimed he had paid \$25,000 in "community" debts and that he had borrowed \$25,000 from his mother in order to pay back the \$14,000 (actually he paid \$12,000) to the wife. RP 516-517 He also claimed that he had borrowed \$25,000 from his mother to pay his attorney fees but that it was not a different \$25,000. RP 640 The husband did not provide bank statements, check registers

or receipts for any of the expenses that he claimed to have paid. CP

67

**F. Post Dissolution Motions:**

**1. Husband's Motion to Reconsider (3/28/13 Order).** Willard Aldridge filed a motion seeking reconsideration of the terms of the Decree of Dissolution on December 21, 2012 citing several items that he sought to have the trial court reconsider including attorney fees award, Poolside Apartment character, award and "slush fund," retirement account, continued occupancy of home and reimbursement for windows and the china cabinet CP 315-323. These are the same issues on appeal discussed in this brief.

**2. Wife's Order on Motion to Amend/Clarify/Enforce (3/28/13 Order).** The court denied Willard's request to remain in the home and granted Debra's request to have him move out based on his uncooperative stance. CP 327

**3. Order on Motion re Post Dissolution Issues (6/26/13 Order).** The court granted Ms. Aldridge's request for funds from Mr. Aldridge to defend this appeal. CP 504-506.

## **V. LEGAL AUTHORITIES**

### **A. Community Property Statutory Scheme**

Three statutory provisions define community property.

*RCW 26.16.030 Community property defined—Management and control.* Property not acquired or owned, as prescribed in RCW 26.16.010 and RCW 26.16.020, acquired after marriage by either husband or wife or both, is community property . . .

*RCW 26.16.010 Separate Property of Husband* states: Property and pecuniary rights owned by the husband before marriage and that acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber or devise by will such property without the wife joining in such management, alienation or encumbrance, as fully and to the same effect as though he were unmarried.

*RCW 26.16.020 Separate Property of Wife* states: Property and pecuniary rights owned by the wife before marriage and that acquired by her afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property without the husband joining in such management, alienation or encumbrance, as fully and to the same effect as though she were unmarried.

### **B. What is Community Property?**

Community property consists of a) all assets acquired during marriage (except personal injury damages to a spouse) unless it is established that the property acquired during marriage is separate property; b) all assets which the spouses agree will be community

property; c) earnings of a spouse while married and living together in a non-defunct marital relationship; and d) all assets which have been converted to community property by co-mingling.

### **C. What is Separate Property?**

Separate property consists of a) all assets owned by a spouse prior to marriage; b) any asset received by a spouse by inheritance or gift; c) personal injury damages for pain and suffering, disability and loss of enjoyment of life; d) all assets which the spouses agree will be separate property; e) earnings of a spouse when living “separate and apart”; and f) the rents, issues, profits and proceeds of separate property.

### **D. What is Community-Like Property?**

Community-like property is property acquired during an equity relationship. Whether an equity relationship formerly known as meretricious relationship exists will be determined by the court’s examination of a non-exclusive list of factors: 1) the continuity of the co-habitation; 2) the duration of the relationship, 3) the purpose of the relationship, 4) whether the parties pooled their resources and services to accomplish common goals and projects, and 5) the parties’ intent.

*Pennington v. Pennington*, 142 Wn. 2d 592, 14 P.3d 764 (2000)

### **E. Community and Community-Like Property Presumptions**

**1. Acquired during equity relationship or marriage.** Property acquired during marriage is presumed to be community property but it is possible to rebut that presumption by “clear and convincing evidence.” *In re Marriage of Davison*, 112 Wash. App. 251, 48 P.3d 358 (2002); *Estate of Madsen v. Commissioner*, 97 Wn.2d 792, 650 P.2d 196(1982); *In re Marriage of Janovich*, 30 Wash. App. 169, 632 P.2d 889 (1981). The community property presumption is not rebutted unless “direct and positive evidence: is presented that the property is separate in character.” *Marriage of Zahm*, 138 Wn.2d 213, 978 P.2d 498 (1999).

Property acquired during an equity relationship is presumed to be community-like, but the presumption is rebuttable. *Soltero v. Wimer*, 159 Wn2d 428, 150 P.3d 552 (2007). The fact that title is in the name of one of the parties does not, in itself, rebut the presumption of common ownership when property is acquired during an equity relationship. *Connell v. Francisco*, 127 Wn.2d 339, 898 P.2d 831 (1995). The fruit of all labor performed by either party during an equity relationship is community-like property. See *In re Meretricious Relationship of Long & Fregeau*, 158 Wash. App. 919, 244 P.3d 26 (2010); *In re Marriage of Lindemann*, 92 Wash. App. 64, 960 P.2d 966 (1998).

**2. Commingling.** Commingling of separate and community or community-like property if substantial amounts of both types of property (separate and community or community-like) are intermixed to the extent it is no longer possible to identify whether the property is separate or community or community-like. Weber, *19 Washington Practice: Family and Community Property Law*, Section 11.13.3; *In re Marriage of Skarbek*, 100 Wash. App. 444, 997 P.2d 447 (2000); *In re Marriage of Pearson-Maines*, 70 Wash. App. 860, 855 P.2d 1210 (1993).

#### **F. Division of Assets at Dissolution of Marriage**

**1. Statutory factors.** Washington State statutes provide that a number of factors are to be considered by the Court in making a property/debt distribution which is to be “fair and equitable.” Case law tells us that the most important factor for the court to consider is the economic circumstance of each spouse following dissolution but other factors are often considered and may form the basis for the Court’s award of separate and community property.

RCW 26.09.080 authorizes the court, without regard to marital misconduct, to make a fair and equitable distribution of the assets and debts of the parties after considering all relevant factors including but not limited to:

- (1) the nature and extent of the community property;
- (2) the nature and extent of the separate property;
- (3) the duration of the marriage; and
- (4) the economic circumstances of each spouse at the time the division is to become effective including the desirability of awarding the family home, or the right to live therein for a reasonable period to a spouse with whom the children reside the majority of the time.

**2. Other factors.** The factors listed in RCW 26.09.080 are by no means meant to be exclusive and other factors not barred from consideration by case law or statute will be analyzed by the trial court when a property award is to be made at the dissolution of the marriage. *In re Marriage of Nuss*, 65 Wn. App. 334, 828 P.2d 627 (1992). Post-dissolution economic circumstances of both parties are the paramount consideration in dividing property per RCW 26.09.080. *In re Marriage of Gillespie*, 89 Wn. App. 390, 948 P.2d 1338 (1997); *In re Marriage of Harrington*, 85 Wn. App. 613, 929 P.2d 1159, 935 P.2d 1357 (1997); *Arnold v. Dep't of Retirement Sys.*, 128 Wn.2d 765, 912 P.2d 463 (1996); *In re Marriage of Chavez*, 80 Wn. App. 432, 909 P.2d 314, *review denied*, 129 Wn.2d 1016 (1996). Health and age may be factors for consideration in awarding property. *In re Marriage of*

*Schweitzer*, 81 Wn. App. 589, 915 P.2d 575 (1996), *remanded*, 132 Wn.2d 318 (1997); *In re Marriage of Dessauer*, 97 Wn.2d 831, 650 P.2d 1099 (1982).

**3. All property subject to division.** All community and separate property is before the court for division and the separate property of one spouse may be invaded/awarded to the other spouse in the right set of circumstances. RCW 26.09.080; *In re Marriage of Griswold*, 112 Wn. App. 333, 347-48, 48 P.3d 1018 (2002), *review denied*, 148 Wn.2d 1023 (2003); *In re Marriage of Stachofsky*, 90 Wn. App. 135, 147-48, 951 P.2d 346, *review denied*, 136 Wn.2d 1010 (1998); *In re Marriage of Harrington*, 85 Wn. App. 613, 935 P.2d 1357 (1997); Separate property may be divided under the “just and equitable” criteria of RCW 26.09.080; it is no longer necessary to demonstrate “exceptional circumstances” as held by earlier case law in order to award the separate property of one spouse to the other spouse. *In re Marriage of Griswold*, 112 Wn. App. 333, 347-48, 48 P.3d 1018 (2002), *review denied*, 148 Wn.2d 1023 (2003); *In re Marriage of Konzen*, 103 Wn.2d 470, 693 P.2d 97, *cert. denied*, 473 U.S. 906 (1985).

**G. Attorney Fees:**

In calculating a reasonable amount of fees under the “need v. ability to

pay” standard of RCW 26.09.140, the court should consider the following factors: 1) the factual and legal questions involved, 2) the amount of time necessary for preparation and presentation of the case and 3) the value and character of the property involved. *In re Marriage of Ayyad*, 110 Wn. App. 462, 467, 38 P.3d 1033, *review denied*, 147 Wn.2d 1016 (2002); *In re Marriage of Foley*, 84 Wn. App. 839, 846, 930 P.2d 929 (1997); *In re Marriage of Knight*, 75 Wn. App. 721, 730, 880 P.2d 71 (1994), *review denied*, 126 Wn.2d 1011 (1995) Proof of fees incurred is necessary to support an award. *In re Marriage of Estes*, 84 Wn. App. 536, 929 P.2d 500 (1997); *In re Marriage of Knight*, 75 Wn. App. 721, 880 P.2d 71 (1994), *review denied*, 126 Wn.2d 1011 (1995); *In re Marriage of Sanborn*, 55 Wn. App. 124, 130, 777 P.2d 4 (1989).

## **VI. ARGUMENT**

Mr. Aldridge's theory of the case seems to be based on the concept that if he contributed a dollar of money that he thought of as his separate property then the property acquired is his separate property. The Poolside Apartment was acquired by the use of borrowed funds and was always titled in both parties' names and it was acquired during marriage. There is a significant difference between Mr. Aldridge's use of funds derived from a separate source to

assist the community in obtaining a piece of community property than characterizing the 2002 transaction 10 years later as a separate property event. Mr. Aldridge failed to submit evidence to overcome the presumption that the Poolside Apartment was community property. It is not as simple as appellant would seem to suggest in citing *In re the Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009) for the proposition that property acquired during marriage has the same character as the funds used to buy it. The *Borghi* case was not related to the acquisition of property during marriage but rather the legal effect of a deed which named husband and wife as co-owners of property acquired by the wife prior to the marriage. The case addresses the issue of whether or not putting the title in both names should be considered a "gift" to community or if more will be necessary to transmute the wife's separate real property to community property.

The Poolside Apartment was acquired by the parties during marriage and they were able to purchase the property because they used community credit to borrow the funds necessary to make the project happen. The \$32,000 contributed by Mr. Aldridge played a limited role in the acquisition of the asset. Mr. Aldridge did nothing to segregate his contribution to the purchase of the Poolside; in fact he did just the opposite. The property was treated by both parties as

community property and Mr. Aldridge only sought to establish a "separate" property claim when the marriage ended. His intent at the time the property was purchased was evidenced by his actions which did not include just the names on the title to the property. The simultaneous purchase of the property with community credit and the subsequent loans that were also based on community credit support the Court's conclusion that the Poolside Apartment was community property. The "subsequent" events are further evidence of the intent of the parties to acquire the Poolside Apartments as community property.

The husband's assertion that the Satterlee Road home is his separate property should be rejected. The parties both sold their separate property homes and purchased their community home on Dogwood which was sold and invested in Satterlee Road. All funds that were borrowed were done so jointly and any separate funds invested were done so with the intent to make a gift to the community or were so co-mingled by the process as to not be traceable by Mr. Aldridge. For Mr. Aldridge to try to unwind this transaction after the fact is his attempt to re-write what occurred in a light most favorable to claim that he owns everything. Again, the parties jointly selected the Satterlee Road real property which had a small cabin. They borrowed money from Mr. Fortun as a bridge until the Dogwood home sold. They

used money that Mr. Aldridge “earned” while married from the Squilchuck property development and comingled said funds with the “boot.” Mr. Aldridge has acknowledged that he is a poor record keeper and has no documentation to establish a clear tracing of the funds and their use in the “acquisition” of the Satterlee Road property. Again, Mr. Aldridge seeks to re-write the actual events that demonstrate his intent at the time of acquisition of the Satterlee home to acquire community property with his wife.

The court was not provided with a present value calculation of the husband’s Civil Service retirement benefit and he did not offer evidence of his assertion that the court should treat a portion of the Civil Service retirement benefit as Social Security. (Mr. Aldridge did not tell the court he would not receive Social Security benefits. RP 630 He noted that he had selected a surviving spouse option when he applied for benefits which he had been receiving since 2004. RP 630) It would have been pure speculation on the Court’s part to undertake to do the calculations that Mr. Aldridge now suggests without expert testimony. The court was presented with the years of service and years of committed intimate partnership and marriage and divided the retirement benefit accordingly. Mr. Aldridge can’t fault the court for his failure to present evidence.

Aldridge was expected to have a fairly steady revenue source of about \$3,000 per month. The Civil Service retirement benefit of the husband award to wife adds a small sum \$310 to her monthly income. Mr. Aldridge receives his Civil Service retirement benefit of \$2,400 gross per month. He also has income from the Deaconess Commercial side that is at least \$4,500 per month when you closely examine what he actually pays of the expenses claimed. He no longer services the debt to Eleanor Aldridge adding \$2,112 per month to his income from the Deaconess Commercial side. He also has taken excess cash from Unit #2 of \$18,000-\$20,000 per year. With the assistance of his friend Mr. Fortun and his mother, he had easy access to funds to pursue development projects during the second marriage and the separation. He increased is worth by the acquisition and improvements to the Gibraltar home. Mr. Aldridge is able to work as an architect and charge for his services.

The court considered all the factors set forth in RCW 26.09.080 and the relevant case law when the court divided the assets and debts of the parties. The court did not abuse its discretion

#### **VII. ATTORNEY'S FEES AND COSTS ON APPEAL**

Pursuant to RCW 26.09.140 and RAP 18.1 the respondent Debra Aldridge seeks an award of her costs and attorney fees on

appeal. The respondent has demonstrated a financial need for assistance with her appellate fees and costs as set forth in her Financial Declaration filed on May 31, 2013 and her 2012 income tax return filed under seal on June 3, 2013. The 2012 tax return was included in the respondent's recent designation of clerk's papers. Debra noted in her supporting declaration that she had used the cash assets awarded to as well as funds generated by the Poolside Apartments to pay \$13,000 to fix a leak in the pool, \$19,000 for boiler repair and she was working on her outstanding attorney fee balance. CP 452 Ms. Aldridge had \$4,533 in the Poolside Bank account which was going to be spent on her 2012 IRS obligation of \$4,300. CP 484 and 486. She reported \$7,394 in monthly expenses without payment on her attorney fee debt and income of \$7, 210. CP 486 and 483.

Based on the Amended Fee Declaration of Ms. Schmidt filed on July 24, 2012 Debra Aldridge owed \$16,728 in fees and costs to Ms. Schmidt. In May 2013 Debra Aldridge still owed Ms. Schmidt \$6,500 and had paid \$32,535. CP 486

The appellant did not submit an updated financial declaration but did file with the trial court two volumes of materials which included copies of some bank statements, credit card accounts and balances due on bank loans. He acknowledged that with the passing of his

mother he no longer had to pay \$2,112 per month on the debt to her and he would pay his outstanding credit card debt with other funds from her estate. Motion Hearing Minutes 6/11/13.

Appellate fees and costs of \$5,000 were awarded and Mr. Aldridge has paid the appellate fees and costs to Ms. Schmidt.

### **VIII. CONCLUSION**

At the temporary hearing on November 23, 2009 and all subsequent hearings when Mr. Aldridge sought to have the Court reconsider or explain away his refusal to comply with the Court's directives, the Court considered the evidence that was before it and correctly determined that Mr. Aldridge would be required to return \$9,500 of the \$11,500 that he had withdrawn from the Poolside Apartment checking account. The Court gave Mr. Aldridge credit for the fact that he had written a check to Gooch Roofing in the amount of \$2,000, which was one of the checks outstanding on the account at the time Mr. Aldridge withdrew the funds. Mr. Aldridge was also ordered to return \$4,500 which he had withdrawn from the Skagit Bank Savings Account. Mr. Aldridge steadfastly refused to comply with the order of the Court and it was necessary for Ms. Aldridge to seek multiple orders attempting to enforce the return of the money to her which finally happened in April 2011 when \$12,000 was paid.

In the interim Ms. Aldridge continued to operate the Poolside Apartments and used the rental income received on a monthly basis to service the sizeable outstanding mortgage debt and to maintain the premises. Mr. Aldridge's willful refusal to comply with the order of the court, based on his own interpretation of the facts and circumstances as well as his legal theories of the case does not result into an abusive discretion on the part of the trial court. Mr. Aldridge failed and refused to fully disclose the amount of money that he had available to him in various bank accounts, some of which were unknown to Ms. Aldridge, at the time of the parties' separation in September of 2009. He did not provide documentation of the expenses he claimed that he had paid with the funds he took; he had funds in his control to pay expenses and some were clearly incurred by him post separation. He asserted the wife had used \$30,000 as part of his justification for taking the funds but she was able to document that she had used the funds for community expense related to the home that were all incurred before the separation in September 2009.

The Court did not commit reversible error with regard to the temporary orders that were entered.

The assignments of error relating to the various findings and conclusions included in the court's orders of December 12, 2012,

likewise do not rise to the level of an abuse of discretion and do not constitute reversible error. The Court reviewed and considered the evidence including the testimony of both parties, and there was sufficient evidence to support the Court's finding that Ms. Aldridge left her job working in a medical office to devote her full attention to real estate projects that she and Mr. Aldridge had undertaken.

The Court reviewed and considered documentary evidence as well as the testimony of both parties with regard to the acquisition of the Poolside Apartment which had occurred after the parties were married. Mr. Aldridge did make a contribution to the project from a source of funds which had been his separate property. At the time of the acquisition of the Poolside Apartment, Mr. Aldridge made no effort to segregate his funds or to account for them but contributed them to an overall project which ultimately ended up costing hundreds of thousands of dollars. All other monies which were used to acquire the Poolside Apartment or to improve it were borrowed with community credit. The parties treated the Poolside Apartment as a "joint" asset and reported the rental income on their joint income tax returns. They maintained a "joint" bank account for receipt of the funds. It is undisputed that Ms. Aldridge was primarily responsible for the management of the community asset, known as the Poolside

Apartments.

It was not an abuse of discretion nor did the Court commit reversible error when it made the determination that Mr. and Ms. Aldridge each owned a home as separate property prior to their joint purchase of the home that they lived in on Dogwood. The parties then determined that they would buy the Satterlee Road property and acquired title jointly. The Dogwood home which was a community asset was sold and the proceeds were used to acquire the Satterlee Road property. The parties "jointly" with the use of community credit borrowed money to acquire the Satterlee Road property and to ultimately construct a new home on said property. Mr. Aldridge transferred into a "joint" bank account a check that had been written to both parties as a result of the sale of the Commercial Street property, which Mr. Aldridge had owned prior to marriage. He also deposited into this same account money he "earned" while married. Willard has no records to show how the "boot" was spent. Mr. Aldridge made no effort to trace the funds other than to indicate that they were deposited into a joint bank account. The parties borrowed additional money after the home had been built to continue the project again using community credit. At no time did Mr. Aldridge indicate to Ms. Aldridge that he was expecting to segregate his contribution or that he ever treated this

home as anything other than an asset owned jointly by the parties as community property.

The Court did not abuse its discretion or make an error when it determined that the Poolside Apartments were community property and therefore should be awarded to the wife.

The Court reviewed and considered the overall financial circumstances of both parties and the value of the assets that would be awarded to each of them. The Court made a fair and equitable distribution and did not abuse its discretion.

When the Court awarded a percentage of the husband's Civil Service benefit to wife based on the length of time that the parties had either been in a committed relationship or married to one another while the husband worked and contributed to the retirement plan. No evidence was presented at the time of trial as to the present value of the right to receive the Civil Service benefit. Mr. Aldridge failed to produce any evidence other than some vague testimony with respect to his assertion that some portion of his Civil Service benefit contains a component of Social Security benefits. He testified he would receive Social Security. The Court did not err or abuse its discretion awarding 11% of the Civil Service retirement benefit to the wife which amounts to be about \$310 per month.

Mr. Aldridge pursued on many occasions his theory that the wife's stated personal expenses and the amount of funds that she reported as her net income from the Poolside Apartments resulted in what he considered to be a "slush fund." His thinking in this regard is flawed and was rejected by the Court. Ms. Aldridge had to pay large sums for repairs, attorney fees and costs all the while the court case was pending.

The Court offered the parties an option of buying each other out so that the Satterlee Road home did not have to be sold. The parties chose to not purchase the other party's interest in the property. It would not be accurate to characterize what occurred as "forcing" the sale, as the parties each had the option to buy the other out. There was no error or abuse of discretion in assigning to the wife the responsibility for marketing the home for the first 12 months. Mr. Aldridge had a similar right to market the next 12 months. Post-dissolution matters were addressed and it was clear that Mr. Aldridge was continuing to be an impediment to repairing the family home so that it could be listed for sale. It was not an abuse of discretion for the Court to require that Mr. Aldridge move out of the residence so that workmen could gain access and the property could be readied to be placed on the market.

Ms. Aldridge incurred attorney's fees and costs in excess of \$40,000 associated with the dissolution of marriage proceeding. Subsequent to the fee declaration filed by Ms. Schmidt, additional fees have been incurred. Ms. Aldridge was awarded the balance of what remained as a "cash" asset that she had in her possession during the course of the proceeding; that being a \$20,000 Certificate of Deposit, reduced to \$10,000 by her share of the appraisal fee and boiler repairs. When Mr. Aldridge sought reconsideration of the \$10,000 fee award that was reduced to \$5,000 his finances had improved due to the unfortunate death of his mother and Ms. Aldridge's circumstances had worsened due to ongoing repair issues at the Poolside.

At the time Ms. Aldridge sought an award of fees with regard to defending the appeal, she had tapped out all of her cash resources. The other assets that she was awarded included the equity in the Poolside, which produces a revenue stream which is sufficient to meet her monthly living expenses but did not permit her to hire legal counsel to defend the appeal. She had no other sources of income except \$310 from the retirement benefit. Mr. Aldridge on the other hand reported to the Court that his mother had died in October 2012 thereby relieving him of the responsibility of making a monthly payment on the outstanding debt associated with the commercial side of the

Deaconess property, saving him several thousand dollars per month. Mr. Aldridge also noted that any credit card debt that he had outstanding at the time that the fee award was requested for appellate attorney's fees that all monies he would be receiving from his mother would pay his bills in full and he would still have funds. It was not error for the Court to examine the parties' respective financial circumstances and determine that the wife was in need of financial assistance to defend the appeal.

The Court did not abuse its discretion when it determined that based on the information that was provided by the wife that the china cabinet should remain as an award of personal property to her, as it had been refinished and "gifted" to her. Mr. Aldridge attempted to describe it as a family heirloom, when in fact Ms. Aldridge noted it was something that was going to be disposed of by his former mother-in-law and she liked it and so bought it for his then wife.

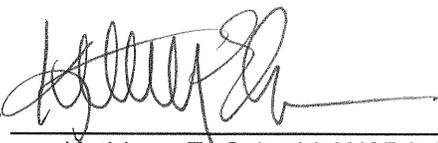
Judge Lesley A. Allan conducted all pre-trial, trial, and post-trial matters in an impartial and fair manner and made decisions that were based on the records before her. She did not fail or refuse to consider any documents that were submitted by Mr. Aldridge. During the course of the trial, objections were made by both parties and the Court reviewed and considered those objections and correctly ruled on the

objections. The short colloquy that was set forth in the brief of the appellant had to do with an objection to having Mr. Aldridge read an exhibit which spoke for itself. The fact that the trial court ruled favorably on a standard objection raised by the wife does not demonstrate partiality.

The Court should affirm the rulings of the trial court and impose attorney's fees and costs on appeal taking into consideration the award at the trial court level of \$5,000 in appellate fees.

DATED: 12/20/13

LAW OFFICE OF KATHLEEN E SCHMIDT

By   
Kathleen E. Schmidt WSBA #7803  
Attorney for Debra M. Aldridge  
Petitioner/Respondent