FILED
FEBRUARY 20, 2015
Court of Appeals
Division III
State of Washington

NO. 320227

COURT OF APPEALS DIVISION III

OF THE STATE OF WASHINGTON

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ZALE K. WOOD, (Appellant)

v.

DIANE WOOD. (Respondent)

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# APPELLANT'S SUPPLEMENTAL BRIEF

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Attorney for Zale Wood, Appellant

## I. Introduction.

This brief supplements Appellant's initial brief only to the extent it provides additional arguments based upon the Report of Proceedings (ROP) from August 9, 2013, which had not been considered in the initial brief. [1]

The parties shall be referred to as "Mr. Wood" and "Ms. Wood". Mr. Wood is the Appellant; Ms. Wood is the Respondent.

The Report of Proceedings (ROP) dated August 9, 2013 is attached in its entirety as Appendix A.

## II. Context of August 9, 2013 Hearing Relative to Mr. Wood's First Appellate Brief.

The August 9, 2013, hearing was noted by Ms. Wood to formally present the Findings of Fact and Conclusions of Law (FOF) and the Final Decree (collectively referred to as "Final Papers") prepared by her attorney.

After the August 9, 2013 hearing, Mr. Wood filed, *pro se*, a written motion for continuance to obtain substitute counsel. The court denied his motion and entered the Final Paperwork over Mr. Wood's objection. (CP 191-198).

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[1] As previously stated, counsel for Mr. Wood was unaware the court held a hearing on August 9, 2013. The contents of the ROP further support Mr. Wood's position on appeal.



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## III. The August 9, 2013 Hearing Further Supports Mr. Wood's Contention that the Court Did Not Properly Consider the Statutory Factors Under RCW 26.09.080.

This hearing was the second post-trial hearing where the parties continued wrestling with (a) the amount of Ms. Wood's social security payments, (b) the amount and exact nature of Mr. Wood's monthly L&I disability benefits; (c) the amount Mr. Wood would pay in spousal maintenance; (d) what amount, if any, Mr. Wood owed Ms. Wood in attorney fees, and (d) the value of personal property and what property would be awarded to whom. [2]

During this hearing the court learned (i) Mr. Wood was now receiving $480 less L&I benefits than what he received during trial; and (ii) Mr. Wood's L&I benefits were converted "to some kind of temporary pension". (App. at 19 and App. 26). Faced with these new set of facts, the court never re-considered whether these new facts impacted Mr. Wood's current economic condition, his age, his

[2] The first post-trial hearing occurred on May 31, 2013, simultaneously with Ms. Wood's hearing on contempt. (CP at 128). Recall, with facts and issues unresolved, the court directed the parties to "set a hearing sometime after the 9th of July and we could –by that time supposedly the house is going to be sold. We'll know –we should know the social security information. We should know where we are and we can just sort out everything at that point." (ROP, May 31, 2013.)



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poor health, his ability to meet his financial needs, etc. RCW 26.09.080.

Neither the attorneys nor the court knew what to do with new characterization of Mr. Wood's L&I payments. Both counsel raised legitimate issues in this regard. Among the concerns: Were these payments compensation for future lost earnings or form of deferred compensation, or something else? Counsel for Ms. Wood admitted he did not know the type of benefit Mr. Wood was receiving. The court directed Ms. Wood's attorney to contact Mr. Snell (Mr. Wood's L&I attorney). (App. at 26). Even Mr. Wood's attorney was uncertain. He stated: "I don't know how to proceed." (App. at 27).

Despite all of this uncertainty relative to the facts, the court maintained its decision to keep everything even. The court stated: "Well, again, I think I said at this point, I want to just have everything come out even." (App at 31) This was legal error, as the court refused to re-address the statutory factors in RCW 26.09.080 in light of a substantial change in the facts. The court limited its analysis to the length of the marriage. The fact the marriage was 48 years long—the analysis was complete. End of story, no matter the circumstances or the changes in fact.



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Making matters worse, the court continued to order the parties to reach an agreement on the terms of the divorce by a 50-50 mathematical formula while also ordering the parties to gather more information about the facts. (See App at 26), court instructs attorney to confer with L&I attorney Mr. Snell and give the information to Mr. Connaughton to facilitate the agreement.)

With all the confusion, the court astonishingly, at the close of the August 9, 2013 hearing told the parties: "I don't see why you couldn't get this done within a week and be back on Friday with an *agreed order…"* The court reminded the parties that if something needed to be decided, "to just have everything come out even." (App. at 31).

During the hearing, Mr. Wood expressed his frustration with the process, telling the court that he felt left out of the process and that he did not receive documents to review. Mr. Wood stated: "But I never got a thing—I never got a piece of paper saying. All he wrote was what was there and it was bad math." The court assured Mr. Wood that his attorney would "sit down with Mr. Connaughton and try to make sure the arithmetic is correct." (App at p. 32). It is unclear from the record whether that happened. What is clear however, is that there never was a meeting of minds



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regarding the arithmetic, due in part, because Mr. Wood's attorney withdrew effective September 3, 2014. CP at 189-190.

Based upon Mr. Wood's desperate plea for a continuance on September 18, 2013, it is clear from the record that justice was not served on September 18, 2013, and that Ms. Wood, not the judge, had the final "say" in this 48-year long marriage. [3]

**IV. The Court Erred by Awarding a Portion of Mr. Wood's L&I benefits by failing to take into consideration that said benefits were Mr. Wood's separate property.**

All property, separate and community, is before the court and subject to division under RCW 26.09.090. However the court completely disregarded the fact Mr. Wood's L&I benefits were carefully calculated by the State, taking into account Mr. Wood's future needs, including but not limited to future medical expenses that Mr. Wood would face as a result of the injuries.

The court did not and should have considered Mr. Wood's future needs in accordance with RCW 26.09.080. But, the court was bound to its rigid mathematical ruling of 50-50, regardless of

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[3] For example, Ms. Wood ignored the court's oral ruling from August 9, 2013 that Mr. Wood would pay spousal maintenance on the 5th and the 20th. In the Final Decree, paragraph 3.7, Ms. Wood required Mr. Wood to pay the full $4,094 on the 1st of each month. (App. at 16) (CP 197)



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the source of the funds or the purpose of the funds. On August 9, 2013 the court expressly stated: "I don't care where the money comes from." (App. at 9)

**V. The Court Committed Legal Error and violated Mr. Wood's Constitutional Rights under the Washington Constitution by Failing to Resolve the Parties Dispute.**

The Washington Constitution, Article IV, §20 and RCW 2.08.240 require the Superior Courts of our state to resolve disputes in a dissolution matter when the parties cannot, and to enter a final decision within 90 days from the end of trial.

Mr. Wood's Final Papers are not the product of a trial. The Final Papers were forced upon Mr. Wood by a series of unfortunate circumstances. The Final Papers are a debacle. The court oversimplified the case by summarily dividing everything 50-50, regardless of the nature, extent, and value of the property. The courts approach was rigid without regard for the facts of the case.

Confusion plagued this case at nearly every stage of the trial and post-trial process. The irregularities are numerous.



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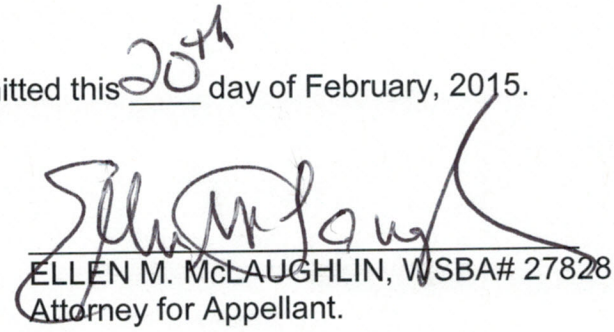
Most notably was the court's insistence that the parties reach an agreement and work out on their own a 50-50, even split distribution of the assets. On August 9, 2013, the parties desperately needed a written decision from the court. In lieu of a decision, the court instructed the parties to gather additional information and to exchange that information, in an effort to hopefully arrive at an agreement representing a 50-50 division. (App. at 30).

This constituted legal error on the part of the court.

## VI. CONCLUSION

The case should, at the very least, be remanded to the trial court to take additional testimony to make the necessary findings of fact and to properly apply the standards of RCW 26.09.080.

Respectfully submitted this 20th day of February, 2015.



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# Appendix A

**ORIGINAL**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

| | |
|---|---|
| In re the Marriage of:<br><br>DIANE LYNN WOOD,<br><br>Petitioner,<br><br>and<br><br>ZAKE KAY WOOD,<br><br>Respondent. | NO. 09-3-00322-2<br><br>VERBATIM TRANSCRIPT OF TRIAL HELD ON AUGUST 9, 2013 |

Proceedings had before the HONORABLE BLAINE GIBSON, Judge, Yakima County Superior Court, Yakima, Washington, on **August 9, 2013**.

| APPEARANCES: | FOR: |
|---|---|
| Blaine Connaughton<br>Connaughton Law Office<br>514B N 1st St<br>Yakima, WA 98901-2308 | Petitioner |
| Robert Velikanje<br>Law Office of Robert G. Velikanje<br>132 N 1st Ave<br>Yakima, WA 98902-2617 | Respondent |
| Transcriber: | Bell Transcription & Typing Services<br>Patricia I. Bell<br>P.O. Box 2122<br>Yakima, WA 98907<br>belltts2122@aol.com |

Yakima, Washington

August 9, 2013

**PROCEEDINGS**

THE COURT: Please be seated. This is the marriage of Woods, 09-3-00322-2. What are we doing here, presentation, right? Mr. Connaughton.

MR. CONNAUGHTON: I do have some orders. I did make a couple of changes that I think that I should have caught thinking it was in there. One was the -- with regard to the changed language on the maintenance at 3.7, and I think we faxed a copy of that over to Mr. Velikanje.

THE COURT: Mr. Velikanje.

MR. VELIKANJE: On that particular change, Your Honor, I guess we did object to the maintenance proposal or timely made which was that -- I'm trying to find the original that -- I think the proposal that had been sent over to you for presentation was maintenance was non-modifiable and non-taxable to wife, not deductible by husband, and it sort of precipitates our argument and I'll reserve on that, I guess, until we get into the bigger picture but I appreciate the change. It looks like they've removed those items from the revised draft that I received. I guess the point is that should be reserved for your purview relative to whether to it's going to be taxable or not and non-modifiable.

THE COURT: Do I even have the authority to say something isn't taxable or is that, I mean, is the IRS bound by my determination of whether something's taxable or not?

MR. CONNAUGHTON: Well, I think they'd be bound by the order to the extent -- I mean, somebody's going to be taxed on it if it's regular income but what I was thinking and it must have got confused in the dictation and I mentioned this before. L&I benefits aren't taxable, so there's no tax on that. So if he's paying her maintenance based upon that income which is non-taxable to him that it makes no sense for wife to be declaring

it as taxable income because it wasn't received as taxable income. It would be a transfer from him to her as maintenance.

THE COURT: Yeah, I don't -- like I said, I don't know if the IRS cares whether I say something is not taxable or not. They may decide it's taxable anyway, but let's go through the findings, Mr. Velikanje. What's -- you have issues with any of the findings?

MR. VELIKANJE: Well, I guess generally speaking, I don't know that this is your ruling. The only thing we talked about at the conclusion of trial was your intent to try to equalize incomes but we were going to wait on the house sale so that we knew whether there was money owed or more money to be received by the parties as to the house, and I think at the time of trial we were contemplating not only the ability to order the sale of the home but whether or not she would relocate and what her expenses would be if and when she relocated. What we've since learned and we don't have rulings on is the house sold, there's about $8,000.00 net. She stayed in the home, in the residence. Apparently the buyers have allowed to stay. We don't believe she's paying rent. We don't know what those circumstances are but --

MR. CONNAUGHTON: I'm going to object, it's rank speculation. We don't believe. I mean, that's the whole thing that we just got from him yesterday is rant. What do they base that on?

THE COURT: Well --

MR. CONNAUGHTON: I find that really objectionable. If you're just going to gift it to them, some buyer of the house says here, you can go live here for rent-free, that's isn't true.

THE COURT: But the point is, I guess, we don't know.

MR. CONNAUGHTON: Pardon me.

THE COURT: None of us actually know at this point what the situation is.

MR. VELIKANJE: Exactly. I don't think it's our job to provide that information. The point is at the time of trial when we finished, that was the discussion we had was we were going to sell the home. Let's look at the situation when and if you relocate. I don't think it even crossed our mind that she would stay in the place, but I think that fact is clearly true, whether or not she's paying rent, don't factually know or in fact she knows. The other aspect is in order to effectuate the division of the assets -- I'm sorry, division of the income we wanted her Social Security information and we've subsequently had hearings about this. She was to go down there, obtain information from them, specifically about whether or not she could draw on his account and whether there would be any back benefits retroactive for that period of time from her application to present. Again, all we got was the phone call and a letter in the mail that says here are your benefits, here's the net benefits on her account. We still don't have the ability to draw on his account, which we understand they've told him his viable option, what the amount is, whether there's back pay, we don't know.

THE COURT: Well, and let me tell you -- I haven't done any legal research on this. I assume it might even be possible to look at the Social Security web page and get an answer to the question, but I don't know for sure but I mean --

MR. CONNAUGHTON: She went down and met with a representative and this is what they generated for her and we filed that.

THE COURT: Yeah, but it doesn't -- does it answer the question. This may be -- this may show what it is she's getting but it doesn't my question of could she get more if she applied for it based upon his Social Security amount. And let me tell you from outside experience, outside of this case, my belief is no, she can't because when you -- because my understanding is she elected to get Social Security when she was 62 and, again, my

1 understanding is that if you do that, you give up the right to get more Social Security in the
2 future, but I don't know that for a fact. That's just something I've gleaned from, you know,
3 you get to be a certain age and you start hearing people who are a little bit older than you are
4 talking about the problems they're having with Social Security and that's just kind of what
5 I've gleaned, but I don't know if the that's the law or not, and one would think that with two
6 lawyers here, somebody could actually look up the law and say here's what the law is. If
7 you take Social Security early you waive any right to come back later and ask for more based
8 upon what your spouse was making. You'd think that would be in the law someplace.
9 MR. VELIKANJE: And it would seem that would be an easy letter the
10 representative could write her that says you drew early so you don't get benefits from
11 (inaudible -- talking over each other) --
12 THE COURT: I'm not sure -- I'm not sure we can count on the people who
13 work in the Social Security office to be ready, willing and able to do that kind of thing.
14 MR. VELIKANJE: Yeah. All I can tell you is from our side of the equation
15 and they can't give us her information but they've said that she would be eligible to draw a
16 larger amount on your account. You know, I don't know what they're basing that on.
17 Maybe it's the same concern with the representative but --
18 MR. CONNAUGHTON: Who said that?
19 MR. VELIKANJE: -- our fear is we get this thing done, she goes down and
20 applies and receives back pay and/or an increased amount --
21 THE COURT: And that's why -- I think I'm the one who raised the issue in
22 the first place --
23 MR. VELIKANJE: Right.
24 THE COURT: -- because I just need to know what -- where the parties are
25 going to end up and I still don't know. Like I said, I -- I think I know but I've never looked

at the law. I've never -- but have either of you tried actually looking at the Social Security website because I assume that kind of information is there. I don't know.

MR. VELIKANJE: I haven't as to this issue, Your Honor.

MR. CONNAUGHTON: Who did they talk to that they claim sent this? Why can't that person generate a letter and saying this is the, you know, the code, the U.S. Code section that provides -- I think it's highly doubtful. She went down there. She's explained the situation to them (inaudible) what you get.

THE COURT: Here's what I'm going to do. At this point, I'm going to assume that she doesn't get any more Social Security and Mr. Velikanje, you're free to research it. Find me some law or get something from Social Security saying under these circumstances where she -- because you have to make sure you ask the right question because if you just ask the question can one spouse get Social Security based upon what the other spouse makes, yeah. The answer is yes, but if you add in the fact, oh, and by the way, this first spouse elected to take Social Security early, it may be a different answer and I'm assuming it is a different answer.

MR. VELIKANJE: Fair enough. Can I suggest to the Court that if we find out there is a positive change, I guess any change, that we make that -- we put in some language to that effect in the decree. In other words, I don't want to have to come back on a petition to say, you know, we found this information, now she gets another two or three hundred a month.

THE COURT: Well, it's not whether she gets it, it's whether she would be able to get it. She might elect not to get it. That's her problem, which means if you can get something confirming that she could get it if she applied then you'd have to show that to Mr. Connaughton and either Mr. Connaughton would agree to --

MR. CONNAUGHTON: We'd like her to get as much as she can out of Social

Security. I don't believe she's capable of getting any more. If she is, we can -- I don't care if there's a provision in there, we'll give them notice. I mean, there's a cost of living increase but we're not talking about that, we're talking something distinct, you know. I have no problem with that at all.

THE COURT: Alright. Well, let's put something in there then that says if she gets an increase in benefits based upon the fact that her ex-husband gets Social Security at a higher rate then that is going to cause an adjustment in the maintenance.

MR. VELIKANJE: Right. Do some sort of mathematical adjustment accordingly or something to that effect.

THE COURT: Something --

MR. VELIKANJE: Yeah, okay.

THE COURT: So, other issues?

MR. VELIKANJE: Well, again, there's -- we haven't had a ruling relative to a lot of the personal property items, debts. It's simply their presentation or presumption but in the actual --

MR. CONNAUGHTON: Well, we did have a ruling. My notes indicate that -- I probably should have transcribed your ruling.

THE COURT: Yeah, we're talking about how long ago was the trial in this case?

MR. CONNAUGHTON: Well --

THE COURT: I don't remember. I remember this Social Security issue, that's all I remember.

MR. CONNAUGHTON: I have that you awarded the stock truck, the tractor and the implements to him at $5,000.00, but -- I think he's already came and picked them up is my understanding.

MS. WOOD: And the saw.

MR. CONNAUGHTON: And the saw?

MS. WOOD: Yeah.

THE COURT: So if there's a dispute about what I -- because I'm pretty sure I decided everything but what I couldn't decide because I didn't have the information which was the relative incomes so that I could decide the maintenance issue.

MR. CONNAUGHTON: Right, and attorney's fees was reserved. You wanted to see what the sale -- if there was a positive or negative flow from the house.

THE COURT: Right. So now we have -- and I'm assuming she doesn't get any more -- isn't entitled to more Social Security, so now we have all the information we need for the income. If you're saying now there's a disagreement on what I may have ruled on with regard to the property then you're going to have to go get a transcript and take a look at it because I don't remember.

MR. VELIKANJE: Well, I guess my point is those items, I don't see them listed in here that counsel just claims his notes say, the tractor, the implements, the --

MR. CONNAUGHTON: He picked them up right after court the last time I think that we were in court.

THE COURT: Let's rephrase the --

MR. WOOD: I haven't picked up anything.

THE COURT: Let's rephrase the issue here.

MR. VELIKANJE: Do you have the tractor --

THE COURT: Mr. Wood, are you saying that there are items of property that either I didn't make a decision on or that I decided were yours but you haven't gotten them yet? Which is it?

MR. WOOD: I haven't gotten anything.

MR. CONNAUGHTON: Apparently he hasn't got those. I misspoke. She -- I thought he -- he'd been out there but he didn't pick them up.

MR. WOOD: I was out with the real estate guy and looked over and see what was left after she sold almost everything off.

THE COURT: So, Mr. Velikanje, if the findings don't specify who gets what, then the findings and if the parties can't agree on what I said, somebody needs to get a transcript before I can -- because I don't remember what I said.

MR. VELIKANJE: Well, we just want the items specifically detailed out because the catch-all phrase that each keep what they have in their possession.

THE COURT: I know, that's a problem.

MR. VELIKANJE: Yeah, so I mean we need to add at a minimum the tractor, the Ford pickup, the implements and his tools --

THE COURT: Then we need to continue this hearing and you need to get a transcript and you need to figure out what it was I said. I don't know what else I can do.

MR. VELIKANJE: Well, I think we know what you said. All I'm asking is those be added, acknowledge in their notes that those were awarded to him but they're not in the decree.

THE COURT: Okay. Any problem with that, Mr. Connaughton?

MR. CONNAUGHTON: No --

THE COURT: Alright.

MR. CONNAUGHTON: -- it was set at a value of 5,000, that's what I have.

THE COURT: So can the two of you sit down and interlineate and add in the stuff that you want to have detailed or put it on a separate piece of paper and attach it as an exhibit.

MR. VELIKANJE: We can propose an exhibit that --

1 THE COURT: Get it done today?

2 MR. VELIKANJE: -- we can attach to the decree, hopefully.

3 THE COURT: Okay, so if that problem is addressed what's the next problem?

4 MR. VELIKANJE: Your Honor, the concern about the maintenance and I
5 think maybe the revised decree cures some of that because it indicates the adjustments will
6 be made based upon benefit changes to my client but from his perspective we again show
7 you the L&I lawyer's, you know, inability to attach the benefits. I understand the argument
8 that this is going to be paid as maintenance. It's not an actual division of his own L&I
9 benefits, so we put it in the bank and then it becomes his money and it gets divided.

10 THE COURT: Yeah. I don't care where the money comes from.

11 MR. VELIKANJE: Huh?

12 THE COURT: (Inaudible) assets he could tell, I don't know that the money
13 that he's required to pay her necessarily comes from his L&I.

14 MR. VELIKANJE: Right. Well, that's the source, that's the math that we used
15 to come to the end result that Mr. Connaughton has brought up, so I guess the point is for the
16 record, he doesn't want L&I included because that is related to his injury. I understand the
17 nature of the time loss but presumptively he's going to get some sort of a disability based
18 upon the injury he received once the surgeries are done and he's stabilized but --

19 THE COURT: Well, but I was --

20 MR. VELIKANJE: Hm?

21 THE COURT: It wasn't (inaudible) about the income loss.

22 MR. CONNAUGHTON: Correct.

23 THE COURT: Not talking about if he gets a lump sum payment because of an
24 injury, the lump sum payment that is compensation for the injury, not compensation for time
25 loss.

1 MR. VELIKANJE: And lost wages.

2 THE COURT: That's -- those are two different things.

3 MR. VELIKANJE: I understand that.

4 THE COURT: And so what I was talking about in calculations were what is
5 he getting for time loss because that's the replacement of income that would have been
6 community property.

7 MR. VELIKANJE: Right. And I guess the objection is that he doesn't believe
8 the L&I benefits are divisible based upon his L&I (inaudible) information. And I've tried to
9 explain is that in the domestic law, it's not the L&I we're benefit or dividing, it's the
10 depositing into your account that's being dividing. I can also inform the Court they're in the
11 process of potentially pensioning him out because it has taken so long and the surgeries are
12 not scheduled and it's not something that's going to happen right away, which changes the
13 scope of the fee arrangement with his attorney but this relates to the non-modifiable, you
14 know, non-terminable maintenance award in the event that pension issue does come through
15 and it reduces his benefits, we need a similar mathematical adjustment because the structure
16 is going to be different with his attorney and potentially the benefits are going to be lowered
17 if they pension him out.

18 THE COURT: And I -- I can't remember, did I indicate that we're talking
19 about the net amount of his --

20 MR. VELIKANJE: Right.

21 THE COURT: -- after reduction of the attorney's fees from the (inaudible --
22 both talking at once --

23 MR. VELIKANJE: That's the way it is now.

24 THE COURT: -- Yeah, okay.

25 MR. VELIKANJE: Yeah. So, anyway we just want some, I guess,

accommodation for that in the event that that does kick in and they do pension him out per year post surgery.

THE COURT: Yeah, it just needs to be adjusted one way or the other.

MR. VELIKANJE: Right.

MR. CONNAUGHTON: I think that was that language in the decree so if it goes up or down because I think that's what Court said when I looked at my notes that that would be --

THE COURT: Is that in the decree?

MR. CONNAUGHTON: Yeah.

THE COURT: Or is it?

MR. CONNAUGHTON: That's in the -- yeah. We had time loss -- L&I time loss and pension benefits are terminated then maintenance payable to wife would be adjusted accordingly (inaudible) or modified or terminated.

THE COURT: Yeah.

MR. CONNAUGHTON: Of if you would could say reduced, modified --

THE COURT: It's modified, modified or terminated. I'm going to give these things back to you and let you guys go over them one more time and you can make these changes.

MR. VELIKANJE: We need Your Honor's assistance on the attorney fee issue and I guess the QDRO preparation fee issue. They're claiming they should be entitled to all of the house sale proceeds as and for attorney's fees. Our position is if we're going to split everything down the middle it should be split as well. There doesn't appear to be any issue as to intransigence that hasn't already been dealt with, turned out, feed out, he's paid those fees. Again, the same frustration today, we're waiting on the Social Security information from her that she was ordered to go get. Should be easily accessible, she hasn't done. So,

1 I'll bear the burden of going to get that information but, again, it's not my account. It wasn't
2 my -- it wasn't ordered that I go do that, but I think there's some tit for tat going on relative
3 to behavior but our point is if your intent is to split everything down the middle, the
4 household proceeds should be split down the middle, too. They're left in equal economic
5 footings. There's no basis for one over the other based upon need and ability.
6 And then the other issue is they're asking --
7 THE COURT: One at a time.
8 MR. VELIKANJE: Okay.
9 THE COURT: On the attorney's fees. Mr. Connaughton, if I'm dividing the
10 property, I'm dividing the income, why should I award attorney's fees against --
11 MR. CONNAUGHTON: Well, there's a couple of things that have gone on
12 here with regard to intransigence. We're back in Court on May 31st, 2013. He was found in
13 contempt and he was ordered to pay 300 for February and April, plus $250.00 in fees within
14 30 days. He's never complied with that. The order -- and that's been sort of his feelings or
15 behavior throughout. It also says he shall pay the equivalent amount of mortgages to wife as
16 additional maintenance. I don't know if he paid the mortgage payments in June. We assume
17 he paid them in May but he didn't have it in July and he didn't have it in August. He's not
18 paid those funds to my client. He paid 1,750 in July and as of today he's paid 1,200, so he's
19 got a serious delinquency. He basically thumbs his nose at the Court, you know, I think you
20 instructed Mr. Velikanje last time. You need to talk to your client and make sure he
21 complies and does what's in this order. He's ignored it, and here we are in mid-August, so I
22 think that that's an ongoing issue with him. He doesn't feel he has to comply with the order
23 because he doesn't like it and he hasn't complied. If he has evidence he has complied with
24 this order, he's here today, I'd like him to tell us how he complied because I know I didn't
25 receive any money from him or his attorney in fees or anything like that. And my client

would indicate and we did, I think in her declaration, the he hasn't paid. So, we think there is a basis for fees. He's been making or earning substantially more than my client in terms of what he's been paying for an extended period of time. And, you know, I think when he testified he was spending money on gambling. He had winnings on his taxes and --

MR. WOOD: I went two times.

MR. CONNAUGHTON: -- he wouldn't disclose stuff. The Court had to basically order him to answer questions about income and the like. So, I think there is a basis for fees. Intransigence has been going on repeated. He was found in contempt previously. We had to go to Court and he never paid those fees and then we were threatening to go back to court and he reluctantly dribbled in, so it's been difficult to deal with that, quite frankly.

THE COURT: Mr. Velikanje, I know that -- I guess it's her affidavit details out or maybe it's Mr. Connaughton's, somebody had detailed how much was owing or he hasn't made all of the payments he's supposed to have been making by this time. So what's your response to that?

MR. VELIKANJE: Well, Your Honor, as to the third line item that -- the first two, February and March we dealt with on May 31st. There was an acknowledgement that the 250 at trial was still owed and $50.00 in March is what you found him in contempt for because he hadn't paid that. April, again, was encapsulated as part of that May 31st order. They've added that back in. She was claiming that at the time of that motion that she was owed this money. We showed the deposit receipts. They should be part of the record that shows actually he was current for that month, so that 667 shouldn't come out. The May and June issue relates to him paying the mortgages which he paid, but it's that increased differential, the six or eight hundred dollars more that his benefits increased by because of COLAs, I think that took place since the temporary order, but I guess the point is he did

make those mortgage payments in May and June. Obviously, those don't exist as of July but he's made his maintenance payments that he was ordered to make.

The other issue and I guess this is going to be a bigger compliance issue that I'd like to head off is that he doesn't receive his benefits on the 1st or the 5th or any particular day of the month. He gets them at all different times of the month. Social Security obviously comes in on the third Wednesday?

MR. WOOD: Fourth Wednesday..

MR. VELIKANJE: Fourth Wednesday by law but the pensions pay out at all different times so that's when he makes his deposit is when they come in. We talked about this last time on the contempt hearing. Their claim is well, it was in the court order that he's supposed to pay by the 1st or the 5th or whatever it was on a temporary basis. Our position is it's going to be same problem. It's impossible for us to comply with that in a timely fashion. We have to pay half when we receive our half in order to pay our own living expenses. So I don't know how we phrase that but the proposal is he needs to pay it by the 1st of the month, I think.

MR. CONNAUGHTON: Yeah.

MR. VELIKANJE: He just simply not going to be able to pay that kind of money on the 1st because he doesn't have that kind of money on the 1st.

THE COURT: So let's go back to the question of how much is currently owing at least through July.

MR. VELIKANJE: Well --

THE COURT: What do you concede as owing?

MR. VELIKANJE: April 667 should come out because, again, that was covered in the May 31st hearing and it was determined that he only had an arrearage for February and March.

1 MR. CONNAUGHTON: But that isn't true.

2 MR. VELIKANJE: I would make the same argument for the month of May. I
3 don't know where that substantial increase comes from when he made the maintenance
4 payment and paid the mortgages.

5 THE COURT: Does he have the checks to show he paid the mortgages?

6 MR. VELIKANJE: I'm sorry, what?

7 THE COURT: Does he have the checks to show that he paid the mortgages?

8 MR. VELIKANJE: No, but we have the closing statement that would --

9 THE COURT: Got a closing statement to show that the mortgage was current?

10 MR. CONNAUGHTON: No, we just -- it shows the amount that was paid off
11 so it could have been, you know, could have been months in arrearage for all we know. I
12 don't know --

13 MR. WOOD: Well, it was not in arrears.

14 THE COURT: I need -- I just need some documentation. I need written
15 documentation to show that you made the payments. That's all I need.

16 MR. WOOD: If someone would have told me I would have brought it in.

17 MR. VELIKANJE: Yeah, it looks like it just has a lump sum for the first and
18 second mortgage.

19 THE COURT: If he paid the mortgages for May and June, Mr. Connaughton,
20 does your calculation here assume that in fact he did pay the mortgage?

21 MR. CONNAUGHTON: Yes. So, what the Court had originally ordered at the
22 hearing was that the income would be divided equally. I asked effective what date. I think I
23 asked for April 1. The Court said April 15th. And if we did that equalization because he had
24 significantly more income it was 667 would be the additional for the half of the month and
25 on the other months the same. And actually he had been ordered to pay, I think, 1,750, not

1 1,700, so that's what that calculation is and I think we did one when e came to Court before
2 and the Court said, well, although I said that orally it wasn't yet a final order, so you weren't
3 going to find him in contempt for not paying that, but then encouraged Mr. Velikanje to
4 advise him that that was in fact the Court's oral ruling that would be put into an order, and
5 that he should pay that and since I thought that he might not, I at least -- and the Court
6 agreed to put in there that once the mortgage stopped that he would at least have to pay that
7 differential so there was no ambiguity in his mind and he hasn't done that for July and
8 August, of course.
9 So, I think these calculations are consistent with the Court's ruling. It's
10 based upon the arithmetic that we've detailed in there which I haven't really heard any
11 objection to --
12 MR. WOOD: I object.
13 MR. CONNAUGHTON: -- so, you know, that's where it comes from and that
14 doesn't include of course August where he's paid, I believe $1,200.00 so far. And Social
15 Security that he gets the fourth Wednesday is for the following month. It's not the prior
16 month, so you don't wait until the end of the month to get it, so he has that early. L&I comes
17 every two weeks, every 14 days they issue it, so certainly we don't have any objection to
18 putting different times whether it's the 5th and the 15th. I mean, from my perspective, as
19 long as there's a date in there and she gets paid. What difference does --
20 THE COURT: Half of its due on the 5th and half of its due on the 20th.
21 MR. CONNAUGHTON: Right. I mean, I don't have a problem with that. I
22 mean, because some of this once we get the QDROs, my client indicates those things usually
23 come early in the month like before the 5th for those ones. So, as to the (inaudible -- talking
24 at counsel table) balance and in a few days on the 5th and the 15th or whatever.
25 **(Counsel and Respondent talking at counsel table)**

MR. VELIKANJE: Well, Judge, I don't know what to say about the arrears. I know the April one we dealt with. May and June obviously is based upon the increase in benefits that apparently my client -- I think we showed on the W-2s through the COLAs received and consistent, I guess, with your ruling that we're going to equalize income as of April 15th, so it's a burden to my client but -- and we don't like it. He objects to it, but it's consistent with your ruling. That he's telling me right now is this pension issue has actually kicked in. He brought me a statement but it's not the actual check or the deposit into his account. All I ask is that we consider that as part of the adjustment that we've talked about because he receives 2713 a month net now instead of -- I think it was about 3,200 that he was receiving in L&I benefits. So the 667 needs to come out for April and I assume you made those other payments.

THE COURT: Why does it need to come out if I -- because I said start in the (inaudible -- respondent talking in the background) as of April 15.

MR. VELIKANJE: What's that?

THE COURT: Mr. Connaughton's saying and I don't remember, but that I said this is -- that the maintenance starts as of April 15.

MR. VELIKANJE: I believe that's what your ruling was that the effective date of this is going to be April 15, tax day.

THE COURT: So Mr. Connaughton is saying that the 667 represents the second half of April.

MR. VELIKANJE: Okay. I haven't done the -- I haven't done the math on that but --

THE COURT: Well --

MR. VELIKANJE: -- (inaudible) be half of 1284.

MR. WOOD: That leaves me $600.00 out of all my pensions if I pay her

whatever that says. I get $4,800.00 in pensions. I'm supposed to pay her 1,750 plus 1,500. That leaves me 600 bucks.

THE COURT: My understanding is that your monthly income is -- at least as of the trial, was something like $9,600.00.

MR. WOOD: Well, he figured that up and he doesn't know how to add.

MR. CONNAUGHTON: It wasn't disputed, I do know that.

MR. WOOD: It was, too.

THE COURT: Let me see if my notes indicate -- I mean, otherwise we may have to get a transcript.

MR. WOOD: It's changed now. It's dropped down.

THE COURT: Actually my notes, I think, indicate 8628 a month. I'm not sure the 96 is correct. Again, I don't remember what I said at the end of the trial. I'm just looking at notes that I was --

MR. CONNAUGHTON: We added in the total amounts including the Social Security, her Social Security plus his to arrive at a total figure combined.

THE COURT: I have -- I have -- my notes indicate total income $9,215. That's the total of the two of the people, right? And so half of that is 4607, but he doesn't have to pay 4,607, he has to pay the difference between 4,607 and what her income is.

MR. CONNAUGHTON: Right, and I think we got updated information which showed -- because at the time there was issues about we had -- remember 2011 --

THE COURT: Do I remember 2011? No.

MR. CONNAUGHTON: He had provided us with the statements that we requested in discovery on the pensions so we find out what the current level was and we were working off, I believe, the 2011 and he was ordered to produce that after trial and I -- actually the supplemental trial memorandum that was filed detailed all of the income.

THE COURT: Well, I need to have the two of you sit down and walk through these numbers. Again, my intent was you figure out what the total income is of the two people together, you divide it in half and then you subtract her income from that and that leaves you how much he owes her a month. It's not complicated.

MR. CONNAUGHTON: Well, that's what I've done and I think it's accurate. I haven't heard any, you know, objections.

MR. WOOD: It's not accurate at all. That's what I've been trying to tell you for four months. Pie in the sky. You're looking out for your pocketbook.

THE COURT: Mr. Wood, don't talk to him, you talk to me if I ask you a question. Mr. Wood, my notes -- you know, I was looking at you were totaling up your income. You said Teamsters 2,476.87 a month and then the other Teamsters was 656.39 a month and social Security was 1,833 a month and Operating Engineers was 200 a month and L&I was 1,648 a month, and there's something else I can't even read my writing. Another 1,598 every two weeks. No, 1,648 is every two weeks.

MR. WOOD: But one of them weeks they takes out his fee of 50 bucks for a retainer until this come out and now he takes out 480.

THE COURT: And again, my net income, he's got to pay the other attorneys so that comes off the top of his income.

MR. CONNAUGHTON: Sure. That wasn't of course revealed to us. Actually if you look --

THE COURT: Wait a minute, what wasn't revealed to you?

MR. CONNAUGHTON: Well, that he's now paying some funds to an attorney. Previously he said he was paying $50.00, I think per month, so we deducted --

MR. WOOD: They've changed it, that's the problem.

MR. CONNAUGHTON: That's fine. We just heard about it in open court

today even though he's had this information.

MR. WOOD: I just got it in July.

THE COURT: Sir, Mr. Wood, please. You're not here to argue with him. I'm trying to get here in a regulated fashion here, I'm trying to hear both sides.

MR. CONNAUGHTON: I -- in that motion and declaration for an order to show cause back in May 22nd, 2013, that I filed, we provided there as an exhibit statements of the income for 2012, along with the --

THE COURT: Listen, I need to have identified for me where the disagreement is. I mean, it's (inaudible -- both talking at once) --

MR. CONNAUGHTON: Well, I didn't know there was -- I didn't know --

THE COURT: -- (inaudible) --

MR. CONNAUGHTON: -- there wasn't --

THE COURT: -- so I'm going to be here until 4:00, alright. Of course, you have another hearing, don't you?

MR. CONNAUGHTON: I do.

THE COURT: Alright. The two attorneys and then maybe Mr. Wood needs to be involved in this so he can say yes that number is right or no the number is not right, but there has to be documentation for all of this and so it should be a simple arithmetic matter and if you make me force you to bring me the documents and if you make me do the math, I'm not going to be happy about doing that because you people should be able to do that and if I think somebody's being obstreperous here, one side or the other, about making these calculations in the face of what the documents say, they're going to pay attorney's fees to the other side. So, sit down and do it.

MR. CONNAUGHTON: Judge --

THE COURT: Yes.

1 MR. CONNAUGHTON: I submitted a supplemental trial memorandum which
2 details all the expenses and then --
3 THE COURT: Expenses or income?
4 MR. CONNAUGHTON: Huh?
5 THE COURT: You said expenses, you mean --
6 MR. CONNAUGHTON: Excuse me, total income and where it came from, on
7 the front page which the total was 115839 (as spoken). Again, this was as of -- for 2012. In
8 the motion and declaration for contempt, I attached the W-2s and the Social Security benefits
9 statements detailing what the income was for 2012. We haven't received any objection to
10 that. I've never heard even in the latest thing we had there wasn't an objection to our
11 numbers. And the stuff is in the file, so I'm -- and this was --
12 THE COURT: So, Mr. Wood, as I understand it -- shouldn't make
13 assumptions here, you're saying that your L&I benefits have been reduced because of a
14 change in the nature of --
15 MR. WOOD: Yes, I brought in the piece of paper.
16 THE COURT: Okay. Other than that change, is there any change in your
17 income from what Mr. --
18 MR. WOOD: Not in the pension funds, no.
19 THE COURT: I said income. He lays out in his --
20 MR. WOOD: Show me the income I have.
21 THE COURT: Please don't interrupt me, sir. Let me finish. He has his
22 supplemental trial memorandum which lays out his calculations of what your total annual
23 income is here and I need to know whether, with the one exception of the adjustment to the
24 pension, are the numbers otherwise correct?
25 MR. WOOD: The pensions are correct, yes.

THE COURT: So his total for your annual income is 115,839.00. Now, that's without the adjustment on the pensions for the increase in attorney's fees or whatever.

MR. WOOD: The L&I is not supposed to be into this kind of thing.

THE COURT: The L&I -- I understand you disagree with me but my ruling is that for purposes of calculating how much income you have, I'm including L&I. So we're done discussing that subject. So the question then is with the exception of that one change in your pension because of the -- or the L&I because of the attorney fee thing, are Mr. Connaughton's numbers otherwise correct?

MR. VELIKANJE: Your Honor, I -- well, I don't know.

MR. WOOD: I don't know either.

MR. VELIKANJE: He filed a letter dated April 15th under Exhibit A with that contempt motion that says the math -- if you take 115839 total annual income, divide it by 12, there's a monthly figure of 9653, divide that by 2 is 4826, subtract her benefits which we've later learned have increased shows a total she's owed would be 4239 a month. The proposed order has 4501 a month, and I guess I need to know what that discrepancy is of about $300.00.

MR. CONNAUGHTON: I didn't say it was 43 because that isn't how you do the calculation, I don't think, do you?

THE COURT: Alright. Again, the two attorneys need to sit down and if you got the numbers in front of you, you should be able to figure out -- but there's no reason taking everybody else's time here while you do that. So do it. But Mr. Wood, you have to get over this thing about you think the L&I isn't included because --

MR. WOOD: The attorney told me that.

THE COURT: Well, the attorney probably doesn't practice divorce law and what one attorney takes from his specialty doesn't necessarily translate over to somebody

else's specialty. So, he may not know under these circumstances and --

MR. WOOD: Yeah.

THE COURT: -- regardless I'm the one who gets to make the decision and I've made the decision.

MR. WOOD: Well, then it would be better off if I would have died on the operating table then.

THE COURT: So, I'm sorry you feel that way but we just need to get this sorted out. So we need the numbers for the net now on the L&I because that -- his net has now been reduced. That needs to factor in and I guess her Social Security went up. Did his go up, too?

MR. CONNAUGHTON: I think his went up some, too, that's why I think we had the --

THE COURT: Alright.

MR. CONNAUGHTON: -- new calculations which I put in there because they changed from 2012.

THE COURT: Alright, well, you need to factor in the new Social Security and then let's -- and then like I said, if -- I'll make a decision on attorney's fees but let me tell you that -- I mean, the attorney's fees for the prior motions as attorney's fees were assessed, and so they're already and whether he's paid them, he hasn't paid them. Anything that he owes in terms of previously assessed attorney's fees or anything in terms of the support that he was supposed to have paid and didn't, if it turns out that he's behind, that's going to come off the top of that $8,000.00, and again, my inclination -- what I want to do is just even everything out which would mean that neither side would get more attorney's fees unless at this point I think somebody's just dragging this out and being difficult, and then I will assess attorney's fees. So -- is there anything else I can do if you don't have numbers yet?

MR. VELIKANJE: One last quick issue is there a request that we prepare all the QDROs and pay all the fees for preparation and any administrative fees? Again, typically it's the one receiving the award of the retirement that pays for the preparation of the QDRO. My offer is to simply split that expense. It seems fair, it seems consistent with the ruling.

THE COURT: Do you have to hire somebody else to do that or you do that?

MR. VELIKANJE: No, I think what counsel proposes if we don't do it that they hire -- there's a QDRO Law out of Portland that does a pretty decent job but it's five or six hundred bucks a QDRO and we're going to have four of them.

THE COURT: Any reason not to split the expense of that, Mr. Connaughton?

MR. CONNAUGHTON: Well, we prepared these final papers and I've done all the calculations repeatedly and I never get a response to it, then we get something yesterday that doesn't even really address the numbers. I spent a lot of unnecessary time, in my opinion, due to this intransigence. I mean, if you read your order, the order that you signed from May, he totally ignored it and my client as a result, you know, has suffered financially because she's not getting the funds and he gets all those pension funds. So I think it's only fair that he prepare the QDROs within a, you know, a timeframe. He talks about administrative costs, usually there isn't any administrative costs other than you go pay $10.00 for a certified copy to send it in and if they do take money they usually take it out of the pension itself. I have seen that a couple of times recently on ones. But I'd be surprised if it's on these.

THE COURT: Your response to that, Mr. Velikanje.

MR. VELIKANJE: Well, again, you know, the administrative fees are not what's spooking me. I know Tree Top charges a fee now and some others but the expenses in relation to preparation of those documents, like I say, it's going to be five to six hundred

bucks depending upon the program for QDRO Law to do it.

THE COURT: Alright.

MR. VELIKANJE: I guarantee if Mr. Connaughton --

THE COURT: Let me do this. Mr. Velikanje you get them done and however it's done, if you have to have somebody else do it, that may be the way to do it so that way there's a -- it's clear what the charge is and then the parties will split that expense. They need to be done soon so we can get the whole thing wrapped up. Anything else?

MR. VELIKANJE: That's it, Your Honor.

THE COURT: Okay.

MR. VELIKANJE: As I understand, Mr. Connaughton has the next hearing, so --

THE COURT: Yeah, not before me, though, I have to change (inaudible) --

MR. VELIKANJE: Okay. I guess we'll do the list of property and our own math and then we can talk.

THE COURT: Alright.

**(COURT ADJOURNS AND THEN RECONVENES)**

THE COURT: Please be seated. So -- you can be seated. What do you have?

MR. CONNAUGHTON: Well, we think our numbers are correct. He's just provided, I guess, something today to his attorney about he's taken out on something and it's not quite clear to me since I do L&I and have been for years mostly getting a monthly payment, they pay time loss every two weeks. Pensions are once a month, to get them on the 15th but in order to be pensioned there has to be a finding that you're fixed and stable and you don't need any more treatment and you can't return to work and apparently he has surgeries pending so I think we need clarification by copies of orders or something. Normally with time loss and an order is generated. If you're on a pension there's an order

1 generated that your pensioned out, so it would all be easily available if he doesn't have
2 copies, his attorney certainly would.
3 My client received an increase in her Social Security which we filed
4 that. It's not particularly significant. Presumably he did as well but we're using his 2012
5 figures so we need that information and we'd really like to get this wrapped up.
6 MR. VELIKANJE: Is your number changed, Social Security number?
7 MR. WOOD: It's 1,861, I checked it yesterday. Added them all up.
8 THE COURT: So 1,861 for Social Security and you can get the L&I, which I
9 assume pretty easily from --
10 MR. WOOD: I can't hear you, sir.
11 THE COURT: I assume you can get from your L&I attorney the documents
12 that show what's going on with your L&I claim, right?
13 MR. WOOD: I brought that sheet of paper that would say I got my first
14 pension. I checked and they stopped the L&I last month.
15 THE COURT: I think maybe -- who's your L&I attorney?
16 MR. WOOD: David Snell (phonetic) in Tacoma.
17 MR. CONNAUGHTON: I'm sure Bob can call up and he could fax over the
18 information (inaudible) --
19 MR. VELIKANJE: I told counsel I'd get that, Your Honor. He brought this in
20 today to meet with me this morning and I understand it was some sort of adjustment they did
21 from L&I to some sort of temporary pension.
22 THE COURT: I think you need to confer with Mr. Snell and find out exactly
23 what's going on and get something in writing that you can give to Mr. Connaughton.
24 MR. VELIKANJE: No doubt, and I think the proposal language solves that
25 that says it shall be adjusted up or down based upon termination or modification of benefits

or payments. Likewise encompasses her Social Security increase and a potential increase by my client but I think 861 is what he was receiving.

MR. WOOD: And it wasn't community property.

MR. VELIKANJE: So I think counsel and I can make those adjustments. The real issue is on this back support, the unpaid maintenance, if you will, and I guess the dilemma with that is she has received the increased Social Security amount so their numbers adjust to get us to equal income. I've done the math on that and shows we owe about 4,000. I think they wanted 6,600. Again, I didn't have this before my client mentioned it to me today but the L&I payments stopped mid-June. He only got one payment when they converted this to the pension type arrangement so we lost some income in the month of June. July, the income has been reduced so our math is based upon the current situation. Their math is based upon the updated W-2 year end information we provided in April and when we had a hearing on splitting the income. I don't know how to proceed. Obviously, there's money in trust or in escrow at the title company to reimburse wife if that's your ruling as stated. The real issue is what is that number?

Tied to that is our list of personal property. I think we've come up with a fairly close agreement minus a couple three items, but again, have been acknowledged to have been disposed of or sold. Nowhere in any of the equations that we've taken into account the fact that my client received absolutely no personal property. The livestock has been sold for thousands of dollars. Equipment has been sold, items have been sold and we don't get any, I guess, counter benefit to that in the grand scheme of things. So I don't know how we need to address that today. I don't know if we can address that today. We could add the personal property to the proposed decree and I think solve that part of it.

MR. CONNAUGHTON: Well, it was all addressed at trial. Personal, we talked about horses and goats. She testified, I think she got 150 or 200 dollars for some

1 goats. The Court, at least in my notes, the one thing when he got awarded the tractor and the
2 other things and finding that it was $5,000.00, I don't see where that was offset anywhere
3 else. There's a lot of miscellaneous items that appear to me to be worthless that we just
4 talked about in the hallway. My client, the stuff she had she was -- that he wanted for the
5 most part she was happy to give him.
6 The tractor and the truck and the other item, bigger equipment items,
7 that were awarded he hasn't picked up and apparently the people that she's renting from
8 want that equipment out of there, and we'd like that to be done sooner rather than later.
9 THE COURT: When can that be taken out, Mr. Wood?
10 MR. WOOD: Pardon.
11 THE COURT: When can you remove the -- what is it, a tractor --
12 MR. WOOD: Well, I was under the impression that I couldn't do anything
13 until the escrow closed and we got to distribute the funds. That's what I was told.
14 THE COURT: Well, the equipment is different from the land --
15 MR. WOOD: I realize that.
16 THE COURT: -- and so whatever I said belonged to you -- what was that, the
17 tractor, the --
18 MR. CONNAUGHTON: Stock truck, a tractor and implements.
19 MS. WOOD: And the saw and a freezer.
20 THE COURT: So that's --
21 MR. WOOD: And the stereo.
22 MS. WOOD: And the stereo. Well, I told you I'd give that to you.
23 MR. VELIKANJE: We propose 30 days.
24 THE COURT: You need to pick that up in 30 days.
25 MR. WOOD: Well, see, half the equipment I need to make that stuff move,

1 the compressors are gone, the battery chargers are gone and half my tools are gone and I had
2 upwards to five, six grand worth of tools because I was a heavy mechanic for a long time and
3 that's where I accumulated all these tools and I had three bins of tools and there are very
4 little left in each one.
5 THE COURT: We are where we are, Mr. Wood, and I said you get that
6 equipment. If you don't want it now --
7 MR. WOOD: That isn't the idea. I want it but I would like it all.
8 THE COURT: I don't know if --
9 MS. WOOD: It's in the shed (inaudible -- talking over each other) --
10 THE COURT: -- I've indicated what you can have. You need to go pick that
11 up.
12 MR. WOOD: So I eat that other stuff?
13 THE COURT: I don't think -- I think Mr. Connaughton may be right in that I
14 awarded that to you but didn't award any corresponding amount to her, did I?
15 MR. CONNAUGHTON: Not that I can find. I think, you know, whatever she
16 has in her possession --
17 THE COURT: I think that kind of --
18 MR. CONNAUGHTON: -- basically and --
19 THE COURT: I thing that kind of offsets the fact that she may have gotten rid
20 of some stuff.
21 MR. WOOD: That doesn't offset seven years of her spending $700,000.00 and
22 I got nothing out of that.
23 THE COURT: Mr. Wood --
24 MR. WOOD: She never even bought an asset I could sell.
25 THE COURT: Mr. Wood, I'm sure your attorney has explained to you that

1 what's happened in the past and during the marriage doesn't count for purposes of dividing
2 things up. It's a community property state. When you marry somebody, it's for good and for
3 bad and you -- if you -- if one party --
4 MR. WOOD: Boy, that (inaudible -- both talking at once) --
5 THE COURT: -- makes some money and the other party spends the money,
6 it's all part of the marriage.
7 MR. WOOD: That's a wonderful idea.
8 THE COURT: You don't get to go back and say, well, so and so spent money
9 and that doesn't -- we're only talking about dividing what you have not what --
10 MR. WOOD: What I have left is what it amounts to.
11 THE COURT: Basically, yeah, that's --
12 MR. WOOD: Okay --
13 THE COURT: -- where we are.
14 MR. WOOD: That's the way it is, that's the way it is. I may not like it, but --
15 THE COURT: Exactly. So you need to pick up that stuff within 30 days, so
16 anything else we can do today or what are we doing here?
17 MR. VELIKANJE: Well, I guess our hope is we can get this thing finalized
18 sooner rather than later but I'm going to need to get the information from Snell and we need
19 to get updated Social Security information for my client but again, I don't think it's changed
20 and then I guess I can lay out my math once I get the Snell information for Mr. Connaughton
21 better. My hope is we don't have to come back to another hearing, that we can supplement
22 this with a declaration or something to Your Honor and we can --
23 MR. CONNAUGHTON: If we get the -- because it sounds like he's saying the
24 income changed perhaps in June or mid-June and we did calculations based upon the best
25 information we had. So if he can get a Social Security statement showing exactly what it is,

1 I'm -- if she got an increase, I don't know how come he wouldn't. I mean, they give them
2 annually, but a statement, stuff from the attorney, then it's just arithmetic, so --
3 THE COURT: Mr. Connaughton, do you need these originals back. I haven't
4 done anything with these originals.
5 MR. CONNAUGHTON: Um --
6 THE COURT: Or are you going to redo them anyway?
7 MR. CONNAUGHTON: Probably, we might as well redo them because if he
8 wants to have that -- the stock truck and tractor. I thought he had already picked that up but I
9 was wrong on that one.
10 MR. WOOD: It doesn't run. I need a compressor --
11 THE COURT: Mr. Wood, please don't interrupt. We're trying to get done --
12 MR. CONNAUGHTON: We can put that in there if it makes everybody feel
13 better.
14 THE COURT: Put it in there. Alright. Well, if you can get all this stuff done.
15 I mean, I don't see why you couldn't get this done within a week and be back on Friday with
16 an agreed order but if there's something you need to have me decide at that point --
17 MR. CONNAUGHTON: We still have the issue of fees. I don't know where
18 you came down on that.
19 THE COURT: Well, again, I think I said at this point, I want to just have
20 everything come out even. He does owe some money for some previous fees that were
21 awarded. He does owe some money for -- at least 4,000 that they're agreeing to, that's going
22 to come off the top of the 8,000 because that's money that he was supposed to have paid and
23 didn't. Now --
24 MR. WOOD: But I never got a thing -- I never got a piece of paper saying.
25 All he wrote was what was there and it was bad math.

THE COURT: That's why your attorney's going to sit down with Mr. Connaughton and try to make sure the arithmetic is correct.

MR. WOOD: Well, if I would have known it.

THE COURT: Well, if you'd known it you would have paid it. You wouldn't have the money that you (inaudible -- talking over each other) --

MR. WOOD: No, I wouldn't have the money to put it.

THE COURT: Mr. Wood, it's late Friday afternoon. We're trying to get done here. I'm not going to argue about this anymore. So this is just where we are, see if you can get it done and if there's some dispute about what my decision was get a transcript before you come back because I don't remember.

MR. WOOD: I got one ordered.

THE COURT: Okay. Anything else, counsel? (No response). We're done. Have a nice weekend.

**(END OF TRANSCRIPT)**

# CERTIFICATE

STATE OF WASHINGTON )
) ss:
County of Yakima )

THIS IS TO CERTIFY that I, PATRICIA BELL, Notary Public in and for the State of Washington residing at Wapato, Washington, transcribed the proceedings held on August 9, 2013, in In Re the Marriage of Diane Lynn Wood, Petitioner, and Zale Kay Wood, Respondent from FTR CDs furnished to me by Ellen McLaughlin, Yakima, Washington. I was requested to transcribe these proceedings on or about September 24, 2013, and did so to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 4th day of October, 2013.

Patricia Bell
NOTARY PUBLIC in and for the
State of Washington
Residing at Wapato
My commission expires 5/29/2017