FILED
June 17, 2014
Court of Appeals
Division III
State of Washington

NO. 320227

COURT OF APPEALS DIVISION III

OF THE STATE OF WASHINGTON

DIANE WOOD (Petitioner)

And

ZALE WOOD, (Appellant)

BRIEF OF APPELLANT

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I. INTRODUCTION

This is an appeal following a two day bench trial dissolving the parties' 48 year marriage. Mr. Zale Wood, the Appellant, hereinafter referred to as "Mr. Wood", was Respondent in the trial court. Ms. Diane Wood, the Appellee, hereinafter referred to as "Ms. Wood", was the Petitioner in the trial.

On April 10, 2013, the second day of trial, the court rendered an oral decision, in part, with instructions for the parties to work out an agreement regarding the family residence, obtain additional evidence regarding Ms. Wood's social security benefits (hereinafter "Soc. Sec. benefits"), and consult a bankruptcy attorney or negotiate with creditors to either minimize or eliminate the parties' liabilities. Without rendering a final decision, the court entered Findings of Fact and Conclusions of Law and the Final Decree of Dissolution (hereinafter "FOF" and "COL" or "final papers"), prepared by Ms. Wood, on September 18, 2013, over Mr. Wood's objections.

The gravamen of Mr. Wood's appeal is twofold: (1) Mr. Wood's dissolution matter was not decided by the judge as required under the Washington Constitution, Article 4, § 20 and RCW 2.08.240, and (2) the trial court erroneously applied RCW 26.09.080 and .090 and,

resulting in an unfair distribution of the marital estate and an unfair spousal maintenance amount.

II. ASSIGNMENTS OF ERROR

1. The court erred by finding Mr. Wood's monthly Labor and Industries (hereinafter "L&I") were community property. (CP, 192 ¶ 2.8)

2. The court erred in the Final Decree by awarding Ms. Wood judgment for $5,631 as back maintenance accrued 2/1/13 – 7/31/13 without accounting for Ms. Wood's obligation to pay 50 percent of the mortgage and 50 percent of the second loan on the family residence. (CP, 195 ¶ 1.3(c)(i), 196 ¶ 3.3 (1))

3. The court erred in the Final Decree by awarding Mr. Wood, as his separate, that property specifically listed as numbers through 7, in paragraph 3.2 "Property to be Awarded to Husband". (CP, 196 ¶ 3.2)

4. The court erred in the Final Decree by awarding Ms. Wood, as her separate, that property specifically listed as numbers 1, and 3 through 9, in paragraph 3.3 "Property to be awarded to Husband". (CP, 196 ¶ 3.3)

5. The court erred by assigning Mr. Wood liabilities listed in ¶ 3.4 in the Final Decree. (CP, 196-197 ¶ 3.4)

6. The court erred by assigning Ms. Wood liabilities listed in ¶ 3.5 of the Final Decree, specifically items 1, 2, and 4. (CP, 197)

7. The court erred by awarding Ms. Wood lifetime spousal maintenance that required Mr. Wood to divide his L&I and Soc. Sec. Benefits. (CP, 197 ¶ 3.7)

8. The court erred by awarding Ms. Wood's $4,094 spousal maintenance, subject to adjustments as necessary on the motion calendar, in the event Mr. Wood's L&I pensions increased or decreased. (CP, 197 ¶ 3.7)

9. The court erred Final Decree that spousal maintenance be paid in full by the 1st of each month. (CP, 197 ¶ 3.7)

10. It was error to make the finding under Section I. "Basis for Findings" that the findings of fact contained therein were based upon trial attended by Mr. and Mrs. Wood and their attorneys when the trial judge failed to make all of the necessary FOF and COL to render a fair and equitable distribution of the property. (CP, 191)

11. The court erred by failing to value all real and personal community property before awarding the property to the parties. (CP, 196-7)

12. The court erred by not valuing the parties' total outstanding

debt at the time of trial, before assigning the *liabilities* to each spouse. (CP, 196-7)

13. The court erred by finding neither spouse owned separate property. (CP, 192 ¶ 2.9)

14. The court erred when it failed to make a finding that Mr. Wood's Soc. Sec. and L&I benefits are his separate property. (CP 192, ¶ 2.9)

15. The court erred by failing to consider the amount owed on community liabilities before it divided the marital estate, assigned liabilities, and awarded lifetime spousal maintenance to Ms. Wood that required Mr. Wood's Soc. Sec. and L&I benefits be divided to equalize the parties' monthly income. (CP, 195 ¶ 1.3 (c)

16. It was error for the court to find that all statutory factors existed to award Ms. Wood lifetime spousal maintenance.

(CP, 193 ¶ 2.1)

17. The trial court erred when it excluded evidence regarding Ms. Wood's dissipation of community assets and failure to preserve the community estate in its award of spousal maintenance. (RP Vol. 11)

18. The trial court erred when it excluded evidence regarding Ms.

Wood's failure to maintain the family residence. (RP Vol I & II)

19. The trial court erred when it failed to consider each spouse's contributions to the community estate before it divided the property and liabilities and awarded spousal maintenance to Ms. Wood. (RP Vol. II, p.165-169)

20. The trial court erred by failing to make specific findings whether Mr. Wood's L&I disability benefits were compensation for loss of future income, deferred compensation, or a combination of both. (CP, 192 ¶ 2.9)

21. The court erred by failing to make specific findings of fact in support of its characterization of Mr. Wood's L&I benefits as community property. (CP, 192 ¶ 2.9)

22. The court erred by awarding Ms. Wood spousal maintenance in such an amount that required Mr. Wood to pay Ms. Wood a substantial portion of his monthly Soc. Sec. and L&I benefits. (CP, 191-198)

23. Court erred by denying Mr. Wood's motion for continuance on the hearing for presentation of final orders on September 18, 2013 to allow Mr. Wood time to obtain legal representation to review the findings and decree proposed by Ms. Wood's counsel to determine whether the final orders were consistent with the trial court's

decision. (CP, 195-198)

24. The court erred when it denied Mr. Wood an order in the Final Decree to retrieve his papers and personal property that remained at the marital residence. (CP, 191-197)

25. The trial court erred when it entered FOF & COL and the Final Decree of Dissolution when the court had not rendered its final decision on all matters. (RP Vol. III)

26. The trial court erred by instructing the parties to reach an agreement on the disposition of the family residence. (RP Vol. III)

27. The trial court erred by advising the parties to explore bankruptcy and to speak with creditors, when it should have assigned the debt to the parties in a fair and equitable manner under RCW 26.09.080.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the court error as a matter of law by dividing Mr. Wood's monthly Soc. Sec. and L&I disability benefits and awarding the amounts to Ms. Wood as spousal maintenance for Ms. Wood's lifetime?

2. Did the trial court abuse its discretion when it denied Mr. Wood a motion for continuance of the hearing on presentation of final orders?

3. Did the trial court violate Article 4, § 20 of the Washington Constitution and RCW 2.08.240 by failing to provide Mr. Wood a final decision after his trial on the dissolution of his marriage to Ms. Wood?

4. Did the trial court abuse its discretion by excluding testimony at trial regarding the parties' contributions and misconduct during their 48 year marriage?

5. Did the trial court abuse its discretion by not considering the statutory factors under RCW 26.09.080 to arrive at a just and equitable division of the parties' assets and liabilities?

6. Did the trial court abuse its discretion by not considering the statutory factors under RCW 26.09.090 when it awarded Ms. Wood $4,094 per month spousal maintenance?

7. Did the trial court abuse its discretion by denying Mr. Wood a court order at the presentation hearing to allow Mr. Wood to retrieve his personal property and papers from the family residence?

8. Is Mr. Wood entitled to attorney's fees on appeal?

IV. STATEMENT OF THE CASE

A. Factual Background of Marriage:

Mr. and Mrs. Wood were married July 5, 1960 in Yakima, Washington. (CP 003) Mr. Wood, the financial provider for the

family, worked full time operating heavy equipment in construction. From 1991 until Mr. Wood retired in August 2002, he worked for the Teamsters Union at various locations in Alaska. (RP Vol. II P. 134) During marriage, Mr. Wood earned three separate pensions. By choice, the parties agreed to return to work full time (with the same employer) to build a larger nest egg to supplement their retirement pensions. (CP)

Ms. Wood worked as secretary and switchboard operator. Her last employment was March 1997 earning $300 per month. (RP Vol. I P. 16)

Mr. Wood arranged his earnings from work to be automatically deposited into the parties' checking account. (RP Vol. II P. 121-123) Ms. Wood managed the family finances. (*ID.* at P. 125: 7-11) She paid household expenses from the account. Mr. Wood withheld small amounts from each paycheck meals and transportation.

By July 2006, the marriage was strained. (*ID.* at P. 125:25) Mr. Wood worked out of town and was rarely home. Mr. Wood continued to work and deposit his paychecks and retirement pensions into the parties" checking account. (CP 123.)

In December 2008, Mr. Wood noticed Ms. Wood withdrew the entire amount of his paycheck within hours of deposit, leaving Mr. Wood

$10 for food and living expenses. (RP Vol II, p. 123:21) Mr. Wood suspected diverted community funds into another account. (*ID*) In response, Mr. Wood opened a new account to deposit his income. At that time, Mr. Wood was working overtime in Seattle and depositing $10,000 to $12,000 per month into the joint account. In response, Ms. Wood filed the petition for legal separation on April 7, 2009. (RP Vol 11. P. 123-125).

B. Ms. Wood filed Petition for Legal Separation:

Ms. Wood filed Petition for Legal Separation on April 7, 2009 requesting the court divide the assets and liabilities and award spousal maintenance. (CP 003) [1] She filed a financial declaration listing her income as $577 and her monthly expenses $3,740 excluding debt.

(CP, 7-12)

On May 18, 2009, the court issued temporary orders. Mr. Wood was ordered to pay Ms. Wood $4,000 per month spousal maintenance, which included credit for paying the mortgage and second loan on the family residence. (CP, 18-20)

Ms. Wood accrued over $5,300 in late fees on the mortgage

1 On the first day of trial, the court converted the case to a Petition for Dissolution of Marriage. (RP __)

payments and $900 in overdraft fees. (RP, Vol. II, p. 121, 126) Mr. Wood paid off both.

Pending litigation, Mr. Wood continued to work full time, struggling to pay spousal maintenance and both loans the residence (CP 29). On August 29, 2011 the court found Mr. Wood in contempt for past delinquent maintenance payments and awarded Ms. Wood $500 attorney fees. (CP 44). Mr. Wood complied with the court's purge conditions.

At Mr. Wood's request on August 29, 2011 the court amended the order allowing Mr. Wood to pay maintenance a day after the Teamsters pension was automatically deposited. (Id.)

C. After separation, Mr. Wood was severely injured in a work- related injury.

September 10, 2010 Mr. Wood was permanently injured on the job operating a 50-ton bulldozer. Mr. Wood was seated 12 feet high on the bulldozer when it tipped over. He was nearly killed by 12,000 volts of electric lines. He laid in a gravel pit fin pain for hours waiting for an electrician to "shut the juice off" before he could be rescued. (RP Vol II, p. 116-117) He was hospitalized at Harborview for 10 days with a broken back, broken ribs and a dislocated collar bone. He spent another 2 months in rehab. (RP. Vol II, p. 117) Mr. Wood

was permanently injured and unable to return to work. L&I paid Mr. Wood a monthly benefit of CITE Mr. Wood was never ordered to pay Ms. Wood a portion of his L&I benefits pre-trial. (CP, 1-360)

D. Economic Circumstances and Health of each Party at the time of Trial.

On April 10, 2013, Mr. Wood was 75 years old. (RP Vol. 11 P. 115) His total net income of $8,365 came from five different sources: (1) social security; (2) three separate monthly pension benefits; and (3) L&I disability benefits.[2] He lived with his roommate Carol Williams to whom he paid $600 twice per month for rent. (RP Vol II p. 122, 139). Mr. Wood had a monthly car of $200. His car insurance was $700 every 6 months. (RP. Vol II p. 139)

In addition to the work related injury, Mr. Wood struggled controlling diabetes and high blood pressure. He was recovering from eye cancer and awaiting bilateral surgery to replace both shoulders. He needed surgery to implant a glass tear duct into his left eye. (RP Vol II, p. 118-119). Mr. Wood suffered from "pain all over" and was unable to lift his arms or walk "very far" due to lower back pain caused by multiple "broken vertebras". (RP Vol 1, p. 101). He attended daily rehabilitation at the YMCA to increase range of

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motion to both arms. (RP Vol. 1 P. 13)

At trial, Ms. Wood was 72 and in good health. She testified she had a "nervous breakdown" during marriage. She broke her left arm; it was repaired with a pin. (CP 334) (*ID* at 48)

Ms. Wood received $3,267 spousal maintenance each month consisting of $1,750 directly to Ms. Wood in three monthly installments and $1,517 per month for the mortgage and second loan owed on the home. (RP Vol. 1 P. 122).

Ms. Wood received monthly Soc. Sec. benefits in the net amount of $587. At trial, the court questioned whether Ms. Wood was entitled to more Soc. Sec. benefits based on Mr. Wood's earnings. (RP Vol 11, p. 110- 111.) and ordered her to verify the amount. (CITE) On May 31, 2013, , the court ordered Ms. Wood a second time to provide something in writing from SSA verify whether she was entitled to a higher monthly benefits. (RP May 31, 2013 p. 18) The court stated on May 31, 2013: "...we can't finish up all the paperwork for this divorce until you get that taken care of with Social security and find out how much you're going to be getting paid." (RP May 31, 2014 p. 13).[3]

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3 The court considered this a material fact in rendering his final decision and ordered Ms. Wood to contact Soc. Sec. Administration (hereinafter "SSA") to determine whether she was receiving the maximum amount of benefits. (RP Vol II, p.) Ms. Wood did not comply with the court's oral

E. Court entered FOC and COL without rendering a final decision.

Ms. Wood noted two hearings on presentation of final papers. On August 8, 2013, objected to Ms. Wood's first proposed FOF and COL arguing the court had not made its final decision. He argued Ms. Wood assumed the role of judge, filling in portions of the final papers the court had not decided. (CP 172)

August 28, 2013, Ms. Wood re-noted a hearing on presentation of final orders. (CP 180), scheduling the hearing for September 18, 2013. Mr. Wood's attorney filed a notice of intent to withdraw on September 3, 2013. (CP 189-90)

On September 18, 2013, Mr. Wood, appeared at the hearing, *pro se* for the first time. Mr. Wood made an oral motion for a continuance as he could not find an attorney in time to represent him at the hearing. Mr. Wood also filed a written motion for continuance the day before, which the trial court received, but was unable to review before the hearing. (CP 199-201, RP Vol II)

Over Mr. Wood's objections, the court entered the FOF and COL denying Mr. Wood's motion for continuance. (CP 191-98) The court

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ruling.

also denied Mr. Wood's request for a court order to allow him to retrieve certain property that remained at the parties' residence.

IV. STANDARD OF REVIEW

A. Abuse of Discretion:

The trial court is obliged to dispose of the property and liability of the parties in a manner that "shall appear just and equitable after considering all relevant factors." RCW 26.09.080. *In re Marriage of Brady*, 50 Wn.App. 728, 731, (1988). The trial court has broad discretion when distributing property in a dissolution proceeding, and the disposition will not be disturbed on appeal absent a showing of manifest abuse of discretion. *In re Marriage of Kraft*, 119 Wn.2d 438, 450 (1992).

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47(1997). A trial court's decision that is based on a

misapplication of the law rests on untenable grounds, and therefore is an abuse of discretion. *Ryan v. State*, 112 Wn. App. 896, 899-900 (2002).

B. Questions of Law are Reviewed De Novo:

Whether property is separate or community is a question of law reviewed de novo, but factual findings upon which the characterization is based will only be reversed if they are not supported by substantial evidence. *In re Marriage of Mueller*, 140 Wn.App. 498, 503-04 (2007).

C. Exclusion of evidence at trial and Motion for Continuance:

An abuse of discretion standard applies to evidentiary matters and matters that allow parties additional time to prepare for a hearing and/or trial. *State v. C.J.*, 148 Wn.2d 672, 686 (2003); and *Harris v. Drake*, 116 Wn.App 261, 287 (2004).

D. Obvious Mistakes:

The appellate court may correct mistakes on review. *In re Marriage* of Nordby, 41 Wn.App. 531 (1985).

V. LEGAL ARGUMENT

ISSUE #1: Did the Trial Court Error as a Matter of Law by Dividing Mr. Wood's Monthly Soc. Sec. and L&I Benefits and Awarding those Amounts to Ms. Wood as Spousal Maintenance

for her Lifetime?

A. The trial court divided Mr. Wood's future Soc. Sec. benefits in a manner forbidden by law. *In re Marriage of Zahm*, 138 Wn.2d 213, 220-222 (1999); *In re Marriage of Rockwell*, 141 Wn.App. 235, 243-245 (2007).

Soc. Sec. benefits are the separate indivisible property of the spouse who earned them. 42 U.S.C. §659(1)(3)(B)(ii); *Hisquierdo v. Hisquierdo,* 439 U.S. 572, 590 (1979). Soc. Sec. benefits themselves are not subject to division in a marital property distribution case. *Rockwell,* at 245. A court cannot "calculate a specific formal valuation of one spouse's Soc. Sec. benefits and award the other spouse a precise property offset based on that valuation"'. *In re Marriage of Zahm*, 138 Wn.2d 213, 218 (1999). *In Re Marriage of Rockwell,* supra, is instructive as it illustrates a correct application of the law announced by the Washington State Supreme Court in *In Re Marriage of Zahm*, supra, relative to Soc. Sec. benefits in dissolution of marriage cases. In *Rockwell,* the trial court compensated wife by awarding her a higher percentage of husband's pension as wife would not receive Soc. Sec. benefits due to federal employment. (*Id.* at 240-41) Husband argued this violated *Zahm.* The *Rockwell* court disagreed and approved the

trial court's consideration of future Soc. Sec. benefits as a factor in evaluating the parties' economic circumstances under RCW 26.09.080. The appellate court held it would have been legal error if the trial had taken a specific amount of social security and "added [it] to either parties' column for purposes of dividing the present assets". *Id.* at 245.

In Mr. Wood's case, the court erred when it ruled: "But what I'm going to do is I'm going to equalize the income." It then ordered that all sources of income "would be divided so that net they come out equal in terms of what their monthly income is. (RP Vo. 2, p. 169). Contrary to law, the court used a numeric formula (50% of the total combined net income) to directly divide Mr. Wood's future Soc. Sec. benefits. *In re Marriage of Zahm,* at 218-220.

As a result of the court's oral decision and Ms. Wood's calculations, Mr. Wood was ordered to pay lifetime spousal maintenance in the amount of $4,094 per month. (RP Vol II, p. 169) (CP 197) This amount is exactly 50% of the parties' combined income according to Ms. Wood. (CP 121, 160). Since Ms. Wood only receives $587 in total income, a portion of Mr. Wood's $1,833 Soc. Sec. benefits must be paid to Ms. Wood each month to equalize the parties' net income. (Ex 8, 9)

The court abused its discretion when it failed to apply the mandatory factors under RCW 26.09.080 and 090 before it equalized the parties' incomes. With the exception of a slight reference to the "relative financial condition of the parties and so on", there is no other mention or analysis of the statutory factors. The court seemingly split the income solely on the basis the parties were married 48 years. (CP 165-179) Nowhere in its oral decision does the court take into account before it split the income that it awarded Ms. Wood nearly 100% of the parties' household goods, 50% of Mr. Wood's three other retirement pensions earned during the marriage, and 50% of Mr. Wood's L&I benefits. (Id.) There was no discussion regarding Mr. Wood's poor health.

B. The court erred as a matter of law when it divided Mr. Wood's separate L&I benefits 50-50 absent consideration of the factors under RCW 26.09.080 and RCW 26.09.090. *In re Marriage of Huteson,* 27 Wn.App. 539, 541-544 Cite (1980).

1. Mr. Wood's L&I disability benefits are his separate property – they replace lost future earnings as a result of Mr. Wood sustaining injury on the job after the parties' separation.

RCW 51.32.055 states L&I benefits are intended to "restore the

injured worker as nearly as possible to the condition of self-support as an able bodied worker". Under RCW 26.16.140, the respective earnings and accumulations of spouses and domestic partners who live separate and apart shall be the separate property of each.

The court ruled the parties separated April 2009. (CP 165) After separation September 16, 2010, Mr. Wood was permanently injured on the job while operating a 50-ton cat wagon. [4] (RP Vol 2, p. 116) As a direct result of those injuries, Mr. Wood received L&I benefits commenced. Mr. Wood argued the L&I benefits were his separate property. Ms. Wood agreed the disability payments were for time loss, and likely separate property. (RP Vol I p. 4) In its oral decision April 10, 2013, the court ruled the L&I benefits were Mr. Wood's separate property. (RP Vol. II, p.169).

There was no evidence Mr. Wood's L&I benefits replaced a retirement pension earned during marriage. In fact, Mr. Wood received three monthly community pensions earned during marriage, in addition to and separate from his L&I benefits. CITE

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4 Mr. Wood was nearly killed by 12,000 volts of electric lines. His injuries included a broken back, broken ribs, and dislocated collar bone. He was hospitalized ten days at Harborview Hospital. Afterwards, he spent two months at an in-patient rehabilitation center to gain back his strength so he could re-learn how to walk and provide basic care for himself. (RP. Vol II, p. 117)

There was no evidence the community contributed and therefore affected the amount Mr. Wood received in L&I benefits. At no time after Mr. Wood's injury did Ms. Wood provide emotional support, comfort, or companionship to Mr. Wood during his 10-day hospitalization or long recovery. Moreover, there was no evidence the community paid medical expenses for Mr. Wood's injury or incurred debt as a result of his injuries. (RP.) These are all factors that support the court's oral decision finding Mr. Wood's L&I benefits were separate property. [5]

For these reasons, the court's failure to characterize Mr. Wood's L&I benefits as his separate property was legal error.

2. The trial court abused its discretion awarding Ms. Wood a portion of Mr. Wood's L&I benefits without addressing the mandatory factors under RCW 26.09.080 and RCW 26.09.090. *In re Marriage of Huteson,* 27Wn.App 539, 542 Cite (1980).

Mr. Wood relies on *In re Marriage of Huteson,* 27 Wn.App. 539 (1980) to support his position. In *Huteson,* the appellate court affirmed a trial court's characterization of husband's fire fighter disability pension as his separate property and further held the trial

5 For unknown reason, the court's oral decision was included in the formal findings of fact. (CP192, ¶ 2.9)

court did not abuse its discretion for not awarding wife any interest in husband's disability pension. *(Id. at 540)* In making its decision, the court of appeals relied heavily upon the fact the trial court addressed the factors under RCW 26.09.080. It wrote: "...the ultimate question, regardless of how the property is characterized, is whether the final division of the property is fair and equitable under the circumstances. *Id. at 544.* In its opinion, the *Huteson* court noted the lower court carefully determined the value of community assets, the ages and future needs of both spouses, and that the parties had minor children to support. *Huteson,* supra, 541-544.

Unlike *Huteson*, the trial court here applied a rigid mathematical 50-50 division disregarding the fact that (a) Ms. Wood was awarded the majority of the community assets; (b) Mr. Wood was in poor health and facing two major reconstructive surgeries to repair both shoulders; and (c) that Mr. Wood worked very hard during their marriage to secure their future retirement by earning three community retirement pensions, which the court awarded Ms. Wood 50 percent. RCW 26.09.080; RCW 26.09.090.

The trial court did not consider Ms. Wood's total monthly income (excluding the L&I benefits) relative to her need for additional income, before it awarded Ms. Wood a substantial portion of Mr.

Wood's disability benefits. It also did not consider Ms. Wood would receive survivorship benefits if Mr. Wood predeceased her. *Id.*

ISSUE #2: Did the Trial Court Abuse its Discretion on September 18, 2013 When it Denied Mr. Wood's Motion for Continuance of the Presentation Hearing on Final Orders?

CR 52 requires a party receive 10 days' notice to review the proposed final orders for accuracy and completeness. Although Ms. Wood complied with CR 52, it was clear Mr. Wood had no time review the FOF and COL due to no fault of his own. (RP September 18, 2013, p. 1-9)

The trial court's decision denying Mr. Wood's motion for a continuance was an abuse of discretion as it was not based upon tenable grounds. The court denied Mr. Wood's request for a continuance on the basis Mr. Wood could either file a Motion for Reconsideration (CR 59) or file an appeal. (Cite)

The risk for error in the final papers was high. It was five months since the court's oral decision April 10, 2013. It was now mid-September 2013. The court's memory had faded.[6]

This was a 48 year long marriage. The parties met at a young age. (

6 Even back on May 17, 2013, the court admitted not remembering what its prior ruling was regarding the sale proceeds from the house. There, the court asked counsel how much Mr. Wood was ordered to pay from sale's proceeds of the family home. (RP May 17, 2013, p. 10-11).

Mr. Wood's marriage represented a lifetime accumulation of property and earnings. Unlike 15 or 20 year marriages where one still has time to start over, that was not the case here -- Mr. Wood was 77, retired, and in poor health.

At no time did the court ask Ms. Wood whether she would be prejudiced if the court granted Mr. Wood's motion. (Cite)

To make matters worse, Mr. Wood's attorney withdrew unexpectedly, just days before the presentation hearing. (CP) This was first time Mr. Wood represented himself. Despite his attorney's withdrawal, Mr. Wood acted quickly, to no avail, to obtain new counsel in time for the hearing. After exhausting his efforts to find an attorney, when Mr. Wood realized he would have represent himself, Mr. Wood alerted the court of his circumstances. He prepared a written motion for continuance explaining in detail his situation. With one day before the hearing, Mr. Wood somehow managed to ensure the judge received a copy of his motion before the hearing. Unfortunately, of no fault of Mr. Wood, the court did not have sufficient time to read it. (RP September 18, 2013, p.1)

Mr. Wood was prejudiced by the court's refusal to grant a continuance. First, the final orders required Mr. Wood to pay $4,094 in full by the first of each month. Mr. Wood told the court

on September 18, 2013 that he was unable not comply, since he was paid three separate times in a given month. His attorney also told the court on May 17, 2013 the total amount was divided into three payments each month. During trial Mr. Wood testified he paid in three installments. (RP Vol II, p. 122:20-24) Mr. Wood was later hauled into court for not making timely payments on the spousal maintenance and ordered to pay Ms. Wood $250 attorney fees. (Cite)

Second, Ms. Wood's calculations contained an error. Ms. Wood's Soc. Sec. benefits were not accounted for in the total amount of combined monthly net income. This total was divided equally to arrive at the monthly amount Mr. Wood was ordered to pay in the decree. This resulted in Mr. Wood paying a higher spousal maintenance amount. [7]

Third, Mr. Wood was forced to pay the entire monthly amount owed against the house for April, May, and June, 2013 when in fact, in its oral decision April 10, 2010, the court ruled the parties would split these payments. (RP Vo. 2, p. 169).

This is revealed in counsel's April 15, 2013 letter. Therein he

7 To date, Mr. Wood continues to pay spousal maintenance each month resulting in Ms. Wood receiving more monthly income than Mr. Wood.

calculated an amount he thought Mr. Wood owed each month pending entry of the final orders. In his calculations, Ms. Wood's attorney assessed Mr. Wood the full amount on both mortgages. In the letter he wrote: "By my calculation, he would owe an additional $973 per month for a total of $2,722, *plus the first and second mortgage*, pending resolution of that issue." (CP 121)) These calculations, repeated again in a detailed declaration filed by Ms. Wood, (CP 160, ¶ 2-4), became the court's final decision, (CP 195, ¶ 1.3C).

As a result Mr. Wood paid a $2,275.50 that he was not required to pay, if the court's oral decision had been properly included in the final decree.[8] For these reasons, the $5,630 judgment assessed against Mr. Wood is wrong. (CP)
Mr. Wood was 77 and in poor health. With his poor eyesight, he relied on others for his transportation to court from his home in Puyallup, Washington. This, combined with Mr. Wood's inability to present his position to the court in any meaningful way, left Mr. Wood remarkably disadvantaged, completely left to the mercy of Ms. Wood's counsel.

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8 This amount represents. Ms. Wood's 50% share of the debt owed for April, May, and June, 2013.

The court's refusal to grant Mr. Wood's continuance *did not* serve the best interests of justice and it resulted in Ms. Wood dictating the final result when the court had not made its final decision. CR 52 was enacted to prevent this kind of unfairness. **ISSUE #3: Did The Trial Court Violate the Washington Constitution, Article IV, § 20 and RCW 2.08.240 by its Failure to Render a Final Decision after Mr. Wood's Trial Within 90 days?**

The FOF and COL violate the court's constitutional and statutory duty to make a final determination of the parties' rights and interest in the marital estate. The court erred when it deferred its duty to value assets and liabilities until a later date. It resulted in Ms. Wood, not the court, deciding the material facts and issues in the case favorable to her. Const. art. IV, § 20; RCW 2.08.240; *In re Marriage of Soriano*, 31 Wn.App. 432, 438 (1982); *In re Marriage of Wold, 7* Wn.App. 872 (1972); and *In re Marriage of Shafer*, 43 Wn.2d 629 (1953).

Const. art. IV, § 20, reads as follows:

> **Section 20 Decisions, When, To be Made**
> Every cause submitted to a judge or a superior court for his decision shall be decided by him within ninety days from the submission thereof: *Provided,* That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.

The text of RCW 2.08.240 and Const. art. IV, § 20 are nearly similar. (Appendix CITE)

The court is required to make a final ruling in a dissolution of marriage. This includes determining the value of the marital estate, including liabilities. RCW 26.09.080. If the trial court has not determined values of the parties' assets or determined debt the parties' owe, the court cannot assure an equitable division of the assets. *Soriano, supra,* at 438.

When evidence is conflicting, the trial court, sitting without a jury, determines the facts. (See *Choate v. Swanson,* 54 Wash.2d 710, 715-716 (1959), our Supreme court held the trial court decides sharply contested facts.)

1. No value for family residence, household goods, or other personal property:

Without assigning a value, in its oral decision the court awarded the family residence to Mr. Wood, assuming he would sell it.[9] The court concluded, if the house was awarded to Mr. Wood, it had no authority to order the parties to either split the sales

9 In its oral decision, the court ruled: "...I have this house that I don't know the value of and I don't know how much debt there is on it." (RP, Vol II, p. 165: 20-21)

proceeds or equally bear responsibility for any loss from the sale. (RP Vol II, p. 168:4-5) The trial court asked both counsel for suggestions about what to do with either a net loss or net profit if Mr. Wood decided to sell it. (Vol II. p. 167-68.) Neither counsel responded.[10] *Id.*

Without assigning a value, the court then directed the parties to resolve the issue themselves, stating: "...I think you need to talk to each other to see if there's an agreement." (RP Vol II, p. 169: 18) Without a decision on the house, the court stated: "So I can't completely decide the case yet because you need to talk to each other to see about if there's any details of the agreement that you can work out that I can't order you to do. And then depending upon how all that sorts out, I will later make a decision on the attorney fees. (RP Vol II p. 169: 23-25 through p. 170: 1)

The court did not place a value on the parties' household furnishings, jewelry, vehicles, tools, farm equipment, farm animals, and other personal property acquired during their 48-year marriage. The court merely commented: "I don't have a lot to work with here...I don't have values for things" to "balance things out". (RP

10 It appears the court was not aware there was sufficient evidence to value the home. CITE

Vol 11, p. 165: 11-13). Disregarding Ms. Wood's concession she sold various community assets, the court considered it a wash. (RP Vol 11 p. 165)

2. No characterization or estimate for liabilities.

On April 10, 2013, the court did not determine the parties separate and community liability or estimate the parties' liabilities.[11] [12] It deferred its decision to allow the parties to explore bankruptcy and whether they could reach a compromise with creditors. In particular, the court was concerned about the $20,000 unsecured debt owed to HFC.[13] The court suggested negotiating with creditors and filing bankruptcy. It told the parties they may be able to "walk away from pretty much all debt". (RP Vol II, p. 168:6-25) Repeating its ruling to defer its final decision, the court advised the parties: "I mean, again, if before we get to the point where we're finalizing this thing, you may be able to make a deal to get that HFC thing to go away. At least you need to look into it." (RP Vol II p. 170: 18-20)

3. Court ordered both parties to provide additional evidence.

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11 Sufficient evidence was admitted at trial to estimate the parties' debt.
12 Regarding the miscellaneous debts Ms. Woods admitted into evidence, the court remarked: "Well, what I – well, it wasn't clear to me is when these debts were incurred.
13 Ms. Wood provided evidence the HFC debt was approximately $20,000. (Ex: CITE)

To assist the court in reaching its final decision, it ordered Mr. Wood to file his 2012 tax information, including current values of each pension. (RP Vol II, p. 148: 5-7) Similarly, the court ordered Ms. Wood to contact the Soc. Sec. Administration (hereinafter "SSA") to verify whether she was entitled to an increase in monthly Soc. Sec. benefits or whether her benefit would increase after divorce. (RP Vol I, p.5: 22-25 through p. 6: 1-25); (RP Vol II, p. 110: 17-25 through p. 111: 1-5)

4. Court deferred its decision a second time on May 17, 2013.

At the hearing on May 31, 2013, Ms. Wood claimed that Mr. Wood was in contempt for failing to abide by the court's oral decision on April 10, 2013. (RP May 17, 2013)[14] Mr. Wood argued he was paying maintenance based upon the pre-trial order from August 29, 20111. (RP May 17, 2103, p. 5: 17-18) Mr. Wood's counsel alerted the court or attempted to remind the court that on April 10, 2013 it had it not rendered a final decision. His counsel stated, "The understanding we had when Your Honor ruled orally was that the house status was going to drive the rest of the operation." (RP Vol, p. 9: 1-2) Counsel also reminded the court Ms. Wood had not

14 The court did not enforce its April 10, 2013, but enforced the pre-trial order and found Mr. Wood in contempt for failing to pay spousal maintenance in a timely manner. (CP 154) Mr. Wood maintains the order Ms. Wood's attorney prepared on May 17, 2013 is not consistent with the court's oral ruling that day.

verified her Soc. Sec. benefits as ordered by the court and that this missing information was necessary to determine the monthly amount of spousal maintenance. [15](Id. at p. 11: 10-17.) The court ordered Ms. Wood a second time to verify whether she was entitled to a higher monthly benefits. (RP May 31, 2013 p. 18)

On this date, the court again deferred its final decision. It stated: "...we can't finish up all the paperwork for this divorce until you get that taken care of with Soc. Sec. and find out how much you're going to be getting paid." (RP May 31, 2013 p. 13). Ms. Wood prepared the FOC and COL entered September 18, 2013 without the court's final decision over Mr. Wood's objection and the court's denial of a request for a continuance.

Ms. Wood noted two hearings for entry of proposed final documents she prepared: August 9 and September 18, 2013. The proposed FOF and COL were inconsistent with the April 10, 2013 decision and filed before final decision. (CP)

On August 8, 2013, in a detailed declaration, Mr. Wood objected to Ms. Wood's first set of proposed FOC and COL arguing the court had not made its final decision and that Ms. Wood had become the

15 Ms. Wood, through counsel, acknowledged Ms. Wood may be entitled to an increase after her divorce. (Id. at p. 12: 10-12.

judge in the case. (CP 117) The first hearing was stricken. Then, Mr. Wood's counsel filed a withdrawal from the case September 3, 2013.

On September 18, 2013, Ms. Wood's second proposed FOF and COL were entered September 18, 2013, before the court ever ruled on the issues it deferred on April 10, 2013.

The court also left spousal maintenance subject to modification based on L&I benefits, leaving the parties in a perpetual state of post decree motions. (CP 197, ¶3.7)

Mr. Wood relies on *In re Marriage of Wold, 7 Wn.App. 872 (1972); In re Marriage of Soriano*, 31 Wn.App. 432, 438 (1982); *In re Marriage of Wold,* 7 Wn.App. 872 (1972); and *In re Marriage of Shafer*, 43 Wn.2d 629 (1953) in support of his position the court erred as a matter of law.

Based on the court's statements at trial and on May 17, 2013, *to wit:* the instructions to work out an agreement on the house, the court's suggestions to explore alternatives regarding debt and need for additional information about Ms. Wood's Soc. Sec., it was reasonable for Mr. Wood to proceed in the manner which he did. It was reasonable for him to conclude his divorce not final. With so many moving parts (changes in circumstances between the

last day of trial and the final order) the court was free to change its opinion on any part of is oral ruling. Cite

ISSUE 4: Did the Trial Court Abuse its Discretion by Failing to Apply the Statutory Factors under RCW 26.09.080 and RCW 26.09.090 when Dividing the Marital Estate and Awarding Spousal Maintenance? [16]

In this case, the court's application of RCW 26.09.080 and .090 was an abuse of discretion for two reasons: (1) the court did not determine the net value of the marital estate before it distributed the property and divided the liabilities; and (2) the court awarded Ms. Wood a monthly amount of spousal maintenance for her lifetime by robotically dividing the parties' combined monthly net income without considering the relevant factors under RCW 26.09.090. (App. P. 169: 1-13; 172: 6)

1. Statutory Authority: RCW 26.09.080 requires the trial court divide the marital estate in a manner that appears "just and equitable" after considering all relevant factors, including but not limited to nature and extent of the community and separate property, the duration of the marriage, and the economic circumstances of the

16 To avoid repetition, Appellant will address the court's division of the marital estate with the court's award of lifetime spousal maintenance, as the arguments for each statute overlap.

parties. RCW 26.09.080. A just and equitable division "does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of parties." *In re Marriage of Crosetto,* 82 Wn. App. 545, 556 (1996). The court is not required to make an equal distribution. *In re Marriage of DewBerry,* 15 Wn. App. 351, 366 (2003).

Spousal maintenance is determined under RCW 26.09.090. (App. 2) The factors listed in the statute are not exclusive. *Id.*

2. The Court Did Not Value the Community Assets or Liabilities To Arrive at a Net Value of the Marital Estate before Making Its Decision.

The valuation of property in a divorce case is a material fact. *In re Marriage of Green,* 97 Wash. App. 708, 712 (1999). The trial court must assign values to property awarded to the parties. (*Id.* at *712)* If the trial court has not determined the value of the estate, it cannot assure an equitable division of the assets. *In re Marriage of Soriano,* 31 Wn.App. 432, 437-438 (1982).

a. Assets not given values:

The court announced in its oral ruling that the estate was about to be distributed without values. "I don't have a lot to work with here.

There's a lot of information – I mean, I can't – you know, technically we do spreadsheets and we balance things out and so on and when I don't have values for things, there's no way I can do that." (App. p. 165: 11-13.)

b. Family home: The court did not set a value for the family home, despite having sufficient evidence to do so. The court stated: "What I had to work with here is I have this house that I don't know the value of and I don't know how much debt there is on it. So, what do I do? (App. p. 165:20-21).

Ms. Wood testified that she had no idea what the home was worth (RP Vol I, p. 20), but she knew it was 900 sq. ft. with four bedrooms. (Id. 19). But the court heard Mr. Wood testify there was a $230,000.00 offer on the house in 2009. (RP Vol II, p. 140: 8-11) Mr. Wood acknowledged it was probably not worth that amount in 2013. He attributed this to a decrease in acreage values. (*Id.* at p. 140). Mr. Wood thought the property needed repairs and improvements, specifically: (a) watering and weeding; (b) painting the outside barn; and (c) fencing around the property. These are all relatively inexpensive. Mr. Wood also testified there was a new roof, but the kitchen needed updating. This was enough evidence to assign a fair market value of the home.

There were two liens against the house. The first mortgage was $124,224.87 in December 2011. The balance on the second loan was $19,641.58 in December 2011. (Exh 7, 11) With Mr. Wood's testimony along with the evidence submitted by Ms. Wood showing the two loans totaled $143,866.45, the court had sufficient evidence to arrive at a net value for the family home. It was error for the court to rule: "I don't know how much debt there is on it." (RP Vol II, p. 165).

Without arriving at a value on the house, the court awarded it to Mr. Wood assuming he would sell it. (RP Vol, p. 166) The court ordered that Ms. Wood bear half the burden of the two mortgages. (RP Vol, p. 167, 169). [17]

c. House furnishings, vehicles, farm equipment, and personal property:

During their 48 years of marriage, the parties acquired a substantial amount of household goods. (RP Vol II, 167). The court did not value any of it. The court candidly remarked: "I have no – again, I have nothing to go on in terms of what it's worth." (Id.)

In a quick decision, the court summarily awarded Ms. Wood the

17 Ms. Wood's payment for half of two mortgages on home was not accounted in the final papers.

entire contents of the family home without regard to the statutory factors under RCW 26.09.080. The court swiftly stated: "She basically gets the stuff in the house. He didn't want it." (*Id.* p. 167) This was an abuse of discretion. The parties accumulated property over a span of 48 years. It was all awarded to Ms. Wood without any consideration for Mr. Wood's current or future needs. (App. p. 167:14-16) Mr. Wood had no idea how the court would divide the property. It was unfair to award Ms. Wood everything in the house simply because Mr. Wood stated at one point in the trial, that he did not want it.[18]

The court failed to consider the award in context with the overall distribution and spousal maintenance awarded. RCW 26.09.080 and .090.

d. Soc. Sec. benefits:

Mr. Wood and Ms. Wood received $1,833.00 and $587 per month, respectively. (Exh. 8, 9) At the beginning of trial, the court questioned if Ms. Wood was entitled to a higher monthly Soc. Sec. benefit since she and Mr. Wood were married more than 10

18 Mr. Wood acknowledges the court did award him the stock truck, the tractor and implements, tools, personal papers, and his clothes. (RP Voll, p. 167) However, Ms. Wood denied him access; he received nothing. Mr. Wood never retrieved his Navy papers.

years. (RP Vol I, p. 5-6) Neither the court nor counsel knew what additional benefits, if any, were available, and under what circumstances. [19] (Id.) Ms. Wood testified that she would contact the SSA Administration. (RP Vol p. 17-18.)

Not knowing whether Ms. Wood was entitled to a higher monthly benefit, the court divided Mr. Wood's Soc. Sec. benefits, awarding Ms. Wood an amount to "equalize the income". (RP Vol, p. 169, CP, 197)[20]

e. Pensions.

The court was also unsure as to the exact amounts Mr. Wood received from his three pensions. April 10, 2013, the court ordered Mr. Wood to supplement the record with additional evidence regarding the amounts received for each pension. (App.3 p. 176:11-22) Not knowing the exact amounts, the court divided the pensions 50-50, ordering Mr. Wood to pay the amount as spousal maintenance. (App.3 p. 169: 1, CP 197 ¶3.7)

f. Liabilities. The court erred by not estimating (at the least) the parties' community and separate debt before rendering its oral

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19 A divorced person may be entitled to benefits by reason of the employment of a former spouse if the marriage existed for 10 years immediately prior to the divorce. 42 U.S.C.§416(d)(1).

20 After the oral ruling April 10, 2013, the court later questioned whether Ms. Wood was also entitled to a lump sum of cash from SSA. (May 17, 2012 Report of Proceedings,

decision, when there was sufficient evidence in the record to do so. As noted previously, the total debt against the house was $143,866.45. (Exh 7,11) There was $19,220.39 owed to HFC and $362.52 owed to their bookkeeper. (Exh.15,4) Aside from that, there were two other debts being paid by the parties' adult daughter: $3,276.00 owed to Wells Fargo and $1,581.94 owed to Dell Computer. (Exh 4)

The parties had separate debt. Ms. Wood incurred approximately $ 2,300 in medical and dental bills and $1,127.99 on an HSBC credit card. (Exh. 4). In the FOF and COL, the court did not assign these debts to Ms. Wood as her separate debt. It was error for the court not to do so. Ms. Wood testified she had a balance on her Capital One credit card. She did not know, however, that Mr. Wood paid it off. (RP. Vol II, 121)

Mr. Wood incurred only one debt after separation. He owed $3,500 on his Ford pick-up truck. (RP Vol II) In the scheme of things, this was not a lot of debt for the court to consider before ruling.

Instead of assigning an amount to the total debt (community and separate), the court instructed the parties to speak with an attorney about filing bankruptcy and attempt a compromise with their creditors. (App. 3, p. 170:9-20)

g. Court's intent. In its oral decision the court stated that it intended to put the parties in "equal position". (*Id.169:1)* But the court's over simplified approach was an abuse of discretion as there were so many unanswered questions.

3. Under the statutory scheme, the court should have, but failed to consider Mr. Wood's poor health and its impact on his ability to provide for his future needs RCW 26.09.080 and RCW 26.09.090. Mr. Wood suffered a permanent injury at work. Mr. Wood testified he had difficulty walking as a result of the broken bones in his vertebra. He needed both shoulders replaced, one at a time, and a glass implant to his eye. He had chronic diabetes and high blood pressure. (RP. Vol II, p. 115-119)

Before dividing the parties' assets, liabilities, and net income, the court did not consider how long Mr. Wood could live independently or whether he would need home care assistance or move to an assisted-care living arrangement. The court did not consider these factors and the potential impact on Mr. Wood's future needs. (App. 3)

Ms. Wood was in relatively good health. She was hospitalized once for congestive heart failure (RP Vol 1, p. 48)

For these reasons the court abuse its discretion.

4. The court was improperly influenced by Ms. Wood's counsel's strenuous argument that the court had no choice but to divide the parties' net income 50-50. Relying upon *In re Marriage of Rockwell*, 141 Wash. App. 239 (2007), in Ms. Woods trial brief, counsel argued intensely the court needed to put the parties in "identical position by dividing the combined total net income 50-50." (CP 107)

Counsel repeated the mantra: "Well, the Court's mandate is to leave them in *identical financial condition*." (R.P. Vol II, p. 162-163.) "This is a 50- year marriage. To me, that is all that needs to be referenced in terms of awarding maintenance based upon his income from the L&I benefits" (RP Vol II, p. 162:23-25) He went on: "There is substantial case law, the Griswall case, the Court can order separate property, routinely does ... and other case law mandating leaving them in identical situations. That's what the court should be doing. (RP Vol II, p 163:1-3)

Ms. Wood's arguments constituted an incorrect instruct tion to the court on the law, which led the court to disregard the statutory guidelines in RCW 26.09.080 and RCW 26.09.090 leaving the court to conclude wrongly that it had no choice but to leave the parties in "identical situations", whether it was fair and equitable or not. (*Id.)* There is little doubt Counsel's argument substantially influenced the

court's decision.

ISSUE #6: Did the trial court abuse its discretion by excluding testimony regarding (a) each parties' contributions during the marriage and (b) each parties' conduct relative to preserving or dissipating the community assets?

In applying the factors under RCW 26.08.090, the court may consider misconduct relevant to dissipation of marital estates and "negatively productive conduct". *In Re Marriage of Steadman,* 63 Wn.App. 523, 528 (1991).

Ms. Wood managed the parties' income and paid the monthly expenses. (RP Vol I. p. 58) Mr. Wood deposited the money from his earnings into the parties' joint account. (RP Vol I p. 59, 70) Evidence of Ms. Wood's mismanagement of the community was either excluded or not considered by the court on the basis of relevance. For example, in opening statement, Mr. Wood alerted the court there was an issue of waste or failure to preserve the value of the parties' family residence. He stated: "Pending the trial since '09 when the filing occurred, it's going to be our position that this place has gone income complete disrepair. (RP Vol I p. 10). The court responded quickly by informing the parties the court would not spend time allowing the parties to argue "...who spent the money

during the divorce, where the money went during divorce and the truth is it doesn't matter." (RP Vol I p. 10-11). The court continued: "... for the money that was badly invested, poorly spent, whatever, before the separation, that's part of marriage and so we're not going to spend a lot of time talking about who spent what during the marriage because it ends up not making any difference. Like I said, you are where you are." (RP Vol I p. 11)

Mr. Wood's counsel was not permitted to question Ms. Wood about excessive shopping on QVC. The court held whether Ms. Wood spent a lot money shopping was not relevant and sustained Ms. Wood's objection to the testimony. (RP Vol I p. 36-37) "..when you're married and spouses are spending money, they're spending money. It's all part of being married, so I don't want to spend a lot of time talking about whose fault was that they ended up with not having any money. (RP Vol 1, p. 37)

Ms. Wood had no knowledge of the extent of the community property at the family residence. She had no idea what community property Mr. Wood had in his possession other than his clothes. (RP Vol I p. 70)

On cross examination, Mr. Wood's counsel questioned Ms. Wood about the parties' vehicles, personal property, guns, coins, a safety

deposit box, farm animals, and other household goods. (RP Vol p. 53-65.) Ms. Wood admitted she had not secured the parties' property until after some had been stolen. ((RP Vol I p. 53-54.) Among those items stolen was Mr. Wood's Honda motorcycle, which Ms. Wood did not bother to file an insurance claim to reimburse the community. (RP Vol I p. 53) Ms. Wood admitted she sold at least one gun, the lawnmower, four horses for $450 each, goats, horses, and a llama. When Mr. Wood took over the mortgage payments, it was $5,300 behind. These facts are all relevant to waste and failing to preserve the community assets. Most important, the court precluded Mr. Wood from testifying about Mr. Wood's testimony that $68,000 of the Alaska Teamsters pension, earned by Mr. Wood from 1971-1991, had to be used to pay off debt, and that it depleted the retirement savings he worked so long and hard for. (Id. at 135). It was error to do so. (RP Vol II p. 134-35) Ms. Wood objected on the basis of relevance and the trial court agreed. [21]

Mr. Wood made an offer of proof: the point of 20 years of work in Alaska, he only gets 659 because they had to take a big draw to pay off. (RP Vol II p. 142) The court reiterated "What's gone is gone"

21 The court responded to the objection by commenting "Well, again, we are where we are. The question is what's the benefit currently being paid and what happens if he dies? (Id. p. 135)

(Id. 144.)

It was relevant testimony. Mr. Wood's position: I was away working most of the time; she had control and managed all of the finances, she incurred huge debt without consulting me, and the debt depleted a large portion of our Alaska Teamsters retirement that I worked so long and hard for during our marriage.

This was relevant. Mr. Wood wanted the court to consider this misconduct in its award of spousal maintenance, particularly the division of his L&I disability benefits, which he argued was his separate property as his injuries occurred after separation.

H. ISSUE #8; Is Mr. Wood entitled to attorney's fees on appeal?22

RCW 26.09.140 grants the authority for this court to award Mr. Wood attorneys and costs incurred by this appeal. RCW 26.09.140 provides an award for attorney's fees based upon the parties' need and ability to pay.

In this case, Mr. Wood attempted to avoid an appeal, not just once or twice, but three times. The first time, on August 8, 2013. (CP 172) In his eight page declaration he explained in detail (1) why he

22 The following is intended to conform with the requirements of RAP 18.1 Attorney Fees and Expense.

believed the court had not made a final ruling; and (2) his position on spousal maintenance, community property, liabilities, and attorney fees. He asked the court to make an independent position. (CP 176)

The second time, on September 18, 2013, Mr. Wood filed a desperate *pro se* written motion for continuance. He made a point to write the judge's name on the top of the motion, and provided a judge's copy to alert the judge he was without counsel and needed a continuance. (CP 199)

Mr. Wood acted with due diligence to hire new counsel. Despite his efforts in his dire situation, he court not hire an attorney willing to represent him on short notice. The hearing was only days away. Under these facts, no new counsel could reasonably be expected to prepare for court to adequately represent Mr. Wood's interests arising from a two day trial which occurred 5 months ago. (Appendix)

After signing the final orders over Mr. Wood's plea for a continuance, the court recommended he hire a new counsel to file a motion for reconsideration (CR 59). **So he did.**

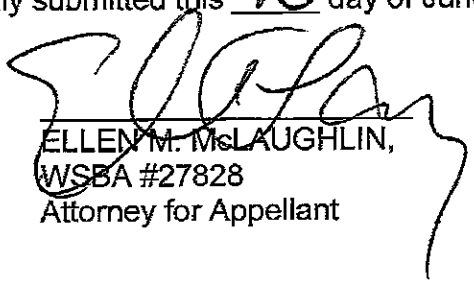
The third time, on October 8, 2013, Mr. Wood's counsel filed a motion for reconsideration or in the alternative requested a

continuance of the 10 day deadline under CR 59 to allow additional time to review. That too was denied. To no fault of Mr. Wood, new counsel lacked sufficient time to familiarize herself with the complexities of the case. Mr. Wood's CR 59 motion was denied. In the event Mr. Wood is the prevailing party, he respectfully asks the court award him attorney fees. In the event he prevails in part, Mr. Wood asks for attorney fees based upon his need and her ability to pay. Currently, based upon the final order, Ms. Wood has the ability to pay.

VI. CONCLUSION

Mr. Wood respectfully requests the Court of Appeals, Division III, reverse the trial court's Findings of Fact and Conclusion of Law and provide relief from the Final Decree of Dissolution and the court deems appropriate upon its review.

Respectfully submitted this 16th day of June, 2014.



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Appendix 1

RCW 26.09.080

RCW 26.09.080
Disposition of property and liabilities — Factors.

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable 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 or domestic partnership; and

(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

[2008 c 6 § 1011; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

Appendix 2

RCW 26.09.090

RCW 26.09.090

Maintenance orders for either spouse or either domestic partner — Factors.

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

[2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.]

Appendix 3

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1 But what I'm going to do is I'm going to equalize the income. Yes, the
2 L&I is Mr. Wood's separate property. But when I'm considering how to divide things, I'm
3 considering -- and when I'm considering maintenance, I'm considering what's the financial
4 -- relative financial condition of the parties and so on and this L&I just simply replace -- is
5 designed as a replacement for income that he would have been getting and so it's -- I think I
6 just factor that in. So, basically it's going to be -- she gets her Social Security. He gets his
7 L&I and then the various pension payments and so on would be divided so that net they
8 come out equal in terms of what their monthly income is. Then if the L&I -- if there's a
9 change in the L&I, either up or down, that would by agreement of the parties, would be
10 considered grounds for modification and so I'm ordering that when there's a determination
11 made on the future of that L&I, if there's any change to it, then that can be brought back to
12 Court if you can't agree on how it should be changed. You can bring it back to Court for
13 modification of the maintenance.
14 When calculating how to divide things up here, I think that the
15 payments on the house need to be calculated into it so they're each splitting the payments --
16 the mortgage payments. They're each bearing -- because it's a joint debt and there's --
17 again, if there's a -- this is assuming -- I'm making an assumption here that maybe I
18 shouldn't make because I think you need to talk to each other to see if there's an agreement.
19 If there's an agreement that if there's any gain, net gain realized on the house, that it be split
20 between the two of them and it would make sense to say, okay, well, then they both have to
21 share the cost of the mortgages until the property is sold. If there isn't any such agreement,
22 then I think since he's getting the house, and he's getting the potential of the gain, he gets
23 both mortgages and its' his responsibility. So I can't completely decide the case yet because
24 you need to talk to each other to see about if there's any details of the agreement that you can
25 work out that I can't order you to do. And then depending upon how all that sorts out, I will

1 later make a decision on the attorney's fees.

2 But I need the 2012 information. I mean, you need it so that you can

3 put together the proposal for the findings and decree. Mr. Connaugton, are there any other

4 facts that we need to address that I didn't address?

5 MR. CONNAUGHTON: Well, I guess on the debts she had listed in her

6 financial declaration, which I believe she testified has been in existence since separation. I

7 mean, if they don't -- I don't know about this bankruptcy thing and option or the current

8 status of that Beneficial, other than nothing's been paid on it and they're --

9 THE COURT: Let me say that the testimony was that that 20,000 at the time at

10 Beneficial, an unsecured Beneficial debt, was a debt incurred for the benefit of their child

11 and the testimony was from her was that Mr. Wood agreed to it. So I think it's a joint debt,

12 which means I think it should be split 50/50 for whatever it is now, but again, that's a debt

13 you may be able to get these people to take cents on the dollar for particularly if you showed

14 them what your other debts were and the fact that you don't have any assets over and above

15 the value of your debts. If you don't file bankruptcy you may be able to get that HFC thing

16 to just go away for a few dollars because a lot of times -- those people charge so much

17 interest on the people who do pay, that they can afford to walk away from a lot of debt that

18 doesn't get paid. So, that's something you need to look into and see. I mean, again, if before

19 we get to the point where we're finalizing this thing, you may be able to make a deal to get

20 that HFC thing to go away. At least, you need to look into it.

21 The other debts -- you're talking about Memorial Hospital and the Selah

22 Dental and that you're talking about?

23 MR. CONNAUGHTON: Well, I was more focused on the -- like the

24 bookkeeper at the Capital, Wells Fargo. The Dell, I don't -- again, if it's in her name

25 whether daughter pays -- continues to pay or I don't know but I think it's a --

1 THE COURT: Well --

2 MR. CONNAUGHTON: -- a debt incurred while they were (inaudible) --

3 THE COURT: -- assuming the daughter doesn't pay then there would be a

4 potential claim against her for breach of contract, so that claim would be an asset offsetting

5 the debt so I'm going to allocate that to Mrs. Wood, both the debt and the asset of the claim

6 against the potential claim against the daughter if the daughter doesn't pay.

7 It wasn't clear to me, for example, the Memorial Hospital debt. It

8 wasn't --

9 MS. WOOD: That's been paid.

10 THE COURT: Alright, that's been paid. Selah Dental --

11 MS. WOOD: It's being paid and there's monthly payments.

12 THE COURT: Well, what I -- well, it wasn't clear to me is when these debts

13 were incurred.

14 MS. WOOD: Last year.

15 THE COURT: Well, see, anything that's been incurred since separation,

16 they're your separate debts. So --

17 MR. CONNAUGHTON: I think that's on the medical. I was focusing -- I

18 think she testified on the Capital and the Wells Fargo debt, that they were debts that were

19 incurred --

20 MS. WOOD: Before --

21 MR. CONNAUGHTON: -- before -- as well as the H -- there's a credit card,

22 HSBC which is 1127.

23 MS. WOOD: Yeah.

24 MR. VELIKANJE: But they're not being paid on, just like the Beneficial debt.

25 There hasn't been a payment. The attachment we got was they're in collection and will take

1 $682.00 if you want to compromise it. So I don't how we treat it any different than we do
2 the large one and just say it was incurred during the marriage, it is what it is, and parties to
3 negotiate the best deal they can.
4 THE COURT: Otherwise it's
5 MR. CONNAUGHTON: (Inaudible -- all talking at once) --
6 THE COURT: Otherwise divide it in half.
7 MR. CONNAUGHTON: I guess one thing I'm not clear on is who they're
8 contacting. If they're contacting him, for example, that one debt of 20,000 or whatever it
9 currently is is in his name. He says he's being contacted, so he's probably in the best
10 position --
11 THE COURT: Whoever is being contacted is the one that should contact the
12 creditors and try to work out a deal.
13 MR. VELIKANJE: So for -- just to extrapolate for kicks and giggles, if he gets
14 a call from Beneficial and says they'll take six grand -- I don't where he's going to get, draw
15 against a pension or take out another debt, I'll pay it. Arguably he's got a claim against her
16 for half of that.
17 THE COURT: Yes.
18 MR. VELIKANJE: (Inaudible) whatever the settlement is.
19 THE COURT: Yes.
20 MR. VELIKANJE: And vice versa.
21 THE COURT: Right. So there will be the standard indemnity language.
22 MS. WOOD: Does that go for Wells Fargo, too?
23 MR. CONNAUGHTON: Uhm-hm.
24 THE COURT: So anything else, Mr. Connaughton?
25 MR. CONNAUGHTON: Not that I can think of.

1 THE COURT: Mr. Velikanje?

2 MR. VELIKANJE: Your Honor, I had just one question and it's probably very
3 premature but thinking ahead. If the house is awarded to him, we probably ought to get the
4 decree entered. Should we start trying to market the house, talk to realtors because
5 obviously they're going to need both parties' signatures on it on an exclusive listing
6 agreement or should we hold off until we get the decree entered?

7 THE COURT: Well, I did say that she has a minimum of two months to move
8 out. And, again, I have a little bit of concern here that Ms. Wood, you need to get started on
9 this project because if it's too months from now and you haven't done anything and they're
10 back in here saying we want to get this house sold but she's not out yet, you know, I'm not
11 going to give you another two months.

12 MR. CONNAUGHTON: One issue I can see with that is that the order on her
13 getting half the income obviously getting that immediately is going to be important because
14 if she has to go out and rent a place they want first and last and deposits, none of which is
15 available to her currently.

16 THE COURT: Right.

17 MR. CONNAUGHTON: The other concern with regard to the house is if it's
18 going to be simply vacant that's usually not a good way to market a house, also subject, you
19 know, you're subject to theft and --

20 THE COURT: Right.

21 MR. CONNAUGHTON: -- also that most insurance companies, if it's vacant
22 for more than 30 days, then you have a fire and --

23 THE COURT: No, I understand that. And I didn't say she couldn't -- well, it
24 seems to me that somebody ought to stay in the house up until the time it's sold for those
25 reasons. But that doesn't mean the house should be full of stuff. I mean you can have a few

1 things in a house to try to make it look a little bit better for sale purposes but you gotta get all
2 of the boxes and stuff out and all the stuff out of the closets. I mean, you gotta move out
3 other than whatever minimal stuff you may need --
4 MR. CONNAUGHTON: Well, yeah, that's the other question. If there's 50
5 years of accumulations there, it's going to have to be either a major garage sale as well as
6 probably a storage unit. I don't know how, you know --
7 THE COURT: It's spring, it's a good time for a garage sale. And I
8 recommend against storage units because all they go is -- that's another bill you have to pay
9 each month and it doesn't help get rid of the stuff. If it's not stuff you need every day get rid
10 of it.
11 MR. CONNAUGHTON: I guess I just -- two months sounds like a long time
12 until you try and move out of a house having recently done that. It's --
13 THE COURT: I know, it's a -- but, you know, I have some (inaudible) faith in
14 Mr. Wood here. I mean, it has been four years and, you know, knowing -- all the time
15 knowing that something was going to happen with the house. I mean, it's not like they're --
16 so, you need to get started. You need to start packing boxes and you know where Goodwill
17 is and you can get rid of stuff and -- you need to simplify your life.
18 MS. WOOD: (Inaudible -- can't hear her) --
19 MR. CONNAUGHTON: Well, um --
20 MS. WOOD: Not only that but the insurance --
21 MR. CONNAUGHTON: It appears taxes are due on the house or there are
22 taxes due in April, and insurance.
23 MS. WOOD: Yes, I have to go pay it -- (inaudible) installment payments.
24 MR. CONNAUGHTON: Um --
25 MR. VELIKANJE: Who pays the homeowners' insurance?

1 MR. WOOD: She does --

2 MR. CONNAUGHTON: She's been responsible for all the other expenses
3 other than him paying the two mortgages. So, if we equalize the effective date of her paying
4 half of the monthly, then that might give her some additional funds. Again, I don't know
5 what she's receiving internally but -- I guess that's the other question, what are we doing the
6 effective date of the 50/50 here. Is that April 1, the month of April?

7 THE COURT: Well, let's make it April 15th. Mr. Wood, I highly recommend
8 that you not do any gambling until all this is sorted out. You're not going to have any extra
9 money that you can afford to -- and should never gamble unless you can afford to lose and
10 right now you can't afford to lose anything. So don't gamble.

11 What about the taxes on the property? Mr. Velikanje.

12 MR. VELIKANJE: Well, obviously the insurance needs to be maintained in
13 the event of a (inaudible) --

14 MS. WOOD: I have to go pay that today.

15 MR. VELIKANJE: Quite honestly, I'll tell the Court given the financial pinch,
16 the County does nothing with unpaid taxes for three years.

17 THE COURT: I know, they never do anyway. All it means -- but there's
18 interest and penalties.

19 MR. VELIKANJE: It's fairly minimal but if we're going to sell the place,
20 they're going to get paid in six months, nine months anyway.

21 THE COURT: Right. The taxes I'm not terribly worried about. Do you have
22 the money to pay the insurance?

23 MS. WOOD: Uhm-hm.

24 THE COURT: Okay. Pay the insurance and then let's see -- if you can get the
25 property sold in three or four months or whatever then you're going to have the -- you'll be

1 able to pay that.

2 MR. VELIKANJE: It will come out of closing.

3 THE COURT: Yeah. It's going to be more difficult if you can't get enough to

4 pay off the debt --

5 MR. VELIKANJE: Well, that's true.

6 THE COURT: -- because a lot of times the mortgage holders won't agree to

7 the sale unless they're getting paid off, which is another reason to talk to a bankruptcy

8 lawyer because if you go into bankruptcy the court can order that the house be sold and can

9 authorize the sale regardless of what the mortgage holder's care about or what it wants, so

10 that's another thing to think about.

11 MR. CONNAUGHTON: Okay, the first thing would be to get a competent real

12 estate agent and to get some (inaudible) --

13 THE COURT: Yeah.

14 MR. VELIKANJE: Procedurally, we'll get the 1099 for last year. May I just

15 maybe attach a financial coversheet, sealed source coversheet and submit it into the court.

16 I'm worried about the lack of admissibility as an exhibit. I mean, the pleadings are not part

17 of the file but how does Your Honor want --

18 THE COURT: Can we agree that he can do that and then I may consider those

19 as an exhibit? Mr. Connaughton.

20 MR. CONNAUGHTON: Fine (inaudible).

21 THE COURT: Okay. So I will -- you file them under seal and then I will

22 consider them as an exhibit.

23 MR. CONNAUGHTON: We have the three pensions and Social Security,

24 right?

25 MR. VELIKANJE: Right.

1 THE COURT: Alright. And this I'm sure there's going to be details we
2 haven't thought of and we may have to talk about it some more but I'm hoping that knowing
3 where I'm going with this and what my intent is, that you can -- you don't -- you're not
4 going to have to come back to Court, you can say, well, we know what Judge Gibson is
5 going to do with this, so let's just do it. But this also means that even though Mrs. Wood,
6 you're living there, Mr. Wood is going to be entitled to come out there and look at the place
7 and you two need to be civil to each other.
8 MS. WOOD: Yes, but not my daughter.
9 THE COURT: So --
10 MR. CONNAUGHTON: I know one -- if he does come out, they probably
11 want to schedule that and not bring the daughter.
12 THE COURT: Is --
13 MR. WOOD: The daughter has beds and everything else out there that are
14 hers that --
15 THE COURT: Alright.
16 MR. CONNAUGHTON: The problem is, without getting into too much detail.
17 Yesterday, my client was assaulted by her daughter in the bathroom. She was screaming at
18 her and she has a bruise that she showed me. I think she applied for a restraining order or
19 there was one before, so I think bringing her into the mix is --
20 THE COURT: Is this the daughter back here?
21 DAUGHTER: Yes, yes.
22 THE COURT: Okay.
23 MALE: (Inaudible), Your Honor.
24 THE COURT: Well --
25 DAUGHTER: I --

1 THE COURT: Wait, wait, wait --

2 DAUGHTER: Alls I did was --

3 THE COURT: Wait. Stop.

4 MALE: We apologize Mr. (inaudible) --

5 THE COURT: Stop. Mr. Wood, you can go out to the house but I don't want
6 you to take your daughter out there for the time being, please. Let's -- you need to go out
7 and look at the place and assess the situation and start figuring out what needs to be done and
8 maybe start to get estimates and whether your daughter has furniture there or not really
9 doesn't make any difference at this point. My, you know, my immediate concern is you
10 need to be able to make an intelligent assessment of what needs to be done then you can start
11 trying to get bids or whatever it may take and get some sense of what this whole project's
12 going to cost, and you don't need to have our daughter there for that.

13 MR. VELIKANJE: And that was my comment, I guess, about the realtor. Not
14 that we want a sign posted in the front yard but obviously with his living arrangement
15 (inaudible) just go between (inaudible) --

16 THE COURT: If he wants -- if he wants to get to talk to a realtor and get a
17 realtor out there to give an initial look at it and make suggestions, that's fine.

18 MR. VELIKANJE: Yeah, I'm just thinking that's a less tense way to sort of
19 address the issue of work that needs to be done, values, than to have the two of them in the
20 driveway, have the realtor come out. Here's the agreement, here's the agreement.

21 MS. WOOD: I'm not going to argue with him.

22 THE COURT: Alright.

23 MR. CONNAUGHTON: Yeah, we'd like to get somebody out there.

24 THE COURT: Get a realtor on board and get some suggestions on how --
25 what needs to be done to maximize the value of the property with a minimal investment.

DAUGHTER: Can I say something about the Dell bill? I've never received a payment. I'm going off something for 2010, and I've asked her to please forward the statements to me so I can know what's on it and payment and I've asked her to do it and she has not.

THE COURT: Mrs. Wood, do you have something from Dell that shows how much is owing and what the payments are and so on.

DAUGHTER: I called and my payments are --

MS. WOOD: That's what I -- I didn't do it because I didn't know, whether I told her to pay at least $60.00 a month to keep the payment up so to take that interest down because Dell just has a horrendous interest and I don't --

THE COURT: Ms. Wood, just --

MS. WOOD: -- have any information if she doesn't pay it.

MR. CONNAUGHTON: You can provide that statement.

MR. VELIKANJE: We have it, Exhibit 4.

THE COURT: Alright.

MS. WOOD: I can look.

MR. CONNAUGHTON: Provide her the statement or we can get it to Mr. Velikanje.

MS. WOOD: Oh, yeah, I can (inaudible) --

THE COURT: And the sooner that's paid off, the better. Give --

MS. WOOD: Yeah, I know it.

THE COURT: Give her the information so she knows what's going on, okay.

MS. WOOD: Okay.

THE COURT: Alright, we're adjourned.

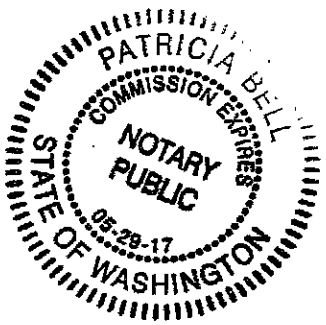
(END OF TRANSCRIPT)

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 April 9 and 10, 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

1 But simply putting it on the market, it would be good to get an appraisal or market analysis,
2 then perhaps take it from there as to what needs to be done on the property. My client was
3 not in a position to pay for a market analysis or to pay for an appraisal. Obviously, his funds
4 and income was substantially more than hers and they didn't, you know, chose not to do so.
5 THE COURT: Alright. I'm finding as a fact that separation was April of
6 2009. I do that because nothing much changed. I mean, after 2006 or even before that, he
7 had always worked out of town if not out of state, deposited his paycheck. She ran the home
8 place. You know, what changed between 2002 and 2009 when he says somewhere in there
9 they separated. I can't see where anything changed, so it wasn't until April 2009 that things
10 changed and so that when the date of separation is, April 2009.
11 I don't have a lot to work with here. There's a lot of information -- I
12 mean, I can't -- you know, technically we do spreadsheets and we balance things out and so
13 on and when I don't have values for things, there's no way I can do that. You know, there's
14 a complaint the horses could have been sold for more. You know, you've all heard the
15 description of a boat as being a hole in the water into which you pour money. Well, a horse
16 is the land equivalent of a boat. And what isn't taken into account here on -- well, we should
17 have sold the horses for more is how much did it cost to maintain the horses up until they
18 were sold. How much would it have cost to maintain the horses if they hadn't been sold? I
19 mean -- so I think all that is just kind of washes out.
20 What I had to work with here is I have this house that I don't know the
21 value of and I don't know how much debt there is on it. So, what do I do? I think -- it's not
22 a medical opinion, I think -- I suspect that Mrs. Wood has suffered from clinical depression
23 and I think that that -- I mean, when you have serious health problems and you have family
24 problems and so on, I mean, that's certainly often a driving cause for clinical depression and
25 that puts you in a position where no matter how much you'd like to accomplish things, you

1 just can't, and I think -- and again, this is not a medical opinion but I think that may very
2 well be why nothing much has been accomplished by her in the last several years.
3 Mr. Wood, had this unfortunate accident and he's in constant pain and
4 that makes people grumpy, being in constant pain makes you grumpy, and I understand that.
5 And so I -- you've been kind of grumpy here in Court and I'm giving you some slack on that
6 because I know -- I understand that you're in pain all the time. It's hard to be Mr. Nice Guy
7 when you're in pain all the time. So, that being said, the law is pretty clear on this. I mean,
8 the law is I basically try to even things out between the two parties. Clearly, the house
9 should be sold. The question is how do we accomplish this? My current understanding of
10 the law -- and again, I could be wrong, and I asked for assistance on this. If you find some
11 law that says I'm wrong, I don't think I can allocate it to one party or the other party and
12 order that it be sold. I think if the parties agree that it should be sold by a certain time, I
13 mean that can be a stipulation and I can say, okay, fine, I'm ordering that it be sold because
14 it's a stipulated order. But who's going to do what?
15 Realistically, I think that the only way to -- well, the best way to
16 maximize the chances of the house being sold in a reasonable period of time is to allocate it
17 to Mr. Wood because he's motivated, but either way, Mrs. Wood, either way whether he gets
18 the house soon, and I'm not going to make you move out overnight but -- or -- I mean, at
19 some point it's going to be sold, either way you're going to have to move. So, whether it's
20 two months from now or six months from now or a year from now, it's going to be as much
21 of a pain in the back side to move no matter when you do it. It's something you're going to
22 have to do.
23 So, I'm allocating the house to Mr. Wood. I'm assuming he's going to
24 sell it. I encourage the parties to stipulate that it be sold. I'm ordering that to the extent any
25 cooperation is required from Mrs. Wood to get it sold. I'm ordering that she provide that

1 cooperation. I'm going to give her two months -- I'm ordering that she can't be required to
2 move out in less than two months. So that's going to give you some time to both find a place
3 and try to figure out -- because -- well, you have at least 30 years of accumulation of stuff in
4 the house and I don't know how much stuff you brought with you when you moved to that
5 house but you might have 50 years of accumulation. And it's going to take some time to
6 work through that but you're going to have to get started on that. Sell as much as you can,
7 give away stuff, have a yard sale, but getting it sold is going to be Mr. Wood's burden.
8 So then the question is what do I do about the two mortgages on it
9 before it's sold, and clearly those payments have to be made and Mr. Wood has been making
10 them and he's going to have to continue making them to make sure they are made. So, I've
11 got in mind that -- okay, somehow I have to account for that. I mean, it's a benefit to both of
12 them that he make those payments, so somewhere in the calculation she needs to essentially
13 be bearing half of that burden.
14 As far as the stock truck and the tractor and the implements, I'm
15 awarding them to Mr. Wood. She basically gets the stuff in the house. He didn't want it. I
16 have no -- again, I have nothing to go on in terms of what it's worth. Mr. Wood obviously is
17 entitled to get his personal papers and I don't remember, there might have been a couple
18 other -- oh, his tools and his clothes. Those all belong to him. He can get those. If -- well, I
19 -- it -- alright. Now, I don't know whether -- when the property is sold it's going to produce
20 a net gain or a net loss. And again, nothing to go on -- what am I supposed to do about that.
21 If I've allocated the property to him, does he bear the entire burden of the loss if there's a
22 loss or does he have to split the equity with her if there's a gain. I'm not supposed to when I
23 divide things in a divorce, and by the way I am granting the divorce. I find that the marriage
24 is irretrievably broken. But I'm not supposed to leave property jointly owned. So, what am I
25 supposed to do about not knowing whether there's going to be a net debt or a net profit from

1 the house? Any suggestions? Again, if they agree that if there's a net debt, that that will be
2 split. If there's a profit, after costs of sale and so on and cost of fixing it up, all of that, if
3 there's net gain, if they can agree that whichever way it comes out they split either the plus
4 or the minus then fine. But I don't think I can order that. So you'll need to talk to each other
5 about that.
6 Let me tell you what my general approach is going to be with regard to
7 the rest of it. Oh, by the way, the unsecured HFC debt, which I don't know the amount of. I
8 mean, at one -- well, at one point it was $20,000.00, but I don't know what it is now.
9 Obviously, if that's open for negotiation with the creditor clearly you want to see if you can
10 negotiate it. You're in a position where, you know, we talked about bankruptcy early on.
11 Many people are morally opposed to bankruptcy whether you -- whether it's a good idea for
12 you -- I can't tell you whether it's a good idea for you or not, but it's something you might
13 want to look into because that might be a way to prevent there from being a net loss on the
14 sale of the house, you know, because if there's not enough money left from the sale of the
15 house to pay the debt, if you're in bankruptcy, the Bankruptcy Court, I think, has the power
16 to just say, well, okay, they just don't get paid for the rest of it.
17 Likewise, with HFC, you know, you may or may not have to pay them.
18 How it would work, I don't know, but you really -- you might want to talk to an attorney
19 about filing bankruptcy because that may actually wipe out a lot of the problems because you
20 don't have really anything of -- you don't have a net value of assets that you own but you do
21 have a pretty good source of income and a lot of that income -- again, I don't know. A lot of
22 it may even be protected in bankruptcy. I mean, I don't know that if in bankruptcy they can
23 take away Social Security or pension plans, I don't know, but that's certainly something you
24 need to ask a bankruptcy expert about. You may be able to walk away from pretty much all
25 of the debt.

Appendix 4

RCW 26.09.090

Washington Statutes
Title 26. DOMESTIC RELATIONS
Chapter 26.09. Dissolution proceedings - Legal separation

Current through Chapter 225 of the 2014 Legislative Session

§ 26.09.090. Maintenance orders for either spouse or either domestic partner - Factors

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance. [end of text]

Cite as RCW 26.09.090

History. 2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.

Note:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901 .

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Appendix 5

Decree of Dissolution & Findings of Fact and Conclusion of Law

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2013 SEP 18 AM 11:31

PAM M. EATON
EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA, WASHINGTON

Superior Court of Washington
County of YAKIMA

In re the Marriage of:	No. 09-3-00322-2
DIANE L. WOOD **Petitioner,**	**Decree of Dissolution (DCD)**
and	**(Marriage)**
ZALE K. WOOD **Respondent.**	**Clerk's Action Required**

I. Judgment/Order Summaries

1.1 Restraining Order Summary:

Does not apply.

1.2 Real Property Judgment Summary:

Does not apply.

1.3 Money Judgment Summary:

A.	Judgment Creditor	Diane Wood
B.	Judgment Debtor	Zale Wood
C.	Principal judgment amount	$5,630
D.	Interest to date of Judgment	$ ø
E.	Attorney fees	$250
F.	Principal judgment shall bear interest at 12% per annum	
G.	Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum	
H.	Attorney for Judgment Creditor	Blaine T. Connaughton
I.	Attorney for Judgment Debtor	Robert Velikanje

End of Summaries

II. Basis

32022 7-000000195

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Yakima, Washington 98901
Phone: 509.249.0080
Fax: 509.469.8836

Findings of Fact and Conclusions of Law have been entered in this case.

III. Decree

It Is Decreed that:

3.1 Status of the Marriage

The marriage of the parties is dissolved.

3.2 Property to be Awarded the Husband

The husband is awarded as his separate property the following property:

1. 2006 Ford Focus and other vehicles in husband's possession, subject to the debt thereon
2. Husband's papers and tools
3. All household items and personal property in husband's possession not specifically awarded to wife.
3. 50% of husband's Washington Teamsters' and Alaska Teamsters' pensions
4. 50% of husband's Operator Engineer's retirement account
5. 50% of all remaining pension and other benefits earned through husband's employment, including but not limited to 401K plans, and retirement plans
6. All bank accounts currently in husband's name not specifically awarded to wife
7. Net proceeds from sale of the home of $4,006.49, which shall be paid to wife's attorney by closing agent and credited to husband's maintenance arrearage.

3.3 Property to be Awarded to the Wife

The wife is awarded as her separate property the following property:

1. $5,630 from husband for back maintenance accrued 2/1/13 – 7/31/13
2. 1990 Ford Crown Vic and any other vehicles in wife's possession not specifically awarded to husband
3. All household items and personal property in wife's possession not specifically awarded to husband, including the stock truck, tractor, and implements
4. 50% of husband's Washington Teamsters' and Alaska Teamsters' pensions
5. 50% of husband's Operator Engineer's retirement account
6. 50% of all pension and other benefits earned through wife's employment, including but not limited to 401K plans, and retirement plans
7. All bank accounts currently in wife's name not specifically awarded to husband
8. $250 from husband for past court-awarded fees per 5/31/13 order
9. 50% of net proceeds from home sale in the amount of $4,006.43

3.4 Liabilities to be Paid by the Husband

The husband shall pay the following community or separate liabilities:

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1. 100% of Ford auto loan
2. 100% of any debt owed on other personal property awarded to husband
3. 50% of debt owed on Chase, HFC, HSBC, & Capital One credit cards & to accountant
4. $5,630 to wife for back maintenance for 2/1/2013 through 7/31/13
5. $250 to wife for past court awarded fees per 5/31/13 order
6. All debt currently in husband's name not otherwise named herein

Unless otherwise provided herein, the husband shall pay all liabilities incurred by him since the date of separation.

3.5 Liabilities to be Paid by the Wife

The wife shall pay the following community or separate liabilities:

1. 100% of any debt owed on personal property awarded to wife
2. 50% of debt owed on Chase, HFC, HSBC, & Capital One credit cards & pre-separation debt to tax preparer ($387.52)
3. 100% of Dell account ($1582) for computer in daughter's possession
4. All debt currently in wife's name not otherwise named herein

Unless otherwise provided herein, the wife shall pay all liabilities incurred by her since the date of separation.

3.6 Hold Harmless Provision

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney fees and costs incurred in defending against any attempts to collect an obligation of the other party.

3.7 Maintenance

The husband shall pay $4,094 per month maintenance pending entry of QDRO's for the pension plans, at which time the maintenance obligation will be reduced by the amount received by wife per those orders. The maintenance payment shall be due on the 1st of each month. In the event husband's L&I pension benefits are reduced or increased, adjustments shall be made accordingly, either by agreement or by motion calendar, with no modification petition required.

Payments shall be made directly to the other spouse.

3.8 Continuing Restraining Order

Does not apply.

3.9 Protection Order

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Does not apply.

3.10 Jurisdiction Over the Children

Does not apply because there are no dependent children.

3.11 Parenting Plan

Does not apply.

3.12 Child Support

Does not apply.

3.13 Attorney Fees, Other Professional Fees and Costs

Attorney fees, other professional fees and costs shall be paid as follows:

Wife is awarded $ Ø in attorney fees and costs.

3.14 Name Changes

Does not apply.

3.15 Other

Each party shall execute whatever documents may be necessary to facilitate transfers described herein. The Court retains jurisdiction to resolve any dispute, which may arise concerning the orders herein.

Any QDRO necessary for the division of husband's pensions shall be prepared by a professional QDRO preparation service ~~and the cost shall be split by the parties.~~

Dated: 9-18-13

Judge/~~Commissioner~~

Presented by:

19766 8/28/13

BLAINE T. CONNAUGHTON Date
Attorney for Petitioner

Approved for entry:
Notice for presentation waived:

22317

ROBERT VELIKANJE Date
Attorney for Respondent

32022 7-000000198

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2013 SEP 18 AM 11:31

KIM M. EATON
EX OFFICIO CLERK
SUPERIOR COURT
YAKIMA, WASHINGTON

Superior Court of Washington
County of YAKIMA

In re the Marriage of: DIANE L. WOOD **Petitioner,** **and** ZALE K. WOOD **Respondent.**	**No.** 09-3-00322-2 **Findings of Fact and Conclusions of Law (Marriage) (FNFCL)**

I. Basis for Findings

The findings are based on trial. The following people attended:

Petitioner
Petitioner's Lawyer
Respondent
Respondent's Lawyer

II. Findings of Fact

Upon the basis of the court record, the court ***Finds***:

2.1 Residency of Petitioner

The Petitioner is a resident of the state of Washington.

2.2 Notice to the Respondent

The respondent appeared, responded, or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent.

The respondent is currently residing in Washington.

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The parties lived in Washington during their marriage and the petitioner continues to reside in this state.

2.4 Date and Place of Marriage

The parties were married on 7/05/1960 at Yakima, WA.

2.5 Status of the Parties

Husband and wife separated in April 2009.

2.6 Status of Marriage

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the respondent joined.

2.7 Separation Contract or Prenuptial Agreement

There is no written separation contract or prenuptial agreement.

2.8 Community Property

The parties have the following real or personal community property:

Net proceeds of $8,012.86 from sale of family home
Vehicles
(2) Teamsters' pensions
Engineer's retirement fund
L&I settlement/pension
Various items of personal property

2.9 Separate Property

The husband has no real or personal separate property.
The wife has no real or personal separate property.

2.10 Community Liabilities

The parties have incurred the following community liabilities:

Ford auto loan
Chase credit card
Capital One credit cards
HFC line of credit
Tax preparation debt
Dell computer loan

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2.11 Separate Liabilities

The husband has no known separate liabilities.
The wife has no known separate liabilities.

2.12 Maintenance

Maintenance should be ordered because:

All statutory factors exist for an award of maintenance to wife.

2.13 Continuing Restraining Order

Does not apply.

2.14 Protection Order

Does not apply.

2.15 Fees and Costs

The wife has the need for the payment of fees and costs and the other spouse has the ability to pay these fees and costs. The wife has incurred reasonable attorney fees and costs in the amount of $ Ø .

2.16 Pregnancy

The wife is not pregnant.

2.17 Dependent Children

The parties have no dependent children of this marriage.

2.18 Jurisdiction Over the Children

Does not apply because there are no dependent children.

2.19 Parenting Plan

Does not apply.

2.20 Child Support

Does not apply.

2.21 Other:

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III. Conclusions of Law

The court makes the following conclusions of law from the foregoing findings of fact:

3.1 Jurisdiction

The court has jurisdiction to enter a decree in this matter.

3.2 Granting a Decree

The parties should be granted a decree.

3.3 Pregnancy

Does not apply.

3.4 Disposition

The court should determine the marital status of the parties, consider or approve provision for maintenance of either spouse, and make provision for the disposition of property and liabilities of the parties. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.5 Continuing Restraining Order

Does not apply.

3.6 Protection Order

Does not apply.

3.7 Attorney Fees and Costs

Attorney fees, other professional fees, and costs should be paid.

3.8 Other

Dated: 9-18-13

Judge/~~Commissioner~~

Presented by:

19766 8/31/13

BLAINE T. CONNAUGHTON Date
Attorney for Petitioner

Approved for entry:
Notice of presentation waived:

ROBERT VELIKANJE, #_____ Date
Attorney for Respondent

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Appendix 6

Motion for Order Re: Continuance

Hon. Judge Gibson

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2013 SEP 19 A 11:42

KIM EATON
EX OFFICIO CLERK OF
COURT

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

In re the Marriage of DIANE WOOD	)	) CASE NO. 09-3-00322-~~3~~ 2
Petitioner	) Motion for Order re:	) Continuance
V.	)	)
ZALE WOOD	)	)
Respondent	)	)

TO: Robert G. Velikanje

TO: Diane Wood, Petitioner, by and through her attorney, Blaine Connaughton

TO: THE CLERK OF THE COURT

I. Relief Requested

Zale Wood moves the court for an order to continue the hearing to approve the "Findings of Fact and Conclusions of Law" and "Judgment/Order Summaries" set for September 18, 2013, to a later date to allow Respondent time to retain substitute counsel and prepare to argue the accuracy and completeness of the documents.

II. Statement of Facts/Statement of Grounds

I believe the documents to be presented to the court on September 18, 2013, do not accurately reflect the decision of the court and that at least one issue regarding specific property was not addressed at all, and I had asked Mr. Robert G. Velikanje to discuss this with the court on my behalf. On September 4, 20113, I was informed by my counsel, Robert G. Velikanje, that he had asked for permission to withdraw as my counsel in this matter. I attempted to file an objection to his withdrawal as soon as I was able to have the notice prepared and taken to the clerk's office (September 9, 2013) but was told by the clerk that I was too late and was not allowed

to file it. In desperation I took the audio records to a lawyer in Puyallup to review but he told me the CD for the second day of trial which would have contained the relevant information was blank, that his computer said there was nothing on it and that on physical examination he could not see any change of color which indicates a recording. He then checked the CD for the first day of trial and found it did have a recording on it. At the time I attempted to file my objection to my lawyer's notice of withdrawal I asked the clerk about the CD and she checked on it. When she brought it back she said the record of the second day actually was on it and I took it back to the lawyer in Puyallup on September 15, 2013. He said this time the audio was present and that, although he did not have time to review the entire record, he thought some of the allocation of property was not included on in the proposed documents and that there was nothing about my coin collections.

As the "Judgment/Order Summaries" currently reads, I will lose my tools, my hand made (by me) equine tack, my coin collections, the tractor attachments (blade and forks), three full tool boxes, twin beds, Total Gym, popcorn maker, rototiller and other items that I was to be awarded. The real property has been sold but neither the new owners nor my wife, who still resides on the property, will allow me to pick up the personalty. Unless provision is made for this there will have to be yet another legal proceeding to take possession. There also appear to be other issues raised but not decided and these need to be brought to the court's attention.

I contacted three Yakima County lawyers between September 9 and September 13 but they did not have time to prepare and one said that I needed to ask the court for a continuance to give me time to confer with him or another attorney. Time is not of the essence and no one will be prejudiced by a continuance of four weeks.

I declare under penalty of perjury under the laws of the state of Washington thay the foregoing is true and correct.

Signed this 13 day of September, 2013, at Puyallup, WA.

Zale Wood

Zale Wood, Respondent
8123 146th Street East
Puyallup, WA 98375
(253)845-3721

CERTIFICATE OF TRANSMITTAL TO ALL PARTIES

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date sent I sent a copy of this document to Petitioner's Attorney and to Robert G. Valikanje at their listed addresses by regular U.S. Mail on this ___ day of September, 2013.

Zale Wood

Zale Wood, Respondent

Signed in Puyallup, WA, this 13 day of September, 2013

Appendix 7

RCW 26.16.140

RCW 26.16.140

Earnings and accumulations of spouses or domestic partners living apart, minor children.

When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse or domestic partner who has their custody or, if no custody award has been made, then the separate property of the spouse or domestic partner with whom said children are living.

[2008 c 6 § 613; 1972 ex.s. c 108 § 5; Code 1881 § 2413; RRS § 6896.]