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No. 63066-1-I

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION ONE

In Re the Marriage of:

REBECCA STEWART,

Appellant,

v.

JERRY STEWART

Respondent.

REPLY BRIEF OF APPELLANT REBECCA STEWART

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DIVISION ONE

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INTRODUCTION

A. Jerry's position that the decree of dissolution of marriage is valid ignores the clear language of the controlling statute, RCW 26.09.030 (d). Before the status of Rebecca's petition for legal separation can be changed, Jerry had the affirmative duty to both object and also file and serve his petition for dissolution of marriage. Because Jerry never prepared, filed or served his petition for dissolution of marriage, the trial court did not acquire subject matter jurisdiction over any dissolution of marriage action. Therefore, the dissolution decree is void.

Because Jerry failed to file and serve a summons to go along with his petition for dissolution, that he also failed to file and serve, the trial court never did acquire personal jurisdiction over Rebecca for purposes of entering a decree of dissolution. Therefore, the the decree of dissolution is void.

Because the relief in the decree of dissolution exceeded the relief requested in the petition for legal separation, the decree of dissolution is void.

It is Rebecca's position that the decree of dissolution is void for any of the three reasons stated above.

- B. Jerry admits in his responsive brief that there was no separate value for the radio business assets and the radio business itself, which was awarded to Jerry. The trial court cannot make a just and equitable division of the parties' assets when the assets are not valued. In the event this Court determines the decree of dissolution is not void, this case should be remanded for a new trial so that the trial court can first value the radio business assets and the radio business itself and then make a just and equitable division of the parties' assets and liabilities.
- C. Jerry admits in his responsive brief that a trial court has no authority to distribute an asset no longer in existence at the time of trial. Rebecca testified that the insurance settlement proceeds had all been spent before trial. Jerry testified that he was not sure whether the insurance settlement proceed continued to exist at the time of trial. The trial court erred when it distributed the insurance settlement proceeds. In the event this Court determines the decree of dissolution is not void, this case should be reversed and remanded

with instructions to the trial court to make a just and equitable division of only those assets that were in existence at the time of trial.

D. Jerry testified that he had spent approximately \$408,579 of the community funds from the community business in the months prior to trial. Jerry did not provide evidence of how all of community funds under his exclusive control had been spent. Jerry did admit to spending community funds to pay his personal bills, pay his attorney fees and pay for the expenses of his separate property, all without court authorization. The trial court erred when it made its division of assets and liabilities without proof of how Jerry spent almost \$408,579 of community funds. In the event this Court determines the decree of dissolution is not void, this case should be reversed and remanded with instructions to the trial court to determine how Jerry spent almost \$408,579 of community funds before it makes a just and equitable division of the parties' assets and liabilities.

E. The trial court did not award Rebecca enough maintenance to meet her basic monthly needs when she was awarded \$1,800.00 per

month. Her mortgage payment of \$1,247 and her monthly health insurance premiums of \$600.00 exceed her monthly maintenance. she has no money for any other basic needs such as food and clothing. Rebecca does not work. Furthermore, the trial court found that she is unemployable. Conversely, Jerry grosses at least \$120,000 per year. Rebecca has the need for more maintenance and Jerry has the ability to pay. The trial court erred by not awarding Rebecca enough maintenance to meet her basic monthly needs. Furthermore, Jerry is anticipating a shorter life span due to his arrested disease. Rebecca has a normal life span. The life insurance policies should be changed back to making Rebecca the beneficiary to provide for her financially in the coming years. In the event this court determines the decree of dissolution is not void, this case should be reversed and remanded to the trial court with instructions to re-determine the maintenance award based upon the overall economic circumstances of the parties.

- F. Rebecca should be awarded her costs and attorney fees at the trial court level and the appellant court level if this Court determines that the decree of dissolution is void. If not, the Rebecca should be awarded her costs and attorney fees at the trial court level and the

appellate court level based upon RCW 26.09.140.

IV. The Decree of Dissolution of Marriage is Void.

It is undisputed that Rebecca filed and served her Summons and Petition for Legal Separation. (CP 261-268) It is undisputed that Rebecca subsequently filed and served her Amended Petition for Legal Separation (CP 203-208). It is undisputed that Jerry filed and served his Response to the First Amended Petition for Legal Separation (CP 153-155), wherein Jerry objected to entry of a decree of legal separation (CP 154). It is also undisputed that Jerry never filed his petition for dissolution of marriage. The governing statute, RCW 26.09.030 (d), is very clear:

If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity.

Jerry failed to comply with the requirements of the governing statute by not filing his petition for dissolution. Contrary to Respondent's Brief at 10, Jerry never made a counterclaim. In her Amended Petition for Legal Separation, Rebecca alleged in paragraph 1.4, "This is a request for legal separation in lieu of a dissolution of marriage." (CP 204) In Jerry's Response to the First Amended Petition

for Legal Separation, Jerry denied Rebecca's above-stated allegation. (CP 153) The state prepared form then requires a party who denies an allegation to explain why. (CP 154) While Jerry's explanation was non-responsive, (CP 154) Rebecca is treating it as an objection to her request for a decree of legal separation. At no time did Jerry file a counterclaim; he simply explained why he was denying Rebecca's allegation in her petition.

Jerry argues in his responsive brief at 9 that the trial court's decision should be affirmed because Rebecca was sitting on her hands throughout the pretrial proceedings and trial. This is a total misreading of the governing statute. Jerry can not simply object to the petition for legal separation; Jerry also has an affirmative statutory duty to prepare and file his petition for a decree of dissolution. The statute is silent as to when Jerry must file his petition for dissolution. Furthermore, the statute does not require Rebecca to force Jerry to file his petition for dissolution after he objects to Rebecca's petition for legal separation.

When Rebecca was asked at trial if she believed the marriage was irretrievably broken, she answered, "No, I don't." (VR27) This answer was in conformity with her petition for legal separation. Because Jerry failed to file his petition for a decree of dissolution in

conformity with RCW 26.09.030 (d), Rebecca's petition for legal separation retained its status throughout the pretrial proceedings and trial. The trial court erred when it entered its Decree of Dissolution (CP 62-86). The decree of dissolution is void.

Division One has restated the law which determines when a decree of dissolution is void. "Where a court lacks jurisdiction over the parties or the subject matter, or lacks the inherent power to make or enter the particular order, its judgment is void." Marriage of Mu Chai, 122 Wn. App. 247, 254, 93 P. 3rd 936 (2004).

The decree of dissolution in our case is void (CP 62-86) because the trial court lacked subject matter jurisdiction. "A judgment entered without jurisdiction is void." Brickum Inv. Co v. Vernham Corp, 46 Wn. App. 517, 520, 731 P. 2nd 533 (1987). "[T]he court must vacate the judgment as soon as the defect comes to light." Mu Chai, supra, 254. Once a petition for legal separation is filed and served, the trial court can obtain subject matter jurisdiction over a dissolution of marriage action only after a party both objects to the entry of a decree of legal separation and also files a petition for a decree of dissolution. RCW 26.09.030 (d). The trial court did not obtain subject matter jurisdiction over its dissolution of marriage decree because Jerry

never filed his petition for a decree of dissolution which was first necessary before the trial court had the authority/jurisdiction to act. Hence, the decree is void.

The decree of dissolution in our case is also void because the trial court lacked personal jurisdiction over the parties. The Washington State Supreme Court agreed with the Court of Appeals decision in Marriage of Markowski, 50 Wn. App 633, 749 P. 2nd 754 (1988). See Marriage of Leslie, 112 Wn. 2nd 612, 619, 772 P. 2nd 1013 (1989). In Markowski, a petition for legal separation was properly filed and served, but a decree was never entered. The same is true in our case. A petition for dissolution of marriage was subsequently mailed to the other party, in Markowski, without a summons. In our case neither a summons nor a petition for dissolution of marriage was ever filed or served. "Noting that actions for legal separation and dissolution 'have distinctly different consequences', the court held a summons was required to obtain personal jurisdiction over the husband for the dissolution of marriage action and voided the decree." Mu Chai, *supra*, 256.

The governing statute, RCW 26.09.030 (d) requires the party opposing a decree of legal separation to file a petition for dissolution.

Because legal separations and dissolutions have distinctly different consequences, Rebecca takes the position that RCW 26.09.030 (d) requires a summons as well as a petition for dissolution to convert her petition for legal separation action into a petition for dissolution action and the resulting relief of a dissolution decree. Rebecca finds support for her position in the Markowski decision, which was approved by our Supreme Court.

In Markowski, the appellate court vacated the dissolution decree because the trial court lacked personal jurisdiction over the other party when no summons was served with the subsequent petition for dissolution. Markowski, supra, 637. "Mrs. Markowski was required to serve a new summons because the petition for dissolution asserted new or additional claims for relief not previously asserted." Markowski, Id. In our case, for example, Rebecca would have maintained her health insurance had the decree of dissolution not been entered. (VR 30, 32-33). Because Rebecca was never served a petition for dissolution nor a summons informing her of the dissolution of marriage action, the trial court lacked personal jurisdiction over Rebecca and could not enter its decree of dissolution. The decree of dissolution is void

because the trial court lacked personal jurisdiction over Rebecca when Jerry failed to prepare, file and serve his summons and petition for dissolution. RCW 26.09.030 (d); Markowski, 637.

The decree of dissolution in our case is also void because the relief granted in the decree of dissolution exceeds the relief requested in the petition for legal separation. The Supreme Court in Leslie, Id, also agreed with the decision of the Court of Appeals in Marriage of Hardt, 39 Wn. App. 493, 693 P. 2nd 1386 (1985). In Hardt, the Court of Appeals affirmed the trial court's vacation of the dissolution decree "where, among other reasons, the decree...provided more relief than the petition requested." Leslie, supra, 618. The only petition before the trial court was Rebecca's Amended Petition for Legal Separation. (CP 203-208). The petition requested a decree of legal separation in lieu of dissolution. (CP 204). The trial court erred when it entered its decree dissolving the parties' marriage. (CP 63). The decree of dissolution is void because the decree provides for more relief than the petition for legal separation requested.

- V. The Property Division Was Not Just and Equitable.
 - 1. The Radio Business Awarded to Jerry Was Not Valued.

In the event this Court determines the decree of dissolution is not void, this case should be reversed and remanded because the trial court did not value the radio business assets, nor the radio business itself. Based upon Jerry's self-serving statement in a deposition, Jerry is now stating that the radio business assets and the radio business itself were a part of Stewart Tax & Accounting. (Responsive Brief, 16). If that were true, then the radio business assets and the radio business itself would have been sold to Andy Eshuis, along with the remainder of Stewart Tax & Accounting. (CP 68, 80) Obviously, the radio business assets and the radio business itself were not sold to Andy Eshuis, because it was awarded to Jerry. (CP 69) Pursuant to paragraph I. of Exhibit "H", Property and Liabilities Awarded to the husband, drafted by Jerry's attorney:

All right title and interest both tangible
and intangible in the following entities:
Husband's Radio Business

The radio business assets and the radio business itself constitute a significant asset. (CP 123) Jerry admits in his Responsive Brief at 17 that there is no separate value for the radio business. This is precisely the issue. There was no valuation of the radio business assets, or the radio business itself. According to Division One,

“We believe that the valuation of property awarded in a divorce case is a material and ultimate fact.” Wold v. Wold, 7 Wn. App. 872, 878, 503 P. 2nd 118 (1972). In Wold, this Court reversed and remanded for new trial because, “The review of the award of properties cannot be undertaken without knowledge of their value.” @ 878. This case should be remanded for a new trial so that the trial court can first value the radio business assets and the radio business itself and then make a just and equitable division of the parties’ assets.

2. The Trial Court Cannot Distribute an Asset Disposed of Prior to Trial.

In the event this Court determines the decree of dissolution is not valid, this case should be reversed and remanded because the trial court erred when it distributed insurance settlement proceeds which had been disposed of prior to trial. In his Responsive Brief at 18, Jerry admits that the trial court cannot distribute an asset that no longer exists. Marriage of Kaseburg, 126 Wn. App. 546, 556, 108 P. 3rd 1278 (2005).

Then Jerry goes on to state on the same page of his Responsive Brief that the court valued the insurance settlement proceeds as of the

date of separation. There is no evidence to support Jerry's claim that the trial court valued the insurance proceeds as of the date of separation in the trial court's oral ruling. (VR 6,9) The parties separated on March 5, 2008. (CP 88) The parties received the insurance settlement proceeds in 2006. (VR 50) Rebecca testified that the money from the insurance proceeds was spent. (VR 50) Even if the court did value the insurance settlement proceeds as of the date of separation, which it did not, Kaseburg requires that the asset, the insurance settlement proceeds, be in existence at the time of trial. Kaseburg, Id.

Jerry was not sure of the amount of the insurance settlement check. (VR 114) Furthermore, Jerry did not even know if the insurance settlement proceeds still existed. (VR 114)

Q. And the insurance settlement cash of \$2,054, when did you learn that – is the cash still there or is it gone?

A. I don't know if it's there. Well, may I explain?

Jerry then goes on to speculate about the existence of the insurance settlement proceeds. (VR 114-116)

During the trial, the trial court made a comment that is in

compliance with Kaseburg.

I'm going to base my decision on the assets that both sides present to the court that exist. I can't decide a case on suspicion. (VR 72)

Rebecca stated the insurance settlement proceeds no longer existed. (VR 50) Jerry did not know if the insurance settlement proceeds still existed at the time of trial. (VR 114) Because Jerry could not prove the insurance settlement proceeds existed at the time of trial, the trial court had no "ability to distribute that asset at trial" Kaseburg, Id.

The trial court erred when it distributed an asset that did not exist at the time of trial. This court should reverse and remand this case with instructions to the trial court to make a just and equitable division of the assets in existence at the time of trial.

3. The documentary evidence is insufficient to support Jerry's business expense claims which deprives the trial court of the ability to make a just and equitable division.

In the event this Court determines the decree of dissolution is not void, this case should be reversed and remanded because Jerry did not prove how he spent \$408,579 (VR 162) of the community accounting business assets in the months before trial. It is undisputed

that Jerry did not have an accounting of the community business expenses from January 2008 through March of 2008, (VR 168, 209). Rebecca was awarded temporary attorney fees of \$10,000.00 (CP 151). Jerry was not. Jerry did spend \$21,308 of the community business assets on his attorney fees. (VR 193,194) Jerry paid other personal bills out of the community business account (VR 46, 189, 249). Jerry admitted that he was spending community business funds on real property, the Park Street house, which Jerry claimed to be his separate property, (VR 209) and was awarded to him as his separate property. (CP 95, 96)

Jerry testified that there was basically no money left in the business account at the time of trial. (VR 163) It is Rebecca's position that Jerry was using the community business account as his "giant slush fund" while he had complete control over the business accounts.

In order to make a just and equitable division, the trial court must have evidence of the assets. Wold, supra, at 878. This case should be reversed and remanded because Jerry failed to provide sufficient evidence to prove his expenditure of approximately \$408,579 of community business funds from

January of 2008 while he had sole control over the business accounts. Only then can the trial court make a just and equitable division of the assets.

VI. Based Upon the Parties' Respective Economic Positions, Rebecca's Maintenance Award is Inadequate.

In the event this Court determines the Decree of Dissolution is not void, this case should be reversed and remanded because the monthly maintenance award of \$1,800 per month is inadequate to meet Rebecca's basic monthly needs. "[T]he economic condition in which a dissolution decree leaves the parties is a paramount concern in determining issues of property division and maintenance."

Marriage of Washburn, 101 Wn. 2nd 168, 182, 677 P. 2nd 152 (1984).

The parties had a forty year marriage. (CP 210-193) At the time of trial, Rebecca was sixty (60) years old. (VR 22) Rebecca has a weak back, digestive problems and arthritis. (VR 29) The trial court made the following finding, in part, concerning Rebecca's employability and basic monthly needs.

2.1 MAINTENANCE

The court finds that the wife is unemployable and that she will need \$2,600 per month to meet her basic monthly needs. (CP 89)

Rebecca was awarded the family home. (CP 81) The monthly mortgage payment is \$1,247. (VR 31) Rebecca anticipated her monthly health premiums to be \$600.00 per month for a sixty year old woman. The monthly health insurance and mortgage payments of \$1,847 exceed her monthly maintenance payment of \$1,800 per month. (CP 89) Obviously, she has no money for any other basic needs such as food and clothing. Rebecca has demonstrated her need for maintenance.

Jerry intended to continue working for Stewart Tax and Accounting. (VR 102-03, 105, 197-202) The business pays his medical insurance. (VR 80) While the monthly shot of Sandostatin costs \$2,000 (VR 79, 80), Jerry pays only his co-pay which is a total of \$15.00. (VR 80) The Sandostatin controls the production of a chemical that "cause certain things to happen to your body." (VR 79, CP 192) Jerry went on to testify, "It was progressing. I did have carcinoid syndrome." (VR 79) (emphasis added) These injections Jerry started in 2004 (VR 80) allow him to continue to work symptom free (VR 79) throughout litigation, including the trial. (VR 79)

Rebecca was trained as a nurse. (CP 192) She went with Jerry to the doctor's appointments prior to the separation. (VR 192) She stated that there had been no growth in the cancer for two or three years. (CP 192) Rebecca's declaration (CP 192) is in conformity with Jerry's trial testimony. (VR 79) Jerry has commented numerous times that the cancer has not changed his lifestyle in any way. (CP 192)

If symptoms concerning the cancer were to resurface, Jerry has options. Jerry has disability insurance. (VR 207) Jerry may also be eligible for Medicaid. (VR 233) However, the symptoms have not resurfaced.

The trial court ordered the sale of Stewart Tax and Accounting, Inc. to Andrew Eshuis (CP 68). Jerry testified that he would continue working in Stewart Tax and Accounting for \$10,000 per month as per his agreement with Andrew Eshuis (VR 196-197). This is a gross of \$120,000 per year. Jerry has demonstrated his ability to pay maintenance.

The maintenance provision in the finding of fact 2.12 (CP 89) also goes on to reference the parties' life insurance policy. Jerry testified that he realized that Rebecca has financial needs and that he wanted to help her meet those financial needs. (VR 107) It is

Rebecca's position that the life insurance, which had made her the sole beneficiary, was a part of the financial plan the parties had worked out to provide for her after Jerry's death. This position is supported by Jerry's prior sworn statement. "I have a large life insurance policy payable to Rebecca and we have enough net worth for me to retire." (CP 210)

Even though Jerry testified at trial that he was symptom free (VR 79), he intended to continue working the same number of hours he had worked previously (VR 197) and he intended to continue working for Stewart Tax and Accounting in the future (VR 197), Jerry speculated that he may not have long to live. If his symptoms were to reappear, he would have his disability insurance. (VR 207) and potentially, Medicaid.

Conversely, Rebecca has no life threatening maladies and should live several more years. Rebecca is unemployable. (CP 89) She is therefore in need of the funds from the life insurance policies to help her financially through her remaining years. The trial court's decision awarding the term policy and the remaining portion of the whole life policy (CP 68) should be reversed with instructions to make Rebecca the irrevocable beneficiary of both policies.

VII. Attorney Fees

1. The Trial Court Erred by not Awarding Rebecca Additional Attorney's Fees and Costs.

Rebecca is seeking attorney fees and costs for the expenses she incurred as a result of the decree of dissolution, which she believes to be void due to the lack of subject matter jurisdiction, personal jurisdiction and because the relief exceeds that requested in her petition. In Redding v. Puget Sound Iron & Steel Works, 44 Wash 200, 87 P. 119 (1906), the Washington State Supreme Court held that the trial court had discretion to award attorney fees before vacation of a judgment for want of prosecution. The Redding case held that "If it was necessary to reasonably reimburse the respondent for the expense and delay that it had been to on account of appellant's action" the decision would be affirmed. @ 201

It is Rebecca's position that this court has authority to award Rebecca her costs and attorney fees in the trial court and in these proceedings because of Jerry's actions in seeking the void decree.

If this court determines the decree of dissolution is not void, this case should be revised and remanded for an award of costs and attorney fees in the trial court pursuant to RCW 26.09.140.

Jerry is arguing that Rebecca is not entitled to an award of attorney fees at the trial court level because Rebecca did not state the specific language "Each party is capable of paying their own attorney fees and costs and no award should be made" in her Assignments of Error. Responsive Brief, 28.

In Rebecca's Notice of Appeal to the Court of Appeals, Division One (CP 34) and her Amended Notice of Appeal to the Court of Appeals, Division One, Rebecca sought review of paragraph 3.11 of the Decree of Dissolution. According to paragraph 3.11

**3.11 ATTORNEY FEES, OTHER PROFESSIONAL
FEE AND COSTS**

Each party shall pay his/her own attorney fees and costs. Jerry was therefore put on notice that Rebecca was appealing paragraph 3.11 in the Decree of Dissolution, which ordered each party to pay his/her own attorney fees. Pursuant to RAP 10.3 (a) (4), Rebecca made a separate concise statement of errors which she contends was made by the trial court.

I. ASSIGNMENTS OF ERROR

... Specifically, the trial court erred when it concluded:

6. Based upon the overall economic circumstances of the parties, each party should pay their own costs and attorney fees. (Findings of Fact 2.8, 2.9, 2.10, 2.12, 2.14 and 2.20; Conclusions of Law 3.3 and 3.5)

Rebecca's need for the payment of her attorney's fees and costs at the trial court level and Jerry's ability to pay those costs can be concisely stated as the parties' overall economic circumstances.

Pursuant to RAP 10.3 (g) Rebecca went on to list each Finding of Fact associated with the assignment of error, which included Finding 2.14 (CP 90)

2.14 FEES AND COSTS

Each party is capable of paying their own attorney fees and costs and no award should be made.

No where in Jerry's Responsive Brief did he state that he did not understand that Rebecca was seeking trial court costs and attorney fees. Jerry cited various portions of Rebecca's opening brief to show that he understood that Rebecca is seeking additional attorney's fees and costs at the trial court level and on appeal. (Responsive Brief, 28)

In his Responsive Brief, Jerry seems to argue that he is entitled to attorney fees at the trial court level. (Responsive Brief at 29 and 30) Jerry waived his cross-appeal. (Respondent's Brief .30)

As a result, Jerry has lost his right to appeal the trial court's rulings. See Marriage of Penry, 119 Wn. App. 799, 803, 82 P. 3rd 1231 (2004).

Jerry then asks for attorney fees on the appellate level not based upon RCW 26.09.140, but Rebecca's alleged intransigence. Jerry alleges that Rebecca has increased the costs of litigation because she has complained that Jerry was not forthcoming with how he spent the community funds from the community business.

Intransigence really lies with Jerry's conduct. Jerry could not prove how he spent \$408,579 of community business funds (RP 162) in the months before trial. (RP 163) Indeed, he had no accounting of the community business expenses from January of 2008 to March of 2008. (RP 168, 2009) Jerry spent community funds on his separate property mortgage (RP 209), personal bills (RP 46, 189, 249) and at least \$21,308 on his attorney fees, (RP 193, 194) all without court authorization. Rebecca's claims of Jerry's misuse of community business funds are justified.

Rebecca has no income. Jerry is grossing at least \$120,000 per year. (RP 196-197) The trial court found that Rebecca is unemployable. (CP 89) While Rebecca was awarded \$10,000 in

community assets to pay her temporary attorney fees (CP 151), Jerry unilaterally and without court order took at least \$21,308 of community funds to pay his legal fees. While Rebecca had to use assets awarded to her to pay her additional attorney fees, Jerry simply took community funds to pay his attorney fees. This evidence is not in conformity with the trial court's finding 2.14, Fees and Costs.

Rebecca should be awarded her costs and attorney fees at the trial court and in the appellant court based upon RCW 26.09.140, if this Court determines the decree is not void.

CONCLUSION

The Decree of Dissolution entered in this case is void due to the lack of subject matter jurisdiction, personal jurisdiction over Rebecca and because the relief granted exceeds the relief requested in the petition for legal separation.

In the event this Court determines that the Decree of Dissolution is not void, this case should be reversed and remanded because the trial court did not make a just and equitable division of the assets and liabilities – the trial court failed to value the

community radio business assets and the radio business itself, distributed the insurance settlement proceeds when they were no longer in existence at the time of trial, and distributed assets concerning the community accounting business without adequate documentary evidence as to how Jerry spent some \$408,579 of the community business funds in 2008. Rebecca should have her monthly maintenance award increased to meet her basic monthly expenses. Rebecca should be awarded the life insurance policies insuring Jerry's life to provide financially for Rebecca in the coming years. Finally Rebecca should be awarded the remainder of her costs and attorney fees in the trial court action and her costs and attorney fees in this appeal.

Dated this 1st day of September, 2009

RESPECTFULLY SUBMITTED

By 
David G. Porter #17925
Attorney for the Appellant
Rebecca Stewart