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SSD

No. 09-3-02590-1 KNT

COURT OF APPEALS,
OF THE STATE OF WASHINGTON
DIVISION I

CALLY MARIE SIMPSON, Respondent,

JEFFREY TODD SIMPSON, Appellant

BRIEF OF APPELLANT

FILED
COURT OF APPEALS DIV. I
STATE OF WASHINGTON
2011 OCT 21 PM 3:25

JEFFREY TODD SIMPSON
Appellant

20605 131ST St. Ct. E
Bonney Lake, WA 98391
(253) 202-4047

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Assignments of Error

1. The Superior Court erred in entering the order of Property to be Awarded to Wife in the June 16, 2010, Decree of Dissolution(DOD), denying defendants' right to personal properties owned prior to marriage:

Other: Except as awarded to Wife in this Decree, Wife is to make available for Husband to pick up on or before June 30, 2010, any personal property awarded to Husband in this Decree.

(DOD 3.3, pg. 3)

2. The Superior Court erred in verifying the monetary amount listed for attorney fees in the Liabilities to be Paid by Husband in Decree of Dissolution order entered on June 16, 2010:

Husband shall pay the following community or separate liabilities as set forth in the judgment awarded above.
Attorney's fees for Wife ($\$10,595.00 \times 50\%$) = $\$5,297.50$

(DOD 3.4 pg. 3)

3. The Superior Court erred in ordering Defendant to return or pay monetary value of jewelry belonging to Plaintiff

Husband shall pay the following community or separate liabilities as set forth in the judgment awarded above.
Jewelry described at trial (ring, necklace, bracelets) \$3,441.00
*Redelivery of jewelry will result in a partial satisfaction of judgment equal to the value of jewelry returned.

(DOD 3.4 pg. 3)

Issues Pertaining to Assignments of Error

A. Did the Superior Court commit a reversible error by ordering the Wife to make available to the Husband any personal property awarded to him in the decree and not include in that order to also release all pre-marital separate property? (Pertaining to Assignment of Error 1.)

B. Did the Superior Court commit a reversible error by not verifying the amount listed by the attorney for fees owed in Exhibit 15 with the amount of attorney's fees ordered in decree? (Assignment of Error 2.)

C. Did the Superior Court commit a reversible error by ordering Husband to return property that Wife alleged he had or to pay monetary compensation for said property when Burden of Proof clearly was not been met by the Wife who was the Plaintiff? (Pertaining to Assignment of Error 3.)

B. Statement of the Case

On June 14, 2010, Cally Simpson, represented by Bob Helland, Attorney and Jeff Simpson did appear in Superior Court for the trial in the Matter of the Marriage of Simpson and Simpson; Cause No. 09-3-02590-1. (RP 2) Jeff and Cally were married from 2006 through 2009 and were seeking dissolution. (RP 3 12-17)

During the proceedings Mr. Helland produced for Exhibit 10 and asked Cally to identify it. (RP 25 16-17) Cally stated it was the record showing that the jewelry had been checked to keep it under warranty. She also stated that as Jeff had turned it in to the courts with his records it proved that he had possession of the jewelry in question. (RP 25 3 18-24) Jeff objected stating that a receipt with his name on it didn't prove he had possession, just that he had purchased it. He was told he was correct but that didn't mean the document should be excluded. (RP 25 23 and RP 26 2-9)

Mr. Helland had Exhibit 15 admitted into evidence, a detailed list of fees and expenses accrued to date along with a declaration of attorney's fees which included \$2500.00 for a one-day trial. (RP 43 7-22) Fees were as follows: fees - \$5,095.00, expenses - \$130.84, trial - \$2500.00, totaling: \$7,725.84 in attorney's fees owed Mr. Helland. (EX 15)

At the end of these proceedings it was decided to take a recess for lunch and reconvene at 3pm for the ruling in this case. (RP 66 14-17) Court asked if Mr. Helland came with proposed final papers and he replied that he did and would like 15 – 20 minutes after the ruling was given to put it down on paper to which the Court agreed. (RP 66 18-25, RP 67 1-4) Jeff, who works nights, asked if he needed to be present for the ruling as he had worked the night prior to this trial and still had to work that night. The court informed him it was not necessary and that Mr. Helland would send him a copy of the ruling. (RP 67 5-12)

Mr. Helland mailed Jeff a copy of the Decree of Dissolution in which the courts ordered Cally to make available to Jeff any personal property awarded in the decree. (DOD 3.3 pg. 3) Jeff was ordered to pay half of Cally's attorney fees. (DOD 3.4 pg. 3) Jeff was also ordered to return jewelry in question or pay monetary value to Cally. (DOD 3.4 pg. 3)

C. Argument

A. Did the Superior Court commit a reversible error by ordering Cally to make available to the Jeff any personal property awarded to him in the decree but not include in that order to also release all pre-marital separate property? By ordering Cally to release only that property

awarded in the decree she felt she didn't need to allow Jeff to pick up the other items in the house which were his pre-marital separate property. So when Jeff went to pick up his rightful property he found that she had set outside only those things awarded in the decree and that he didn't have access to any of his belongings still in the residence.

B. Did the Superior Court commit a reversible error by not verifying the amount listed by the attorney for fees owed in Exhibit 15 with the amount of attorney's fees ordered in decree? Jeff was ordered to pay 50% of Cally's attorney fees in the amount of \$5,297.50. (DOD 3.4 pg. 3) If you calculate the amounts listed in Exhibit No. 15: fees - \$5,095.00, expenses - \$130.84, trial - \$2500.00, the total fees amount to: \$7,725.84. Please note that 50% of \$7,725.84 is not \$5,297.50, rather it is \$3,862.92.

C. Did the Superior Court commit a reversible error by ordering Jeff to return property that Cally alleged he had or to pay monetary compensation for said property when Burden of Proof clearly was not met by the Wife who was the Plaintiff? In every case, where any question arises as to the good faith of any transaction between spouses or between domestic partners, whether a transaction between them directly or by intervention of third person or persons, the burden of proof shall be

upon the party asserting the good faith. (RCW 26.16.210) Also, the person or party in interest claiming to be the lawful owner or to have the lawful right to possession shall have the burden of establishing his/her claim of ownership. (WAC 446-30-050) The Court agreed that a receipt of purchase does not constitute proof of possession. (RP 25 23 and RP 26 2-9) As Cally produced no further evidence to prove Jeff to be in possession of her jewelry, she failed to carry her burden of proof and therefore Jeff should not be ordered to return or pay compensation for said jewelry.

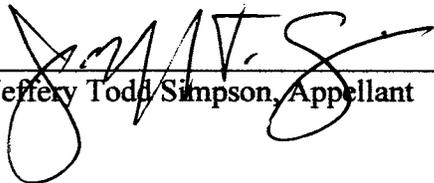
D. Conclusion

Jeff asks the Court of Appeals to revise, correct, or remove (3) items in the Decree of Dissolution entered by the Superior Court on June 14, 2010. (1) To revise the order to Cally stating that she is to make available Jeff's personal property awarded in this decree by adding that she is to allow him to also pick up those items in the residence that are his pre-marital separate property and were not disputed or awarded her by decree and to give him reasonable time to do this. (2) To correct the mathematical error in the monetary amounts awarded for attorney's fees from the current and incorrect amount of \$5,297.50 to the true and correct

amount of \$3,862.92. (3) To remove the award of monetary compensation for jewelry Jeff does not have possession of and therefore can not return to alleviate said monetary compensation.

September 23, 2010

Respectfully submitted,


Jeffrey Todd Simpson, Appellant

RECEIVED
COURT OF APPEALS
DIVISION ONE
SEP 14 2010

2010 JUL 13 AM 10:30
Form 1. Notice of Appeal
(Trial Court Decision)
[Rule 5.3a]

RECEIVED
KING COUNTY, WASHINGTON

JUL 13 2010

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

KNT DEPARTMENT OF
JUDICIAL ADMINISTRATION

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

[Cally Marie Merrifield SIMPSON],
Plaintiff,

v.

[Jeffrey Todd Simpson],
Defendant.

)
) No. [09-3-02590-1 KNT]
) Notice of Appeal to
) [Court of Appeals Division 1]
)
)
)

[Jeffrey Todd Simpson], [defendant], seeks review by the designated appellate court of the
[Decree of Dissolution paragraph 1.3, 3.3, and paragraph 3.4 entered on [06-14-2010.]

A copy of the decision is attached to this notice.
[07-12-2010]

Signature

[Defendant]

Jeffrey Todd Simpson
20605 131st St Ct East
Bonney Lake WA 98391.)



RECEIVED

SEP 14 11 28 28

COURT CLERK'S OFFICE
KING COUNTY

Superior Court of Washington
King County

In re the Marriage of:

CALLY MARIE SIMPSON,

Petitioner,

and

JEFFREY TODD SIMPSON,

Respondent.

No. 09-3-02590-1 KNT

Decree of Dissolution (DCD)

~~M~~ Clerk's action required @ 3.4
~~M~~ Law Enforcement Notification, ¶
3.8

I. Judgment/Order Summaries

1.1 Restraining Order Summary:

Name of person(s) restrained: Cally Marie Simpson, Jeffrey Todd Simpson. Name of person(s) protected: Cally Marie Simpson, Jeffrey Todd Simpson. See paragraph 3.8.

Violation of a Restraining Order in Paragraph 3.8 Below With Actual Knowledge of its Terms is a Criminal Offense Under Chapter 26.50 RCW and Will Subject the Violator to Arrest. RCW 26.09.050.

1.2 Real Property Judgment Summary:

Does not apply. All real property used by the parties during the marriage was and is the separate property of Wife.

1.3 Money Judgment Summary:

- | | | |
|---|-----------------------------|--------------|
| A. Judgment creditor | <u>Cally Marie Simpson</u> | |
| B. Judgment debtor | <u>Jeffrey Todd Simpson</u> | |
| C. Principal judgment amount | | \$ 19,396.50 |
| D. Interest to date of judgment | | \$ 00 |
| E. Attorney fees | | \$ 00 |
| F. Costs | | \$ 00 |
| G. Other recovery amount | | \$ 00 |
| H. Principal judgment shall bear interest at the statutory judgment rate, until paid. | | |

I. Attorney fees, costs and other recovery amounts shall bear interest at the statutory interest rate, until paid.

J. Attorney for judgment creditor

Robert Helland
960 Market Street
Tacoma, WA 98402-3605

K. Attorney for judgment debtor

pro se

L. Other:

End of Summaries

II. Basis

This Decree is based on the court's Findings of Fact and Conclusions of Law entered in this case.

III. Decree

3.1 Status of the Marriage

The marriage of the parties is dissolved.

3.2 Property to be Awarded Husband

Husband is awarded as his separate property the following property.

Any property taken from the residence and in his possession, *except* that property awarded to Wife in this Decree.

His vehicle

Karcher pressure washer

Computer peripherals (keyboard, mouse, speakers)

Master bath mat

3 Octagon attic vents

Large dog door

One leather office chair – his choice

2 bronze statues – acquired before marriage

½ cookbook collection – his choice

Other: Except as awarded to Husband in this Decree, Husband is to return any other personal property to Wife's residence on or before June 30, 2010.

3.3 Property to be Awarded to Wife

Wife is awarded as her separate property the following property.

All real property, all of which was her separate property *

Any personal property taken from the residence and in her possession or in the possession of Husband, *except* that property awarded to Husband in this Decree

Her vehicle

2 bronze statues – acquired during marriage

½ cookbook collection – Husband's choice

One leather office chair – Husband's choice

Hooks and beaters for Kitchen Aid blender

* HUSBAND TO PORTFOLIO SIGN OUT CLAIM DEEDS AND REAL ESTATE
EXCEPT ADDENDUMS TO BOTH PARCELS TO WIFE.

JMB
6-14-10

Other: Except as awarded to Wife in this Decree, Wife is to make available for Husband to pick up on or before June 30, 2010, any personal property awarded to Husband in this Decree.

3.4 Liabilities to be Paid by Husband

Husband shall pay the following community or separate liabilities as set forth in the judgment awarded above.

*Unpaid mortgage payments for April – November 2009 (less amount set forth in separate judgment and credit for one month paid)

\$ 10,658.00

Do the Math?

** Prior judgment for unpaid mortgage payments

4,000.00

Not included

** Prior judgment for attorney's fees

350.00

*Fees total
7725.84
x 50%
= 3862.92*

*Attorney's fees for Wife (\$10,595.00 x 50%)

5,297.50

*Jewelry described at trial (ring, necklace, bracelets)

3,441.00

Not in my poss. - Not Proven

Total Judgment Amount

\$23,746.50

* Included in judgment summary.

♦ Redelivery of jewelry will result in a partial satisfaction of judgment equal to the value of jewelry returned.

** PRIORE JUDGMENTS ARE NOT MERGED BY ENTRY OF THIS DECREE AND REMAIN IN EFFECT

Unless otherwise provided herein, Husband shall pay all liabilities relating to, or secured by any property awarded to him and all liabilities incurred by him since the date of separation.

3.5 Liabilities to be Paid by Wife

Unless otherwise provided herein, Wife shall pay all liabilities relating to, or secured by any property awarded to her and 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's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

3.7 Maintenance

Does not apply.

3.8 Continuing Restraining Order

A continuing mutual restraining order is entered as follows:

Each party is restrained and enjoined from disturbing the peace of the other party.

Both parties are restrained and enjoined from going onto the grounds of or entering the home, work place or school of the other party.

*MB
0-14-10*

Violation of a Restraining Order in Paragraph 3.8 With Actual Knowledge of its Terms Is a Criminal Offense Under Chapter 26.50 RCW and Will Subject the Violator to Arrest. RCW 26.09.060.

Clerk's Action. The clerk of the court shall forward a copy of this order, on or before the next judicial day, to: King County Sheriff (Maple Valley) – Wife; Bonney Lake – Husband law enforcement agency which shall enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants. **(A law enforcement information sheet must be completed by the party or the party's attorney and provided with this order before this order will be entered into the law enforcement computer system.)**

Service

The restrained party or attorney appeared in court or signed this order; service of this order is not required.

Expiration

This restraining order expires on: June 13, 2011.

This restraining order supersedes all previous temporary restraining orders in this cause number.

Any temporary restraining order signed by the court in this cause number is terminated. **Clerk's Action.** The clerk of the court shall forward a copy of this order, on or before the next judicial day, to: King County Sheriff (Maple Valley) – Wife; Bonney Lake – Husband law enforcement agency where **Petitioner** resides which shall enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants.

Full Faith and Credit

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

3.9 Protection Order

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:

3.14 Name Changes

CALLY

SMB
6-14-10

Wife's name shall be changed to Callie Marie Merrifield.

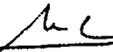
3.15 Other

Dated: 6.14.10

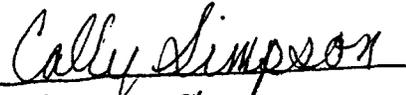


Judge/Commissioner

APPROVED BY



ROBERT HILLMAN 9559
ATTY PETITIONER



CALLIE SIMPSON
PETITIONER

(10)

Gordon's

SEATTLE, WA 98188

Diamond Bond Number: 046900045306

Today's date: 03/14/2006
Store: 4690 Trans#: 206381

For more than 95 years, Gordon's Jewelers has been committed to diamond excellence. A great deal of care has gone into selecting every diamond we sell. You can be sure that your diamond is among the finest in its price range for cut, clarity, carat weight and color. To fulfill our promise to you, we are covering your diamond purchase with our Lifetime Diamond Bond Warranty.

Before leaving the store, verify the information and read the stipulations concerning this warranty. Then, keep it in a safe place as you would any other important document. You will be required to bring in your purchase every six months for inspection. Be sure to bring your diamond bond with you for your semi-annual inspections and service needs. Your first inspection must be six months from the month of purchase.

JEFF SIMPSON
22440 BENSON RD SE
KENT, WA 98031

Daytime Phone: 253-850 2997
Evening Phone:

SKU	Description	Purchased	Cert# & Company
16633588	RND CTR >= 1CTW	2841.75	N/A

Gordon's INSPECTIONS -- Be sure to bring this card with you for each semiannual inspection. Inspections will be every Mar. and Sep.

Inspection Year	Authorized Signature	Inspection Number	Authorized Signature	Inspection Number
2006 Mar	Initial Purchase		B. Vaehn	06174631
2007 Mar	Chris S.	0707892407	R. P. P.	07571122
2008 Mar	my	085817773	W. C. P.	08468789
2009 Mar	Susan	09498380		
2010 Mar				
2011 Mar				
2012 Mar				
2013 Mar				
2014 Mar				
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2016 Mar				
2017 Mar				
2018 Mar				
2019 Mar				
2020 Mar				

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Superior Court of Washington
County of PIERCE

In re the Marriage of:

CALLY MARIE SIMPSON,

Petitioner,

and

JEFFREY TODD SIMPSON,

Respondent.

No. 09-3-02590-1 KNT

ATTORNEY FEE AFFIDAVIT

UNDER PENALTY OF perjury under the laws of the State of Washington I affirm the following to be true:

I am the attorney for Petitioner, CALLY MARIE SIMPSON.

I have practiced law in Washington State, primarily in family law, since 1979.

I currently bill out my time at the rate of \$250 per hour.

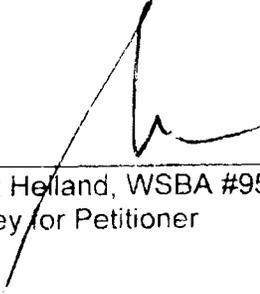
Attached is a copy of Ms. Simpson's billing statements with my office to date. I believe that said time is reasonable and necessary with regard to the issues presented herein.

I would also request the judgment to reflect the following (for the trial to be held regarding this matter):

Review file: prepare for trial; trial (estimated-one day trial); travel time 2 hours: \$2,500

Signed at Tacoma, Washington on: JUN 11 2010

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Robert Helland, WSBA #9559
Attorney for Petitioner

For the dates: 6/12/2000 to 6/12/2010

Client: Merrifield-Simpson, Cally

Matter: Dissolution 09-087 (Default)

Bill Detail

Date	Type	Billor	Description	Hours	Amount
8/6/2009	Fee	RH	conference with client; review of file; prepare response, motion, and notice of appearance; dictate to staff	1.50	\$375.00
8/7/2009	Exp	RH	standard open file fee		\$100.00
8/7/2009	Fee	RH	call from client	0.10	\$25.00
8/10/2009	Exp	RH	postage to client and Mr. Simpson (\$2.92 each)		\$5.84
8/10/2009	Fee	RH	review file; hearing (not confirmed); travel; prepare for hearing; calculate income; dictate to staff; review and copy file at courthouse	2.20	\$550.00
8/28/2009	Fee	RH	call from client	0.10	\$25.00
8/31/2009	Fee	BHM	review file; prepare for hearing at Maleng Regional Justice Center	0.40	\$80.00
8/31/2009	Fee	BHM	appear for hearing on temporary orders	2.30	\$460.00
8/31/2009	Fee	BHM	prepare motion for revision	0.20	\$40.00
8/31/2009	Pmt		paid from trust - fees		(\$1,660.84)
9/3/2009	Fee	RH	call from client; review of file	0.10	\$25.00
9/3/2009	Exp	RH	King County Clerk - records request		\$25.00
9/15/2009	Fee	RH	dictate to staff re: garnishment; prepare Motion for Temporary Order	0.50	\$125.00
9/16/2009	Fee	RH	review file; prepare bench copies	0.10	\$25.00
9/17/2009	Fee	RH	call from client	0.10	\$25.00
9/28/2009	Fee	RH	prepare renote of Motion Docket and Declaration of Mailing; letter to Todd; review file-conference with staff re: call from court to renote	0.20	\$50.00
9/30/2009	Pmt		paid from trust - fees		(\$275.00)
10/16/2009	Fee	BHM	attend hearing on motion for revision	1.70	\$340.00
10/19/2009	Fee	RH	review file; hearing; travel time	2.50	\$625.00
10/20/2009	Fee	RH	call to client; reading papers; review file prepare strict reply declaration	1.00	\$250.00
10/26/2009	Fee	RH	hearing	3.00	\$750.00
10/31/2009	Pmt		paid from trust - fees		(\$1,965.00)
11/4/2009	Fee	RH	call to client; review file	0.20	\$50.00
11/12/2009	Fee	RH	letter to client; review file; draft motion	1.00	\$250.00
11/30/2009	Pmt		paid from trust - fees		(\$300.00)
12/8/2009	Fee	RH	read documents; dictate to staff	0.10	\$25.00
12/14/2009	Fee	RH	read letter	0.10	\$25.00
12/29/2009	Fee	RH	review of file; prepare witness list; dictate to staff	0.20	\$50.00
12/31/2009	Pmt		paid from trust - fees		(\$100.00)
3/1/2010	Fee	BHM	prepare motion, declaration and order continuing trial date	0.50	\$100.00
3/1/2010	Fee	BHM	e-file motion and declaration - transmit to bailiff - NO CHARGE	0.20	\$0.00
3/31/2010	Pmt		paid from trust - fees		(\$100.00)
5/13/2010	Fee	RH	review file; dictate to staff	0.50	\$125.00
5/19/2010	Fee	RH	conference with client; prepare trial materials	1.00	\$250.00
5/25/2010	Fee	RH	call to judicial assistant; review file; prepare Witness Form	0.30	\$75.00
5/26/2010	Fee	RH	letter to client; review file; read documents	0.40	\$100.00

5/31/2010	Pmt		paid from trust - fees		(\$550.00)
6/4/2010	Fee	RH	read letter	0.10	\$25.00
6/7/2010	Fee	RH	review file; prepare Exhibit list and Memorandum	1.00	\$250.00

Activity Subtotals

Fees:	21.60 Hours	\$5,095.00
Expenses:		\$130.84
Other Charges:		\$0.00
Payments:		(\$4,950.84)

$$\begin{array}{r}
 \text{trial Date costs} \text{ --- } 2500.00 \\
 \text{Fees} \text{ --- } 5095.00 \\
 \text{Expenses} \text{ --- } 130.84 \\
 \hline
 7725.84 \\
 \times 50\% \text{ per decree} = \quad \times 50\% \\
 \hline
 = 3862.92
 \end{array}$$

For the dates: 6/12/2000 to 6/12/2010

Activity Totals

Hours:	21.60
Fees:	\$5,095.00
Expenses:	\$130.84
Other Charges (net):	\$0.00
Payments:	\$4,950.84