

66268-6

66268-6

No. 66268-6-1

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

In Re the Marriage of:

AMY BUECKING,

Respondent

And

TIM BUECKING

Appellant.

BRIEF OF APPELLANT
TIM BUECKING

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APPENDIX

1. Petition for Legal Separation
2. Amended Petition for Dissolution of Marriage
3. Findings of Fact and Conclusions of Law
4. Decree of Dissolution

I. Introduction

The first issue before this Court is that of jurisdiction. Amy filed her Petition for Legal Separation on December 12, 2008. At a mediation, Tim signed Amy's Petition for Dissolution, not as a joinder in the petition, but his agreement that Amy could file her petition for dissolution of marriage. No new summons was served with the petition for dissolution of marriage. Amy filed her petition for dissolution of marriage on April 2, 2010. The trial occurred on May 19, 2010, and the decree of dissolution of marriage was entered on June 23, 2010, which was less than 90 days from the filing of the petition for dissolution, alleging, for the first time, that the marriage was irretrievably broken. The trial court acted without statutory authority, or without subject matter jurisdiction, when it entered the decree before the lapse of the 90 days. The decree is void and should be vacated.

If the decree is not void, then the case should be remanded for recalculation of child support. The Court determined that Tim was underemployed because Tim could have earned \$7,000.00 per month, each month, based upon one pay stub from 2008. Tim works at various oil refineries. Tim works long hours for short periods of time at the oil refineries, followed by periods of unemployment. This employment cycle is considered customary for his type of employment.

The trial court should have imputed income to Amy for child support purposes. She has no work history from October 1, 1999, but for, one pay stub showing part-time employment for a two week period. The evidence at trial showed an absence of pay records of Amy's earnings since October 1, 1999.

If the decree is not void, then the case should be remanded for redistribution of the property and debts. The trial court awarded Amy \$25,000 of equity, payable by Tim, in real property that was in active foreclosure at the time of trial and subsequently lost to foreclosure. Amy was awarded a judgment for rents from the property when the properties were not rented.

If the decree is not void, then the case should be remanded to change number 8 of paragraph VI of the final parenting plan to conform with the evidence. Number 8 states, "Neither parent shall allow the children to have any contact whatsoever with Orvel William Ball, dob 8/6/70." Mr. Ball was Amy's "boyfriend." Tim filed a motion which required Amy to keep Mr. Ball away from the children. The order requiring both parents to keep the children away from Mr. Ball is not based upon the evidence. Amy, alone, should be ordered to keep the children away from Mr. Ball.

II. Assignments of Error

The trial court entered its Findings of Fact and Conclusions of Law, Decree of Dissolution, Final Order of Child Support and Final Parenting Plan, all on June 23, 2010. The Order on Reconsideration was entered on October 25, 2010. Tim assigns error to the Findings of Fact, Conclusions of Law, Decree of Dissolution of Marriage, Final Order of Child Support, Final Parenting Plan and the Order on Reconsideration. Specifically the trial erred:

1. The trial court erred because it did not have the statutory authority to determine that the marriage is irretrievably broken and enter the decree of dissolution when less than 90 days had passed since the date the petition was filed. (All of the Findings, All of the Conclusions, and the Order on Reconsideration).
2. In the alternative, to paragraph 1 above, the trial court erred when it imputed income to Tim of \$7,000.00 per month for child support purposes when it is customary in the father's vocation to work more than 40 hours per week for relatively short periods of time followed by periods of unemployment. (Findings of Fact 2.20, 2.12 and Conclusion of Law 3.4).
3. In the alternative to paragraph 1 above, the trial court erred when it

failed to impute income to Amy for child support purposes when Amy was ordered to seek full time employment, provided the trial court with only one pay stub for part time work during one, two week period and had not previously been employed since October 1, 1999. (Finding of Fact 2.20, and 2.12 and Conclusion of Law 3.4)

4. In the alternative to paragraph 1 above, the trial court erred when it awarded Amy a judgment for missed mortgage payments and lost rents when those funds were not available at the time of trial to distribute. (Findings of Fact 2.8, 2.9, 2.10, 2.11 and 2.21, Conclusions of Law 3.4)

5. In the alternative to paragraph 1 above, the trial court erred when it awarded Amy \$25,000.00 in equity for land that was in active foreclosure and subsequently lost to foreclosure. (Findings of Fact 2.8, 2.9, 2.10, 2.11, 2.12 and 2.21, Conclusion of Law 3.4)

6. In the alternative to paragraph 1 above, the trial court erred when it ordered both parents to keep the children away for the wife's former boyfriend when the evidence showed that Tim was the parent trying to keep Amy's former boyfriend away from the children, not both Tim and Amy. (Findings of Fact 2.17 and 2.19, Conclusions of Law 3.4)

Issues pertaining to these assignments of error include:

A. The trial court lacked jurisdiction under RCW 26.09.030 to find that the marriage was irretrievably broken and enter the decree of dissolution because less than 90 days had passed since the petition for dissolution of marriage had been filed, thus making the decree void. The decree should be vacated. Should the decree be vacated because the trial court had no jurisdiction to find that the marriage was/is irretrievably broken and no jurisdiction to enter the Decree of Dissolution of Marriage? (A of E #1)

B. In the alternative to paragraph A above, the trial court erred when it failed to determine Child Support in compliance with Chapter 26.19 RCW. Gross income of \$7,000.00 per month should not have been imputed to Tim under RCW 26.19.071 (6) when he does not work a 40 hour week. The customary practice of his vocation is to work more than 40 hours per week until a short term job is completed at an oil refinery followed by periods of unemployment. Tim has never earned \$84,000 in a given year. Did the trial court error when \$7,000 per month was imputed to Tim for child support purposes? (A of E #2)

C. In the alternative to paragraph A above, the trial court erred when it failed to impute income to Amy under RCW 26.19.071 (6) when

Amy was ordered to pursue full time employment, provided one pay stub showing part-time employment for a two week period, which worked just before trial, and had not previously worked since October 1, 1999. Did the trial court error when it failed to impute income to Amy for child support purposes? (A of E #3)

D. In the alternative to Paragraph A above, the trial court erred when it award judgments to Amy for missed mortgage payments and rental funds that were not collected because the property was not rented and equity in real property for land subject to active foreclosure that was eventually foreclosed upon. Did the trial court error when it awarded equity in property that was in active foreclosure and other property not in existence at the time of trial? (A of E #'s 4,5)

E. In the alternative to paragraph A above, the trial court erred when it ordered both parents to keep the children away from the wife's former boyfriend in paragraph VI of the Final Parenting Plan (CP 51) when the evidence showed that Tim successfully sought remedies preventing the former boyfriend from having contact with the parties' children, which Amy resisted. Did the trial court error when it ordered both parents to keep the children away from Mr. Ball when the evidence

showed that it was only the mother who sought to retain the relationship?

(A of E #6)

III. Statement of the Facts

Tim and Amy Buecking were married on August 14, 1999 on Lumi Island, Whatcom County, Washington (CP 54) Tim works as a mechanic at various oil refineries. Amy worked until October 1999. (RP 44) During the marriage Amy worked on/with the rentals (RP 66) Three children were born of the marriage, namely Hannah 10, Justin 6, and Summer 4. (CP 43)

Tim purchased the Lumi Island property prior to marriage. (RP 29, 115) During the economic boom of the 2000's, the parties purchased additional properties. When the economic bubble burst, Tim and Amy were unable to maintain the mortgages on most of the properties, which went into foreclosure. (RP 119, 120)

Amy filed for legal separation on December 12, 2008. (CP 183-186). At a mediation, Tim, who was unrepresented, was convinced to sign Amy's request to file her dissolution of marriage petition on March 25, 2010. (CP 90) The filing of an Amended Petition for Dissolution of

Marriage occurred on April 2, 2010. (CP 86) The trial occurred on May 19, 2010, which was within less than 90 days from the filing of the dissolution petition. The Decree was entered on June 23, 2010, which was less than 90 days from the filing of the petition for dissolution. Tim filed a Response to Amy's Petition of Marriage on May 18, 2010.

ARGUMENT

IV. Lack of Oral Ruling and Memorandum Opinion

No oral ruling transcription nor memorandum opinion was provided to this Court because none was made. At the end of the trial on May 19, 2010, there was no time left in the court day for closing arguments. (RP 192-193) Stating that there was usually a delay in receiving the final orders after the oral ruling, the trial court requested proposed final orders from the parties in advance of the closing agreement. Closing argument was heard on June 15, 2010. Proceedings in other cases were also scheduled before the Court on June 15, 2010. As a result, the trial court made no oral ruling on June 15, 2010. No subsequent memorandum opinion was provided to the parties. On June 23, 2010, counsel received a telephone call from the judge's judicial assistant that

the proposed final orders were entered as essentially prepared by Amy's counsel. As this Court can see, there is no signature on any final order by Tim or his attorney.

V. Standard of Review

It is Tim's position that the trial court had no statutory authority to enter the Decree of Dissolution because less than 90 days had passed from the filing of the petition for dissolution of marriage, with its allegation that the marriage is irretrievably broken, and the entry of the Decree of Dissolution of Marriage. "A judgment, decree or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void. Dike v. Dike, 75 Wn. 2nd 1, 7, 448 P. 2nd 490 (1968). "A void judgment must be vacated." Summers v. Dept. of Revenue, 104 Wn. App. 87, 90, 14 P. 3d 902 (2001).

In the alternative, it is Tim's position that the trial court improperly applied RCW 26.19.071 to the facts concerning child support. "The question of whether a statute applies to a particular set of facts is a legal

issue and fully reviewable on appeal.” Lobdell v. Sugar ‘N Spice, 33 Wn. App. 881, 887, 658 P. 2nd, 267 (1983).

Also, in the alternative, while property division in a dissolution of marriage action is discretionary and based upon the manifest abuse of discretion standard (See In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P. 3d 1018 (2002), the trial court has no ability to distribute assets that do not exist at the time of trial. See Marriage of White, 105 Wn. App. 545, 549, 20 P. 3d 481 (2001)

It is Tim’s position that the trial court abused its discretion in section 8 of paragraph IV of the final parenting plan because the mutual restraint prohibiting Tim and Amy from allowing contact with Mr. Ball is not based upon the evidence in the case. A trial court’s decision is based upon untenable grounds, “if the factual findings are unsupported by the record.” Marriage Littlefield, 133 Wn 2d 39, 47, 940 P. 2nd 136 (1997).

VI. The Trial Court Lacked Jurisdiction to Enter the Decree

Dissolution of Marriage actions are governed by Chapter 26.09 RCW. Pursuant to RCW 26.09.030, the trial court has the authority to proceed in a dissolution of marriage action when the petitioner alleges that

the marriage is irretrievably broken and after 90 days have elapsed since the date petition was filed and served. Pursuant to RCW 26.09.030, and RCW 26.09.030 (a)

When a party who (1) is a resident of this state...petitions for dissolution of marriage...and alleges that the marriage...is irretrievably broken and when ninety days have elapsed since the petition was filed,...the Court shall proceed as follows: (a) If the other party....does not deny that the marriage...is irretrievably broken, the Court shall enter a decree of dissolution.

In our case, Amy filed her Summons and Petition for Legal Separation on December 12, 2008. (CP 181-186) By definition, a petition for legal separation does not make a claim that the marriage is irretrievably broken. On March 4, 2010, Tim agreed to the filing of Amy's Petition for Dissolution of Marriage instead of legal separation (CP 90) Amy's Amended Petition for Dissolution of Marriage was filed on April 2, 2010. (CP 86-91) Because a legal separation petition requests different relief, it is necessary to start the 90 days from the date of filing. In Marriage of Markowski, 50 Wn. APP. 633, 637, 749 P. 2nd 754 (1988), the Court stated that separation and dissolution have distinctly different consequences and required the filing and service of a new summons.

As the Court in Markowski stated, the petition for dissolution of marriage asserted new or additional claims for relief. In our case, Amy

subsequently petitioned for dissolution of marriage, while alleging for the first time, in paragraph 1.4 of her petition, that the marriage is irretrievably broken. (CP 87) No new summons was ever filed or served.

The statutory language of RCW 26.09.030 is clear, when a party petitions for a dissolution of marriage and also alleges that the marriage is irretrievably broken and after ninety days have elapsed since the later of when the petition was filed, or served, the Court may, after the 90 day period, make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage, RCW 26.09.030 and RCW 26.09.030 (a). The petition for dissolution of marriage was filed on April 2, 2010. (CP 89-91) On June 23, 2010, the Court found in paragraph 2.6 that the marriage was irretrievably broken and more than 90 days had elapsed since the date the petition was filed. (CP 54) The finding is erroneous. Less than 90 days had passed since petition for dissolution, alleging that the marriage was irretrievably broken, had been filed.

The decree was entered on June 23, 2010 (CP 16-26), without statutory authority. “A judgment, decree or order entered by a Court which lacks jurisdiction of the parties or of the subject matter or which lacks the inherent power to make or enter the particular order involved, is void.” Dike supra, 7. Because dissolution of marriage proceedings are

governed by section RCW 26.09.030, which only grants the trial court the authority to make a finding that the marriage is irretrievably broken and enter a decree after 90 days have passed since the filing of the petition, the trial court lacked the jurisdiction over the subject matter to enter the decree. Therefore, the decree of dissolution of marriage is void.

This court should determine that the decree is void and vacate the same.

VII. Child Support Was Not Entered in Compliance with Chapter 26.19 RCW

If this Court does not determine that the Decree is void, along with the Final Parenting Plan (CP 43-52) and the Final Order of Child Support (CP 27-42) which are based upon the Decree, it is Tim's position that the Final Child Support Order was not entered in compliance with statutory authority.

In the way of background, Tim was overpaying temporary child support. No income was imputed to Amy. (CP 131) Rental income of \$900.00 was included in Tim's gross income. (CP 135) The temporary order, also entered on January 29, 2009 (CP 125-128), specifically,

paragraph 3.2 of the Temporary Order, stated that rental payments were to be used to satisfy rental mortgages. (CP127) In 2009, Amy took rental income and kept the funds. (RP 163) She did not apply the rent money to the mortgages. (RP 163) Furthermore, Amy claimed an interest in the rental money for which she received an award of “\$2,250.00 representing wife’s community property interest in lost rents for the Mt. Vista Drive home“ (CP 24) and \$1,800.00 for her “community interest in the Lumi View Drive rent.” (CP 23)

The Temporary Order entered on January 29, 2009, required Tim to pay the first and second mortgages on the Michigan Street house, which was to be considered maintenance. (CP 126) However, the maintenance was not included as gross income for Amy (RP 71, CP 136), nor was the maintenance included as a deduction from gross income for Tim, for child support purposes. (CP 136)

The Temporary Order of Child Support ordered Amy to provide a medical update and/or employment information by the end of February 2009. (CP 134) Amy never provided this information. (RP 70) Amy provided one pay stub for part-time work that she had done from April 17, 2010 to April 30, 2010, (Ex 14, RP 47), which was a few days before trial. She had worked about 30 hours during the two week pay period, earning

\$8.55 per hour. (EX 14, RP 44) Amy's last job, prior to April of 2010, ended on October 1, 1999. (RP 44) Amy applied for jobs for which she was not qualified during the pendency of the action. (RP 80-81 EX 23)

Tim works on oil refinery sites. Tim's job is not a 9-5 job. Amy admitted that Tim's vocation includes periods of unemployment. "That's part of his job. He works for weeks and gets laid off for a few months and weeks (sic) for a few months and then off again." (RP 69) On some jobs, Tim is paid per diem, which includes travel and meals. (RP 188-189)

Amy provided the Court with Tim's September 26, 2008 pay stub. (EX 16, RP 49) Amy averaged the income from the 2008 pay stub. Amy then stated that Tim was capable of earning \$7,000.00 per month at the time of trial, May 19, 2010, (RP 47) based upon his one pay stub from 2008. The pay stub includes per diem, which are nontaxable living expenses. (RP 188-189) \$7,000.00 per month is an annual gross income of \$84,000.00. Amy did admit that Tim had never made \$84,000.00 in any year that they were married. (RP 81) Amy asked the Court to input gross income to Tim in the amount of \$7,000.00 for child support purposes. (RP 47-48)

Tim testified that his income for 2009 was \$54,563.27, including unemployment. (EX 26, RP 138) Tim provided evidence that his income,

prior to trial, for 2010 was \$15,157.52. (EX 29, RP 142)

The trial court erred by imputing \$7,000.00 of monthly gross income to Tim because the trial court found that Tim was underemployed. (CP 29) RCW 26.19.071 (6) does not define full-time employment. See Marriage of Schumacher, 100 Wn. App. 208, 214, 997 P. 2d 399 (2000). Schumacher goes on to state, “According to the dictionary, full-time means “employed for working the amount of time considered customary or standard.” Id. In our case, Amy stated the industry standard for Tim’s vocation. (RP 69) Tim works for a time during refinery a shut-down. He gets laid off and goes on unemployment. He then obtains another job working during another refinery shut-down or temporary job at a refinery. (RP 100-102) Tim is not voluntarily underemployed because it is customary or standard for him to work for periods of time for more than 40 hours per week followed by periods of unemployment.

The trial court erred by not imputing income to Amy. Amy was voluntarily unemployed during the pendency of this case through to the start of her part-time job at the paint ball range. She applied for jobs that she was not qualified to do. (RP 80-81, EX 23) The trial court based Amy’s income for child support purposes on the one pay stub she provided at trial. (EX 14, CP 39, RP 48) Amy is capable of full time employment.

The Final Order of Child Support ordered Amy to seek full time employment. (CP 30) The final order of child support also speaks to Amy's work history. "No income is imputed to wife because she is currently employed in an entry level job after being out of the work force for 10 years." (CP 30) One pay stub since October 1, 1999, is clearly an "absence of records of a parent's actual earnings," RCW 26.19.071 (6)

Amy is voluntarily underemployed pursuant to RCW 26.19.071(6). Amy last worked on October 1, 1999. (RP 44) One pay stub of part-time work in a two week period, worked a few days prior to trial, is insufficient evidence of Amy's work history. Income should have been imputed to Amy based upon RCW 26.19.071(6)(e), the median net monthly income table.

If the Court does not determine that the Decree along with the Final Child Support Order is void, then the case should be remanded for recalculation of child support, based upon the above-stated argument.

VIII. The Trial Court Erred By Awarding Judgments to Amy for Property and for Maintenance that did not Exist at trial or was Lost to Foreclosure.

If this Court does not determine that the Decree is void, it is Tim's

position that the trial court awarded judgments to Amy for property that did not exist at the time of trial. The trial court erred when it characterized the Lumi Island property as community. The Lumi Island property was purchased prior to the parties' marriage by Tim. (RP 29, 115) The character of property as separate or community is determined as of its date of acquisition. See Estate of Borghi, 167 Wn. 2nd 480, 484, 219 P. 3rd 932, (2009) Therefore, the Lumi Island property was Tim's separate property. Once the separate character of the property is established, a presumption arises that it remained separate property absent direct and positive evidence of a change of character. Borghi @ 484 Amy's name was put on the title to the Lumi Island property because it was beneficial to refinance the property (RP 115) No presumption arises when the names of both spouses are on the title. Borghi supra 489-90 There was no community property agreement, nor quit claim deed giving Amy any interest in the real property. Borgi at 488-89. Hence, the Lumi Island property was Tim's separate property. Therefore, the trial court erred when it found in paragraph 2.9 that Tim had no separate property. (CP 54)

Now, the trial court awarded Amy \$2,250.00 for lost rents in the Mt. Vista, Lumi Island property. A spouse who owns separate property is entitled to the rents therefrom. See Marriage of Hurd, 69 Wn. App. 38,

50, 848 P 2d 185, (1993) Therefore, the rents should have belonged to Tim.

However, even though the rents should have belonged to Tim, there was no rent money before the trial court for the court to divide because there were no renters to provide the funds. (RP 118) Tim was living in the Lumi View Drive house from September of 2009 (RP 122) Furthermore, Amy had the benefit of living in the Michigan Street house. Yet, the trial court awarded her \$6,162.00 for the funds Tim could not pay on the mortgage while the house was in active foreclosure as bank wanted the total arrears, not partial payments. If an asset does not exist at the time of trial, then the Court cannot distribute the asset. See Marriage of White, supra^{54a}. Therefore, the trial court erred by awarding Amy \$2,250.00 in lost rents for the Mr. Vista or Lumi Island property (CP 24), and \$1,800.00 for the “wife’s one-half community property interest in rents on the Lumi View Drive property, when there were no rents to divide.

The Lumi Island property was lost to foreclosure. At the time of the trial, the Mt. Vista home was in foreclosure (RP 35) Amy provided a copy of the Notice of Trustees Sale for the Lumi Island property at trial. (EX 10, RP 36) The property went into foreclosure in large part because Amy had no employment income and because of the cut back in Tim’s

employment after the economy soured in 2008. Tim was unable to make the mortgage payments because he did not have the funds. (RP 123) The Michigan Street property in Bellingham, Washington was also in foreclosure. (RP 24)

Tim was awarded the Lumi Island property, which was subsequently lost to foreclosure. (CP 23) Amy was given a \$25,000.00 award for her equity in the Lumi Island property, which remains in effect. (CP 23, 25) It is Tim's position that the trial court erred when it awarded Amy \$25,000.00 in the foreclosed property. She had knowledge of the foreclosure, because it was her exhibit. She did nothing to object to the foreclosure. Amy refused to cooperate with the loan modification. (RP 111, 120, 126) Because Amy did nothing to prevent the foreclosure, and arguably ensured the foreclosure because of her refusal to participate in the loan modification, she should not be awarded a \$25,000.00 judgment in the lost property payable by Tim. Although the foreclosure in Marriage of Kaseburg, 126 Wn. App. 546, 559, 108 P. 3d 1278 (2005) occurred 10 days before the dissolution trial started, the principles of waiving the interest in the property is a logical extension of Kaseburg.

This Court should vacate the award to Amy for rents that did not exist at the time of trial, strike the maintenance arrears because Amy had

the benefit of living in the Michigan Street property and the bank refused to accept partial payments during the foreclosure for Tim, and waive the \$25,000.00 interest Amy was awarded in the Lumi Island property.

IX. Number 8 of Paragraph VI of the Final Parenting Plan is Not Supported by the Evidence

The trial court has been granted broad discretion in determining matters of parenting plans. “Generally, a trial court’s rulings dealing with the provisions of a parenting plan are reviewed for abuse of discretion.” Marriage of Littlefield, supra, 46. A trial court’s decision is based upon untenable grounds, “if the factual findings are unsupported by the record.” Littlefield at 47.

The trial court determined that, “Neither parent shall allow the children to have any contact whatsoever with Orvel William Ball, d.o.b 8/6/70.” (CP 51) This decision is based upon untenable grounds because the trial court made the order reciprocal.

On September 3, 2009, Tim obtained an Ex Parte Restraining Order prohibiting Amy from allowing the children to have any contact with Mr. Ball. (CP 122-124) Pursuant to paragraph 4.2 of the restraining

order, Orval William Ball shall not be around the children under any circumstances.” (CP 124) In Response, Amy filed a declaration by Mr. Ball stating that he continued to date Amy. (CP 102) Amy responded in her own declaration stating that Mr. Ball is not a child molester (CP 106) and requested restrains against Tim. (CP 104-119) Amy’s requests that Tim have supervised visitations and engage in counseling for himself were denied. (CP 93)

At trial, Tim requested a provision that prevented Amy from allowing contact between Mr. Ball and the children. (RP 155) Amy objected to any language in the parenting plan concerning Mr. Ball (RP 85-86) Yet, the court made the order to state that neither parent shall allow the children to have any contact with Mr. Ball. (CP 51)

The reciprocal provision should be stricken because there is no evidence that Tim wanted to allow any contact between Mr. Ball and the children. The provision should state that Amy shall not allow the children to have any contact whatsoever with Orvel William Ball, d.o.b. 8/6/70.

Conclusion

This court should determine that the Decree is stricken because it is

void. The decree is void because less than 90 days lapsed from the filing of Amy's petition for dissolution of marriage, on April 2, 2010, wherein she stated, for the first time, that the marriage is irretrievably broken, and the date, June 23, 2010, trial court made the determination that the marriage is irretrievably broken and entered its decree of dissolution.

In the alternative, if this court determines that the trial court had jurisdiction to enter the decree, then the case should be remanded for recalculation of child support based upon Tim's actual income and income inputted to Amy; remand for a property and debt distribution based on assets that were in existence and not waived at the time of trial; and remanded for determination that the mother not allow contact with Mr. Ball, based upon the evidence.

Respectfully Submitted this 13th day of June, 2011.



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**Superior Court of Washington
County of Whatcom**

<p>In re:</p> <p>AMY BUECKING</p> <p>and</p> <p>TIM BUECKING</p> <p style="text-align: right;">Petitioner, Respondent.</p>	<p>No.</p> <p>Petition for Legal Separation (Marriage) (PTLGSP)</p>
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I. Basis

1.1 Identification of Petitioner

Name: Amy Buecking, Birth date: 4/14/78
Last known residence: Whatcom County, Washington.

1.2 Identification of Respondent

Name: Tim Buecking, Birth date: 1/30/75
Last known residence: Whatcom County, Washington.

1.3 Children of the Marriage Dependent Upon Either or Both Spouses

The husband and wife are both the legal (biological or adoptive) parents of the following dependent children:

- Name: Hannah Buecking, Age: 8
- Name: Justus Buecking, Age: 4
- Name: Summer Buecking, Age: 2

1.4 Request for Legal Separation

This is a request for legal separation in lieu of a dissolution of marriage.

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1 **1.5 Date and Place of Marriage**

2 The parties were married on August 14, 1999, at Lummi Island, Washington.

3 **1.6 Separation**

4 Husband and wife separated on September 2, 2008

5 This is the date the parties moved into separate residences.

6 **1.7 Jurisdiction**

7 This court has jurisdiction over the marriage.

8 This court has jurisdiction over the respondent because the respondent is currently
9 residing in Washington.

10 **1.8 Property**

11 There is community or separate property owned by the parties. The court should make a
12 fair and equitable division of all the property.

13 The division of property should be determined by the court at a later date.

14 **1.9 Debts and Liabilities**

15 The parties have debts and liabilities. The court should make a fair and equitable division
16 of all debts and liabilities.

17 The division of debts and liabilities should be determined by the court at a later date.

18 **1.10 Maintenance**

19 There is a need for maintenance as follows:

20 The wife has a need for spousal maintenance and the husband has the ability to pay.

21 **1.11 Continuing Restraining Order**

22 A continuing restraining order should be entered which restrains or enjoins the
23 husband from disturbing the peace of the other party.

1.12 Protection Order

There is a protection order between the parties filed in case number 08-2-02754-2,

1 Whatcom County Superior Court, which expires on January 1, 2009.

2 **1.13 Pregnancy**

3 The wife is not pregnant.

4 **1.14 Jurisdiction Over the Children**

5 This court has jurisdiction over the children for the reasons set forth below.

6 This state is the home state of the children because the children lived in Washington with a
7 parent or a person acting as a parent for at least six consecutive months immediately
8 preceding the commencement of this proceeding.

9 **1.15 Child Support and Parenting Plan for Dependent Children**

10 A parenting plan and an order of child support pursuant to the Washington State child
11 support statutes should be entered for the following children who are dependent upon
12 both parties:

13 Names of Children

14 Hannah Buecking

15 Justus Buecking

16 Summer Buecking

17 The petitioner's proposed parenting plan for the children listed above is attached and is
18 incorporated by reference as part of this Petition.

19 (The following information is required only for those children who are included in the
20 petitioner's proposed parenting plan.)

21 During the last five years, the children have lived in no place other than the state of
22 Washington and with no person other than the petitioner or the respondent.

23 Claims to custody or visitation.

The petitioner does not know of any person other than the respondent who has physical
custody of, or claims to have custody or visitation rights to, the children.

Involvement in any other proceeding concerning the children.

The petitioner has not been involved in any other proceeding regarding the children.

Other legal proceedings concerning the children.

1 The petitioner does not know of any other legal proceedings concerning the children.

2 **1.16 Other**

3 Does not apply.

4 **II. Relief Requested**

5 The petitioner **Requests** the court to enter a decree of legal separation and to grant the relief
6 below.

7 Provide reasonable maintenance for the wife.

8 Approve the petitioner's proposed parenting plan for the dependent children listed in
9 paragraph 1.15.

10 Determine support for the dependent children listed in paragraph 1.15 pursuant to the
11 Washington State child support statutes.

12 Divide the property and liabilities.

13 Enter a continuing restraining order.

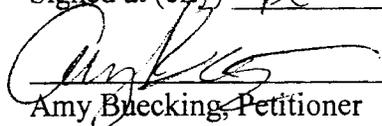
14 Order payment of attorney fees, other professional fees and costs.

15 Dated: 12/12/08

16 
Eugene Keay, WSBA #33821
Attorney for Petitioner

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

19 Signed at (city) Bellingham, (state) WA on (date) 12/11/08.

20 
Amy Buecking, Petitioner

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**Superior Court of Washington
County of WHATCOM**

In re the Marriage of:

AMY BUECKING

Petitioner,

and

TIM BUECKING

Respondent.

No. 08-3-00852-5

**AMENDED PETITION FOR
DISSOLUTION OF MARRIAGE
(Replacing Petition for
Legal Separation)**

I. Basis

1.1 Identification of Petitioner

Name (first/last) AMY BUECKING, Birth date 4/14/78

Last known residence (county and state only) Whatcom County, Washington .

1.2 Identification of Respondent

Name (first/last) TIM BUECKING, Birth date 1/30/75

Last known residence (county and state only) Whatcom County, Washingtonon.

1.3 Children of the Marriage Dependent Upon Either or Both Spouses

The husband and wife are both the legal (biological or adoptive) parents of the following dependent children:

Pet for Disso of Marriage (PTDSS) - Page 1 of 5
WPF DR 01.0100 Mandatory (6/2008) - RCW 26.09.020

**JEAN KINGSLEY
ATTORNEY AT LAW
1313 E. MAPLE STREET
SUITE 204
BELLINGHAM, WA. 98225
(360) 685-4250
(360)685-4251 fax**

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Name (first/last) Hannah Buecking Age 10

Name (first/last) Justus Buecking Age 6

Name (first/last) Summer Buecking Age 3

1.4 Allegation Regarding Marriage

This marriage is irretrievably broken.

1.5 Date and Place of Marriage

The parties were married on August 14, 1999 at Lummi Island, Washington.

1.6 Separation

Husband and wife separated on September 2, 2008.
This is the date the parties moved into separate residences

1.7 Jurisdiction

This court has jurisdiction over the marriage.

This court has jurisdiction over the respondent because:

The respondent is currently residing in Washington.

The petitioner and respondent lived in Washington during their marriage and the petitioner continues to reside, or be a member of the armed forces stationed, in this state.

1.8 Property

There is community or separate property owned by the parties. The court should make a fair and equitable division of all the property.

The division of property should be determined by the court at a later date.

1.9 Debts and Liabilities

1 The parties have debts and liabilities. The court should make a fair and equitable
2 division of all debts and liabilities.

3 The division of debts and liabilities should be determined by the court at a
4 later date.

5 **1.10 Maintenance**

6 Wife has a need for maintenance

7 **1.11 Continuing Restraining Order**

8 A continuing restraining order should be entered which restrains or enjoins the
9 husband from disturbing the peace of the other party and entering the home
10 of the other party.

11 **1.12 Protection Order**

12 Does not apply.

13 **1.13 Pregnancy**

14 The wife is not pregnant.

15 **1.14 Jurisdiction Over the Children**

16 This court has jurisdiction over the children for the reasons set forth below.

17 This state is the home state of the children because:

18 the children lived in Washington with a parent or a person acting as a
19 parent for at least six consecutive months immediately preceding the
20 commencement of this proceeding.

21 **1.15 Child Support and Parenting Plan for Dependent Children**

22 A parenting plan and an order of child support pursuant to the Washington State
23 child support statutes should be entered for the following children who are
24 dependent upon both parties.

25 Names of Children

Pet for Disso of Marriage (PTDSS) - Page 3 of 5
WPF DR 01.0100 Mandatory (6/2008) - RCW 26.09.020

JEAN KINGSLEY
ATTORNEY AT LAW
1313 E. MAPLE STREET
SUITE 204
BELLINGHAM, WA. 98225
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Hanna Buecking
Justus Buecking
Summer Buecking

The petitioner's proposed parenting plan for the children listed above:

will be filed and served at a later date pursuant to RCW 26.09.181.

(The following information is required only for the children who are included in the petitioner's proposed parenting plan.)

During the last five years, the children have lived:

in no place other than the State of Washington and with no person other than the petitioner or the respondent.

Claims to custody or visitation:

The petitioner does not know of any person other than the respondent who has physical custody of, or claims to have custody or visitation rights to, the children.

The petitioner has not been involved in any other proceeding regarding the children.

Other legal proceedings concerning the children:

The petitioner does not know of any other legal proceedings concerning the children.

1.16 Other

II. Relief Requested

The petitioner **Requests** the Court to enter a decree of dissolution and to grant the relief below.

Provide reasonable maintenance for the wife.

Pet for Disso of Marriage (PTDSS) - Page 4 of 5
WPF DR 01.0100 Mandatory (6/2008) - RCW 26.09.020

**JEAN KINGSLEY
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- Approve the petitioner's proposed parenting plan for the dependent children listed in paragraph 1.15.
- Determine support for the dependent children listed in paragraph 1.15 pursuant to the Washington State child support statutes.
- Divide the property and liabilities.
- Enter a continuing restraining order.
- Order payment of attorney fees, other professional fees and costs.

Dated: 3/9/10 Jean Kingsley
 Jean Kingsley #39158
 Attorney for Petitioner

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Bellingham, Washington on 3/25/10 [Date].

[Signature]
 AMY BUECKING
 Signature of Petitioner

Joinder

I, the respondent, agree to the filing of an Amended Petition for Dissolution of the marriage instead of legal separation.

Dated: 03-04-10 [Signature]
 TIM BUECKING
 Signature of Respondent

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WASHINGTON
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Superior Court of Washington
County of WHATCOM

In re the Marriage of:

AMY BUECKING

No. 08-3-00852-5

Petitioner,

Findings of Fact and
Conclusions of Law
(Marriage)
(FNFCL)

and

TIM BUECKING

Respondent.

I. Basis for Findings

The findings are based on evidence and testimony presented at trial of May 19, 2010. The following people attended:

Petitioner Amy Buecking, Petitioner's lawyer, Jean Kingsley, Respondent Tim Buecking, Respondent's lawyer David Porter.

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

Fndngs of Fact and Concl of Law (FNFCL) - Page 1 of 11
WPF DR 04.0300 Mandatory (6/2008) - CR 52; RCW 26.09.030;.070(3)

JEAN KINGSLEY
ATTORNEY AT LAW
1313 E. MAPLE STREET
SUITE 204
BELLINGHAM, WA. 98225
(360) 685-4250
(360)685-4251 fax

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

2
3 **2.3 Basis of Personal Jurisdiction Over the Respondent**

4 The facts below establish personal jurisdiction over the respondent.

5 [X] The respondent is currently residing in Washington.

6 [X] The parties lived in Washington during their marriage and the petitioner
7 continues to reside, or be a member of the armed forces stationed, in this
state.

8 **2.4 Date and Place of Marriage**

9 The parties were married on August 14, 1999 at Lummi Island, Washington.

10 **2.5 Status of the Parties**

11 Husband and wife separated on September 2, 2008.

12 **2.6 Status of Marriage**

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

15 **2.7 Separation Contract or Prenuptial Agreement**

16 There is no written separation contract or prenuptial agreement.

17 **2.8 Community Property**

18 The parties have real or personal community property identified and divided as set forth
19 in Exhibit "A".

20 **2.9 Separate Property**

21 Based on the evidence and testimony presented the Court finds that the husband has
22 no separate real property. Husband's claim that real property located at 3090 Mt. Vista
Drive, Lummi Island is his separate property is denied.

23 Evidence of joint title was admitted in Exhibit No. 22, the Whatcom County Assessor's
24 information showing both parties as owners of said property. Admitted into evidence was
Exhibit No. 7, a rental agreement on said property signed by Wife as "Lessor".

1 Additional evidence was Wife's testimony that she always believed she was a co-owner
2 of the property, Husband's testimony that it was "our" house, Wife's testimony that the
3 adjoining property owners, the Bowmans, had given one of the three lots on which the
4 home is situated to both Husband and Wife jointly, and Exhibit No. 8, the SLS Mortgage
5 statement, confirming that Wife's name is on the mortgage, In addition, Husband
6 testified and confirmed his answer to Interrogatory No. 5 on March 15, 2010 which
7 specifically asked if he had any separate property interest in 3090 Mt. Vista Drive.
8 Husband's interrogatory answer, under oath, was "I don't know this either".

9 Accordingly, the Court finds that the real property located at 3090 Mt. Vista Drive
10 is community property.

11 The wife has no real or personal separate property other than what might have been
12 obtained after the date of separation.

13 **2.10 Community Liabilities**

14 The parties have incurred community liabilities as set forth in Exhibit "B" attached
15 hereto. The parties have agreed to divide the debts as allocated in Exhibit "B"

16 **2.11 Separate Liabilities**

17 The parties have no known separate liabilities other than those acquired after
18 the date of separation as set forth in the January 29, 2009 Order of the Court.

19 **2.12 Maintenance**

20 The Court finds that this was a marriage of 9 years and one month. Based upon the
21 evidence and testimony presented the Court finds that Wife was a mother and
22 homemaker for the entire marriage, that she did not work outside the home during
23 the marriage by agreement of the parties.

24 Given Wife's testimony regarding her efforts to find full-time work and copies of some of
25 the rejections of her employment applications entered into evidence as Exhibit No. 23
and that she has been out of the work force for over ten years, since October 1999, and
in consideration of her testimony and evidence that she is currently working two days
each week at an entry level job as shown in Exhibit No. 14, and that she desires to
return to school to gain training as a tax preparer, this Court finds that Wife is not
voluntarily unemployed or underemployed and therefore denies Husband's request that
income be imputed to Wife.

Based upon Wife's testimony and her paystub marked as Exhibit No. 14, the Court finds
that her current rate of pay is \$8.55 per hour and her actual gross income is \$588 per

1 month (based on a 16 hour week). Wife's current income is to be used in calculations
2 for maintenance and child support.

3 The Court heard Wife's testimony, based on her Financial Declaration marked as
4 Exhibit 18, that her living expenses will be \$2,536 if she and the children are living in the
5 2604 Lummi View Drive home (\$1,794 in household expenses plus \$742 mortgage) and
6 based upon her current income of \$588 gross she will have a deficit of \$1,948 per
7 month. Until Wife can secure full-time employment she has a need for maintenance.

8 The Court heard Husband's testimony and admissions that he does not keep accurate
9 income information and unemployment benefit information records and that he does not
10 always advise the Division of Child Support when he has a new job, as well as his
11 testimony that at the time of trial he still had not gone through his "packed boxes" to find
12 income information but would "do that soon" as well as his testimony that at the time of
13 this trial he had not filed his 2008 tax return or his 2009 tax return; and in consideration
14 of Wife's testimony regarding the efforts of Wife's counsel to obtain Husband's financial
15 information, including filing a motion to compel production of said information, and after
16 hearing Wife's testimony that Husband told her he is refusing work out of state and that
17 he is going to let the assets go to foreclosure so she will have nothing, Husband's
18 admission that he did take out of state jobs in California and Wyoming and his further
19 admission under oath that he told Wife he would no longer take work out of state, this
20 Court finds that Husband's representation of his income and earning capacity is
21 not credible.

22 The Court finds that Husband has breached his fiduciary duty by not working to
23 capacity and failing to pay child support and spousal maintenance as previously ordered.

24 The Court considered Husband's 9/21/08 paystub entered into evidence as Exhibit
25 No. 16 which showed at that time average income, after deducting mileage and per
diem, of \$6,853 per month and Husband's March 2010 paystubs showing gross income
for March, after deducting per diem, of \$8,422.85 in that month.

The Court also considered Husband's 2009 W-2 forms showing income of \$38,563 and
heard his testimony that he also received \$16,000 in unemployment income for 2009
resulting in income of \$54,563 which would average \$4,546 per month income.

By Husband's own admission he has not reported all of his income to DCS and his
record keeping is unreliable. Taking into consideration his proven ability to earn \$6,853
per month and \$8,422 per month, it is reasonable to assess an earning capacity of
\$7,000 per month to Husband for purposes of calculating maintenance and child
support.

Wife has demonstrated a need for maintenance and Husband has an ability to
pay maintenance in the amount of \$800 per month to Wife. Maintenance shall
be paid for a period of 3 years from the date of this Order.

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2.13 Continuing Restraining Order

Because Husband has admitted to two arrests for domestic violence and to entering the family home occupied by Wife and removing her jewelry therefrom, it is found that there is a need for a restraining order preventing Husband from approaching Wife's residence and one shall issue with no expiration date.

2.14 Protection Order

Same as above

2.15 Fees and Costs

The Court finds that Wife has a need for attorney fees and costs and that Husband has the ability to pay. Wife testified that her attorney fees, prior to trial, were approximately \$7,000 and that she was seeking an order that Husband reimburse one-half of her attorney fees. In closing argument Wife's counsel made an offer of proof that Wife's fees, through trial, and including the \$1,440 still owed to her prior counsel, total \$11,055.

Husband is ordered to pay the sum of \$5,527 as one-half of Wife's attorney fees. Said fees shall be paid monthly at the rate of \$300 per month with the remaining balance to be paid in full, out of escrow, from Husband's share of net sales proceeds on the sale of any of the properties owned by the parties.

2.16 Pregnancy

The wife is not pregnant.

2.17 Dependent Children

The children listed below are dependent upon either or both spouses.

Name of Child	Age
Hannah Buecking	10
Justice Buecking	6
Summer Buecking	4

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2.18 Jurisdiction Over the Children

This court has jurisdiction over the children for the reasons set forth below:

This court has exclusive continuing jurisdiction. The court has previously made a child custody, parenting plan, residential schedule or visitation determination in this matter and retains jurisdiction under RCW 26.27.211.

This state is the home state of the children because:

the children lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

2.19 Parenting Plan

The Court adopts and approves the proposed parenting plan submitted by Wife. Wife has been the full-time primary caretaker for the children's entire lives. Husband's claim for custody on a two week on/two week off rotation during the summer months is specifically denied due to the young age of the children and the fact that they have never been away from their mother for such extended periods of time. Husband presented no evidence that he would be able to adequately provide for the children for two weeks at a time when his employment often requires that he work 10 hour days. No evidence was presented to establish that Wife abuses drugs or alcohol or is otherwise unfit to parent. The shared holidays and vacations provided in Wife's parenting plan provide for Father to have reasonable and adequate parenting time.

2.20 Child Support

There are children in need of support and child support should be set pursuant to the Washington State Child Support Schedule. The Order of Child Support signed by the court on this date or dated _____ and the child support worksheet, which has been approved by the court, are incorporated by reference in these findings.

For purposes of calculating child support, the Court uses Father's earning capacity of \$7,000 per month and Mother's actual income of \$588 per month, as set forth in Mother's proposed Worksheet introduced into evidence as Exhibit 15. No income is imputed to Mother in the absence of evidence that she is intentionally unemployed or underemployed. (See Paragraph No. 2.12 above).

Child support may be modified when Wife obtains full time employment.

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2 **Child Support Arrears**

3 Received into evidence was the Debt Calculation child support arrears form
4 prepared by the Division of Child Support and marked as Exhibit 2.

5 The Court denies Husband's claim that the \$6,968 in Child Support Arrears amounts to
6 an overpayment of child support. Husband was represented by counsel at the time the
7 January 29, 2009 child support order was entered. Husband admitted that he was
8 represented by counsel at the time the January 29, 2009 Order was prepared. He
9 testified that he "did not read it" when asked about the Financial Declaration and the
10 subsequent Order. If Husband believed that the January 29, 2009 Child Support Order
11 was in error he could have moved for modification but he did not.

12 The Court further considered that Husband's Financial Declaration filed with the
13 Court on December 31, 2008 shows a \$1,000 housing expense yet Husband testified
14 that he lived with friends and family until September 2009 when he moved into the
15 2604 Lummi View Drive home. Husband's mortgage payment on Lummi View Drive
16 was initially \$523/month as shown on the Wells Fargo Mortgage statement introduced
17 as Exhibit 11 and remained so until it was increased to \$742. He did not, and does not,
18 have a \$1,000 mortgage or rent payment as stated on his Financial Declaration.

19 Accordingly the Court finds that Husband's claim of overpayment is disingenuous and
20 that he has waived his claim of overpayment of child support.

21 **2.21 Other:**

22 The Court's findings on division of property is attached as Exhibit "A".

23 **III. Conclusions of Law**

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

25 **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 of dissolution. Wife's maiden name of Westman is to be restored.

3.3 Pregnancy

1 Does not apply.

2 **3.4 Disposition**

3 The court should determine the marital status of the parties, make provision for a
4 parenting plan for any minor children of the marriage, make provision for the support of
5 any minor children of the marriage entitled to support, consider or approve provision for
6 maintenance of either spouse, make provision for the disposition of property and
7 liabilities of the parties, make provision for the allocation of the children as federal tax
8 exemptions, make provision for any necessary continuing restraining orders, and make
9 provision for the change of name of any party. The distribution of property and liabilities
10 as set forth in the decree is fair and equitable.

11 **3.5 Continuing Restraining Order**

12 After consideration of Wife's testimony of prior domestic violence, Husband's admission
13 to two domestic violence arrests and his admission to entering her home post-
14 separation to remove her jewelry, the Court finds that Wife's request for a continuing
15 restraining order that Husband stay 150' away from Wife's home is granted.

16 **3.6 Protection Order**

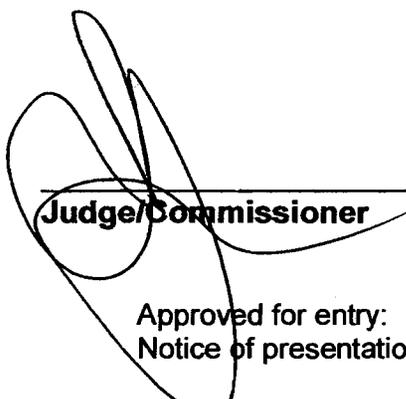
17 A continuing restraining order should be entered restraining Husband from
18 approaching Wife's residence.

19 **3.7 Attorney Fees and Costs**

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

21 **3.8 Other**

22 Dated: 6/23/10

23 
24 **Judge/Commissioner**

25 Presented by:

Approved for entry:
Notice of presentation waived:

26 Jean Kingsley 6/11/10
27 Jean Kingsley, #39158 Date
28 Attorney for Petitioner .

29 David Porter, # 17925 Date
30 Attorney for Respondent .

1
2 EXHIBIT "A"
3

4 Real Property Located at 2604 Lummi View Drive

- 5 1. The Court having heard testimony regarding Husband being found in contempt of court
6 for violating the January 29, 2009 Temporary Order requiring him to pay the mortgages
7 on the Michigan Street family home and having accepted into evidence the Notice of
8 Trustee's Sale on said home, and having heard Wife's testimony that she and the
9 children will be homeless when the Michigan Street home is foreclosed upon it is
10 ordered that Wife shall be awarded the home at 2604 Lummi View Drive.

11 Equity in the Lummi View Drive home is found to be \$77,525 based upon testimony that
12 the property is currently listed for sale at \$120,000 Husband's testimony that the
13 property is worth \$110,000, less \$28,484 mortgage, less \$387 property taxes, less
14 \$3,604 arrears on mortgage payments.

15 Wife shall maintain the home in good condition and keep it listed for sale. Wife shall
16 make the mortgage payments on 2604 Lummi View Drive. Upon sale of 2604 Lummi
17 View Drive, the following reimbursements to Wife shall be made from Husband's
18 share of the net sales proceeds:

19 \$6,968 in child support arrears owed by Husband as of May 2010 pursuant to the
20 Division of Child Support Debt Calculation form admitted into evidence as Exh. 2.

21 Additional child support arrears which may have accrued after May 2010 as
22 calculated by the Division of Child Support at close of escrow.

23 \$1,800 as Wife's community property share of the \$3,604 missed mortgage payments
24 which accrued while Husband was occupying the property based on Wife's testimony
25 that Husband is currently \$3,614 behind in the mortgage payments on Lummi View Drive
and his admission that he has not paid Wife her share of the fair rental value of the
property he is occupying.

\$6,162 in spousal maintenance arrears not made by Husband when he did not make
the mortgage payments on the Michigan Street family home.

\$2,250 as Wife's community property share of lost rents on the 3090 Mt. Vista Drive
property from December 2009 to May 2010 based on Husband's admission that
the home sat empty and was not rented during this period of time.

\$25,000 as Wife's community property share of the equity in 3090 Mt. Vista Drive.

The Court reserves jurisdiction over the sale of the 2604 Lummi View Drive property.

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2 2618 Michigan Street, Bellingham

3 2. Based on the evidence and testimony presented the Court finds that Husband has made
4 no effort to stop the foreclosure of the family home and is therefore in breach of his
5 fiduciary duty and a contempt of court order, and that the trustee's sale will occur on
6 July 16, 2010. Both parties admit the Michigan Street home has no equity.

7
8 Wife is awarded the family home on Michigan Street and may occupy said home until
9 it is lost to foreclosure.

10 3090 Mt. Vista Drive, Lummi Island

11 3. Husband's claim that Mt. Vista Drive is his separate property is denied based on
12 Wife's testimony that they owned it together and she always thought of it as
13 community property, Husband's testimony that it was "our" house, based on title
14 being held in joint ownership as well as the mortgage being in both names, and
15 Wife's signature as the "lessor" of the property as shown on the rental agreement
16 marked as Exhibit 7.

17 The home is awarded to Husband with an offset of \$25,000 for Wife's share
18 of the equity.

19 The home is found to have a fair market value of \$150,000 based on Wife's testimony
20 that the home is worth \$160,000 and the County Assessor rolls valuing the home at
21 \$147,120 on Exhibit 22.

22 Equity in Mt. Vista Drive is found to be \$50,388 based on a mortgage of \$96,134 and
23 mortgage arrears of \$3,478. Wife's community property share of the equity is \$25,000.

24 Wife will receive her \$25,000 equity from Husband's share of the net sales proceeds
25 from the 2604 Lummi View Drive property.

4. 3980 Pipeline Road, Blaine

It is ordered that this property continue to be listed for sale and that the net sales
proceeds, whatever they may be, be divided equally between the parties.

The Court finds that the equity in this property is approximately \$16,000 based on
its current list price of \$130,000, less 6% commission, less a \$100,000 private money
loan, less \$5,710 in back taxes.

The Court reserves jurisdiction over the sale of this property.

1
2 5. Allocation of Community Property Debt

3 By agreement of the parties the debt is allocated as follows:

4 To Wife

To Husband

5 Award of Community Property Debts

6 Bank of America #2692	\$4,697	Chase #2351	\$10,316
7 Citibank #7050	3,848	WAMU #0165	7,019
Discover #4070	8,702	A T & T	1,760
8 Jeff Solomon	<u>7,972</u>	Jeff Solomon	<u>6,125</u>
	25,219		25,220

9
10 By agreement of the parties the vehicles are allocated as follows:

11 6. Award of Vehicles

12 To Wife

To Husband

13 2001 Kia Optima - \$1,175 per Blue Book
14 1986 GMC - \$500 per H
15 1970 GMC - \$500 per H

1993 Mercury Villager - \$250 per H
1977 Jeep - \$200 per W
1968 Chevrolet - \$250 per H
1989 Toyota - \$500 per H
1985 Thunderbird - zero per H
1977 Dump Truck - \$2,000 per H

16 \$2,175

\$ 3,200

1 **CASE NAME: IRMO Buecking**
2 **CASE NO.: 08-3-00852-5**

PROOF OF SERVICE

3 I am a citizen of the United States. My business address is 1313 E. Maple Street, Suite 204,
4 Bellingham, Washington 98225. I am employed in the county of Whatcom where this service
5 occurs. I am over the age of 18 years and not a party to the within cause.

6 On the date set forth below I served the following document(s) described as:

7 **WIFE'S DRAFT PROPOSED FINDINGS OF FACT**

8 on the interested party(ies) in this action addressed as follows:

9 **BY MAIL:** Under normal business practice of collection and processing of correspondence for
10 mailing this document was deposited with the U.S. Postal Service that same day in a sealed
11 envelope(s) with postage thereon fully prepaid at Bellingham, Washington in the ordinary course
12 of business.

13 **BY FAX:** I served said document(s) by transmitting via facsimile from facsimile number (360)
14 685-4251 to the facsimile number(s) set forth below, or as stated on the attached service list, on
15 this date before 5:00 p.m. A statement that this document was successfully transmitted without
16 error is hereby attached to the Proof of Service.

17 **X BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand this date to the
18 offices of the addressee(s).

19 **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered on the same day to an
20 authorized courier or driver or to a regular box or other facility regularly maintained by

21 David Porter
22 103 E. Holly #409
23 Bellingham, WA 98225

24 Hon. Ira Uhrig

25 **STATE:** I declare under penalty of perjury under the laws of the State of
26 Washington that the above is true and correct and that this declaration was
27 Executed on 6/11/10 2010 in Bellingham, Washington.

28 

FILED
COUNTY CLERK

2010 JUN 23 PM 4:17

WHATCOM COUNTY
WASHINGTON

BY _____

Superior Court of Washington
County of WHATCOM

In re the Marriage of:

AMY BUECKING

Petitioner,

and

TIM BUECKING

Respondent.

No. 08-3-00852-5

Decree of Dissolution (DCD)

Clerk's Action Required ✓

Law Enforcement Notification ¶ 3.8 ✓

I. Judgment/Order Summaries

1.1 Restraining Order Summary:

Restraining Order Summary is set forth below:

Name of person(s) restrained: TIM BUECKING
Name of person(s) protected: AMY BUECKING
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:

Decree (DCD) (DCLSP) (DCINMG) - Page 1 of 10
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)

JEAN KINGSLEY
ATTORNEY AT LAW
1313 E. MAPLE STREET
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(360) 685-4250
(360)685-4251 fax

No Jis/dh

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Does not apply.

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number:

or

Legal description of the property awarded (including lot, block, plat, or section, township, range, county and state):

See Page for full legal description.

1.3 Money Judgment Summary:

Judgment Summary is set forth below:

A.	Judgment Creditor	Amy Buecking	
B.	Judgment Debtor	Tim Buecking	
C.	Principal judgment amount		\$ 47,847.00
D.	Interest to date of Judgment		\$ -
E.	Attorney fees		\$ TBD
F.	Costs		\$ TBD
G.	Other recovery amount		\$ -

End of Summaries

II. Basis

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

Decree (DCD) (DCLSP) (DCINMG) - Page 2 of 10
WPF DR 04.0400 Mandatory (6/2008) - RCW 26.09.030; .040; .070 (3)

**JEAN KINGSLEY
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BELLINGHAM, WA. 98225
(360) 685-4250
(360)685-4251 fax**

1 [X] The husband is awarded as his separate property the property set forth in Exhibit
2 A. This exhibit is attached or filed and incorporated by reference as part of this
3 decree.

4 **3.3 Property to be Awarded to the Wife**

5 [X] The wife is awarded as her separate property the property set forth in Exhibit B.
6 This exhibit is attached or filed and incorporated by reference as part of this
7 decree.

8 **3.4 Liabilities to be Paid by the Husband**

9 [X] The husband shall pay the community or separate liabilities set forth in Exhibit A.
10 This exhibit is attached or filed and incorporated by reference as part of this
11 decree.

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

14 **3.5 Liabilities to be Paid by the Wife**

15 [X] The wife shall pay the community or separate liabilities set forth in Exhibit B.
16 This exhibit is attached or filed and incorporated by reference as part of this
17 decree.

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

20 **3.6 Hold Harmless Provision**

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

25 **3.7 Maintenance**

[X] Husband shall pay maintenance in the amount of \$800.00 per month,
effective June 1, 2010. Said payment is due on the 15th day of each month.
The first maintenance payment shall be due on June 15, 2010.

The obligation to pay future maintenance is terminated upon the death of either
party or the remarriage of the party receiving maintenance or in three years, on
June 15, 2013, whichever comes first. The amount of maintenance may be
modified when Wife obtains full time work.

1 Payments shall be made:

2 [X] to the Washington State Child Support Registry (only available if child
3 support is ordered).

4 **3.8 Continuing Restraining Order**

5 [X] A continuing restraining order is entered as follows:

6 [X] The husband is is restrained and enjoined from knowingly coming within or
7 knowingly remaining within (distance) 150 feet of the home, or work place of the other party.

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

11 [X] **Clerk's Action.** The clerk of the court shall forward a copy of this order, on
12 or before the next judicial day, to WHATCOM SHERIFF law enforcement
13 agency which shall enter this order into any computer-based criminal
14 intelligence system available in this state used by law enforcement agencies
15 to list outstanding warrants. **(A law enforcement information sheet must
16 be completed by the party or the party's attorney and provided with this
17 order before this order will be entered into the law enforcement
18 computer system.)**

14 **Service**

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

17 [] The restrained party or attorney did not appear in court; service of this order is
18 required.

19 The protected party must arrange for service of this order on the restrained
20 party. File the original Return of Service with the clerk and provide a copy to
21 the law enforcement agency listed above.

20 **Expiration**

21 This restraining order expires : upon further court order.

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

24 [] Any temporary restraining order signed by the court in this cause number is

1 terminated. **Clerk's Action.** The clerk of the court shall forward a copy of this
2 order, on or before the next judicial day, to: law
3 enforcement agency where **Petitioner** resides which shall enter this order into
4 any computer-based criminal intelligence system available in this state used by
5 law enforcement agencies to list outstanding warrants.

6 **Full Faith and Credit**

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

10 **3.9 Protection Order**

11 [X] The parties shall comply with the domestic violence order for Protection signed by
12 the court on this date or dated, in this cause number. The Order for
13 Protection signed by the court is approved and incorporated as part of this decree.

14 **3.10 Jurisdiction Over the Children**

15 [X] The court has jurisdiction over the children as set forth in the Findings of Fact
16 and Conclusions of Law.

17 **3.11 Parenting Plan**

18 [X] The parties shall comply with the Parenting Plan signed by the court on this date
19 or dated. The Parenting Plan signed by the court is approved and
20 incorporated as part of this decree.

21 **3.12 Child Support**

22 [X] Child support shall be paid in accordance with the order of child support signed
23 by the court on this date or dated. This order is incorporated as part
24 of this decree.

25 **3.13 Attorney Fees, Other Professional Fees and Costs**

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

Wife is awarded judgment in the amount of \$5,677.00 against Husband as one-half of
the attorney fees she has incurred in this matter. Husband is to pay the sum of \$5,677
at the rate of \$300 per month until paid in full. If said fees are not paid in full at the time
of sale of those real properties located at 2604 Lummi View Drive or 3980 Pipeline Road
then the balance due on this judgment is to be paid from Husband's share of the net

1 sales proceeds from either or both of those escrows. If escrow funds are insufficient
2 then Wife shall have judgment for the remaining balance which shall be enforceable
3 against any other property or source of funds available to Husband.

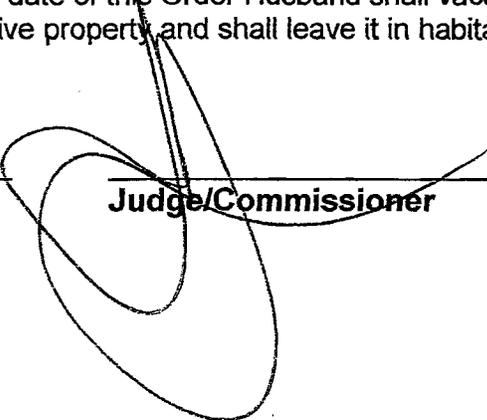
4 **3.14 Name Changes**

5 [X] The wife's name shall be changed to Amy Irene Westman.

6 **3.15 Other**

- 7
- 8 1. The parties shall cooperate in signing listing agreements or any other
9 documents necessary to continue efforts to sell 2604 Lummi View Drive
10 and 3980 Pipeline Road. The Court reserves jurisdiction over the sale of
11 these properties.
 - 12 2. Within 15 days of the date of this Order Husband shall deliver the 1986 GMC
13 and the 1970 GMC vehicles to Wife at her residence. Delivery of these
14 vehicles shall not constitute a violation of any protection orders or
15 restraining orders.
 - 16 3. Both parties shall immediately sign all forms necessary to transfer
17 ownership of the vehicles listed in Exhibits A and B to the receiving party.
 - 18 4. Within 15 days of the date of this Order Husband shall sign a deed
19 quitclaiming his ownership of the Michigan Street property and the
20 Lummi View Drive property and any other documents required for
21 recordation of said deeds. Wife shall sign a deed quitclaiming her
22 ownership of the Mt. Vista Drive property to Husband any any other
23 documents required for recordation of said deed.
 - 24 5. Within 30 days of the date of this Order Husband shall vacate the
25 2604 Lummi View Drive property and shall leave it in habitable
condition.

Dated: 6/23/10



Judge/Commissioner

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Petitioner or petitioner's lawyer:
A signature below is actual notice of this order.

Presented by:
 Approved for entry:
 Notice for presentation waived:

Respondent or respondent's lawyer:
A signature below is actual notice of this order.

Presented by:
 Approved for entry:
 Notice for presentation waived:

Jean Kingsley 6/16/10
Jean Kingsley #39158 Date
Attorney for Petitioner

David Porter #17925 Date
Attorney for Respondent

**JEAN KINGSLEY
ATTORNEY AT LAW
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SUITE 204
BELLINGHAM, WA. 98225
(360) 685-4250
(360)685-4251 fax**

22

EXHIBIT "A"

The following assets are awarded to Husband:

- 1) That real property located at 3090 Mt. Vista Drive, Lummi Island and the loans and mortgages thereon.
- 2) Husband is to make an equalizing payment to Wife of \$25,000 for her share of the community property equity in Mt. Vista Drive. Husband's payment of \$25,000 is to be paid to Wife from escrow from his share of the net sales proceeds of 2604 Lummi View Drive and/or 3980 Pipeline Road, whichever comes first. Any balance remaining shall be paid from the next escrow. If escrow funds are insufficient to pay this debt then the balance will be due and payable from any other property or source of funds available to Husband and Wife shall have judgment for \$25,000 against Husband.
- 3) Husband is confirmed as 1/2 owner of that real property located at 3980 Pipeline Road, Blaine. The parties shall cooperate in keeping the property listed for sale. From Husband's share of the net sales proceeds of Pipeline Road he shall pay to Wife any remaining balance on reimbursements to her as hereinafter set forth.
- 4) The 1993 Mercury Villager, the 1977 Jeep, the 1968 Chevrolet, the 1989 Toyota, the 1985 Thunderbird and the 1977 Dump truck
- 5) All furniture and personal property currently in his possession.

The following liabilities are assigned to Husband to pay to Wife:

- 6) \$6,958.00.00 in child support arrears as of May 2010 to be paid to Wife from escrow of Husband's share of the net sales proceeds of 2604 Lummi View Drive and/or 3980 Pipeline Road, whichever comes first. Any balance remaining shall be paid from the next escrow. At close of escrow of either property DCS shall provide an updated accounting of support arrears and that sum shall be the sum paid to Wife. If escrow funds are insufficient to pay this debt then the balance will be due and payable from any other source of funds available to Husband and Wife shall judgment against Husband for that amount.
- 7) \$1,800.00 representing Wife's one-half community property interest in rents on the 2604 Lummi View Drive home. Said amount to be paid to Wife from escrow of Husband's share of the net sales proceeds of 2604 Lummi View Drive and/or 3980 Pipeline Road, whichever comes first. Any balance remaining shall

1 be paid from the next escrow. If escrow funds are insufficient to pay this
2 debt then the balance will be due and payable from any property or source of
3 funds available to Husband and Wife shall have judgment against Husband in
4 that amount.

5 8) \$2,250.00 representing Wife's community property interest in lost rents on the Mt.
6 Vista Drive home. Said amount to be paid to Wife from escrow
7 of Husband's share of the net sales proceeds of 2604 Lummi View Drive and/or
8 3980 Pipeline Road, whichever comes first. Any balance remaining shall
9 be paid from the next escrow. If escrow funds are insufficient to pay this
10 debt then the balance will be due and payable from any other property or source of
11 funds available to Husband and Wife shall have judgment against Husband in that
12 amount.

13 9) \$6,162.00 representing spousal maintenance arrears which were to be paid
14 as mortgage payments on the Michigan Street home and were not paid by
15 Husband. Said amount to be paid to Wife from escrow of Husband's share of the
16 net sales proceeds of 2604 Lummi View Drive and/or 3980 Pipeline Road,
17 whichever comes first. Any balance remaining shall be paid from the next escrow.
18 If escrow funds are insufficient to pay this debt then the balance will be due and
19 payable from any other property or source of funds available to Husband and Wife
20 shall have judgment against Husband in that amount.

21 10) \$5,677.00 representing one-half of Wife's attorney fees. Said fees are to be paid
22 by Husband to Wife at the rate of \$300 per month as set forth above in
23 Paragraph No. 3.13 and from other sources of property or funds as set forth in
24 that paragraph and Wife shall have judgment against Husband in that amount.

25 Total of above liabilities is \$47,847.00.

The following other liabilities are assigned to Husband:

- 11) The mortgages and any outstanding arrearages and property taxes on Mt. Vista Drive
- 12) One-half the outstanding debt and property taxes on the Pipeline Road property.
- 13) Chase Card #2351 - \$10,316.00
- 14) WAMU - \$7,019.00
- 15) A T & T - \$1,760.00
- 16) Jeff Solomon - \$6,125.00

EXHIBIT "B"

The following assets are awarded to Wife:

1. That real property located at 2618 Michigan Street, Bellingham, Washington and the mortgages thereon.
2. That real property located at 2604 Lummi View Drive, Bellingham, Washington and the mortgages thereon.
3. Wife is confirmed as 1/2 owner of that real property located at 3980 Pipeline Road, Blaine.
4. \$25,000 as her share of the equity in the 3090 Mt. Vista Drive home which will be paid to Wife as set forth in Exhibit "A".
5. The 2001 Kia Optima, the 1986 GMC, the 1970 GMC vehicles.
6. All furniture and personal property currently in her possession.

The following liabilities are assigned to Wife:

7. The mortgages and outstanding arrears on 2618 Michigan Street.
8. The mortgages and outstanding arrears on 2604 Lummi View Drive.
9. One-half the outstanding debt and property taxes on Pipeline Road.
10. Bank of America account #2692 - \$4,697.00
11. Citibank #7050 - \$3,848.00
12. Discover Card #4070 - \$8,702
13. Jeff Solomon - \$7,972.00