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THURSTON COUNTY, WA

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Trial Brief
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Superior Court of Washington
County of THURSTON

In re the Marriage of:

ANNETTE MARIE ROTH,

Petitioner,

No. 14-3-00778-8

PETITIONER'S TRIAL BRIEF

and

STEPHEN KEITH HICKS,

Respondent.

I. PROCEDURAL HISTORY

Ms. Roth filed a Petition for Legal Separation on May 30, 2014. The parties have been married for 17 years and have one son in common, Lucas Hicks, who is currently seven years old. Mr. Hicks did not leave the home until approximately September 1, 2014. A Proposed Parenting Plan was filed by Mr. Hicks on March 6, 2015, but no Response was ever filed.

On April 10, 2015, Ms. Roth filed an Amended Summons and Petition for Dissolution of Marriage. A Return of Service was filed on April 13, 2015, indicating service upon Mr. Hicks on April 10, 2015. Mr. Hicks has not filed a Response to the Petition for Dissolution.



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1 A Domestic Violence Order of Protection which was originally issued on April 15,
2 2015 under Thurston County Superior Court Cause # 15-2-30089-7 and modified in
3 September 23, 2015 is currently in effect. Under that Order, Mr. Hicks was to
4 participate in perpetrator treatment program approved under RCW 26.50.150,
5 completing a full intake as required by RCW 26.50.150 and WAC 388-60-0165, and
6 within 30 days. Mr. Hicks was to sign releases such that Ms. Roth could provide
7 information in the assessment process. Mr. Hicks was to follow all
8 recommendations made by the treatment provider.
9

10 Under that same Order, Mr. Hicks was to complete a Chemical Dependency
11 evaluation within 30 days, and sign releases such that Ms. Roth could provide
12 information in the assessment process. Mr. Hicks was to follow all recommendations
13 made by the treatment provider. Under that Order Mr. Hicks was to pay \$3,000 in
14 attorney fees on behalf of Ms. Roth.
15

16 Mr. Hicks sought Modification of the DVPO and set a Hearing for July 8, 2015.
17 Mr. Hicks also filed a Alcohol/Drug Evaluation on or about July 8, 2015 which did not
18 contain evidence that collateral information had been obtained from Ms. Roth.

19 Mr. Hicks also sought recusal of the Court Commissioner at that time. The
20 Motion was denied, with a Hearing on August 26, 2015 as a Review on the Domestic
21 Violence matter.

22 Following a Compliance Hearing on August 26, 2015, Mr. Hicks was found to be
23 non-compliant for his failure to obtain domestic violence treatment. A new Review
24 date of September 23, 2015 was set.
25

1 The Modification of the DVPO on September 23, 2105 occurred as a result of Mr.
2 Hicks failing to comply with the treatment requirements of the Order, upon Review.
3 The Court at that time found that Mr. Hicks was not in compliance with the treatment
4 requirements as ordered, and discharged the Case Coordinator. Mr. Hicks is still
5 required under that Order to comply with the treatment requirements of the Order
6 issued on April 15, 2015. At that time, the Court also ordered that Mr. Hicks is to pay
7 an additional \$1500 in attorney fees.
8

9 There is currently a Petition for Renewal of the Order for Protection set for April
10 15, 2016.

11 The Order for Protection has disallowed visitation between Mr. Hicks and his son
12 given the severity of the abuse, and the issue of Mr. Hicks' abuse of substances. Mr.
13 Hicks has not had contact with his son since the entry of the Temporary Order for
14 Protection on February 6, 2015.
15

16 II. PARENTING

17 *RCW 26.09.187 (3) (a-c)* provides the criteria for establishing the residential
18 provisions of a permanent parenting plan:

19 (a) The court shall make residential provisions for each child which encourage
20 each parent to maintain a loving, stable, and nurturing relationship with the
21 child, consistent with the child's developmental level and the family's social
22 and economic circumstances. The child's residential schedule shall be
23 consistent with *RCW 26.09.191*. Where the limitations of *RCW 26.09.191* are
24 not dispositive of the child's residential schedule, the court shall consider the
25 following factors:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

- (iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3)*, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs and developmental level of the child;
- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of *RCW 26.09.191* are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

RCW 26.09.191 states with respect to restrictions in temporary or permanent parenting plans that

- (1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in **RCW 26.50.010(1)* or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

1 (2)(a) The parent's residential time with the child shall be limited if it is
2 found that the parent has engaged in any of the following conduct: (i)
3 Willful abandonment that continues for an extended period of time or
4 substantial refusal to perform parenting functions; (ii) physical, sexual,
5 or a pattern of emotional abuse of a child; (iii) a history of acts of
6 domestic violence as defined in *RCW 26.50.010(1) or an assault or
7 sexual assault which causes grievous bodily harm or the fear of such
8 harm....

6 DOMESTIC VIOLENCE

7 On February 6, 2015, Ms. Roth filed a Petition for Order of Protection after
8 receiving text messages from Mr. Hicks regarding their son stating "*now come over*
9 *and pick him up before I toss him in the g*dd*mn river...*" and, "*Do you want your*
10 *son to see his father splatter blood all over the wall when fired again through his*
11 *skull Then don't bother coming to get him*".

12 A Temporary Order of Protection was granted restraining Mr. Hicks from having
13 contact with Ms. Roth and their son. The Temporary Order of Protection was
14 reissued several times.

15 On April 15, 2015, an Order of Protection was entered with court. Mr. Hicks was
16 ordered to complete a Domestic Violence Evaluation and a Chemical Dependency
17 Evaluation with collateral contacts to be done within 30 days. Ms. Roth was awarded
18 \$3,000.00 in attorney fees. A review hearing was set for July 8, 2015.

19 Mr. Roth completed a Chemical Dependency Evaluation on May 1, 2015, but the
20 evaluation did not have the input of Ms. Roth. On July 8, 2015 Mr. Hicks indicated
21 to the Court he had not yet completed the Domestic Violence Evaluation due to
22 insufficient funds. Another review hearing was set for August 26, 2015.

23 On August 26, 2015, Mr. Hicks was found in Non Compliance with the Court. An
24
25

1 Order Re: Non Compliance was entered with the court and a review was set for
2 September 23, 2015.

3 Mr. Hicks failed to appear at the hearing on September 23, 2015. Ms. Roth was
4 awarded \$1,500.00 in attorney fees. Mr. Hicks continues to be non-compliant with
5 the treatment requirements ordered by the Court.
6

7 Ms. Roth has provided the majority of the child care for the minor child, and
8 provides a stable environment to meet his needs. Mr. Hicks struggles with
9 methamphetamine addiction which has caused him to be volatile and make
10 concerning threats regarding their son.

11 It is unknown if Mr. Hicks has a steady income. Ms. Roth is concerned about
12 their son being in an unsafe and unstable environment especially since Mr. Hicks
13 has not completed the domestic violence treatment ordered by the court. Mr. Hicks
14 is not permitted to have visitation until he follows all orders of the Court, and it
15 should remain so.
16

17 III. CHILD SUPPORT

18 Ms. Roth is employed by the Thurston County Economic Development Council.
19 Her earnings are reflected in the Child Support Worksheets she has proposed and in
20 her Financial Declaration which will be presented for entry.

21 It is unknown if Mr. Hicks is currently employed at this time and his income has
22 been imputed at or about minimum wage, with a transfer amount of \$161.00 per
23 month.

24 Ms. Roth's position is she shall claim their son for even tax years and Mr. Hicks
25

1 claim their son for odd tax years, if he is current on his child support obligations by
2 December 31st of that tax year.

3 IV. PROPERTY

4 A. The Court Has Broad Discretion in the Distribution of Community Property in Dissolution 5 Proceedings.

6
7 *RCW 26.09.080* provides guidance for the distribution of community property:

8 In a proceeding for dissolution of the marriage, legal separation, declaration of
9 invalidity, or in a proceeding for disposition of property following dissolution of the
10 marriage by a court which lacked personal jurisdiction over the absent spouse or
11 lacked jurisdiction to dispose of the property, the court shall, without regard to
12 marital misconduct, make such disposition of the property and the liabilities of the
13 parties, either community or separate, as shall appear just and equitable after
14 considering all relevant factors including, but not limited to: (1) The nature and
15 extent of the community property; (2) The nature and extent of the separate
16 property; (3) The duration of the marriage; and (4) The economic circumstances
17 of each spouse at the time the division of property is to become effective,
18 including the desirability of awarding the family home or the right to live therein
19 for reasonable periods to a spouse with whom the children reside the majority of
20 the time.

21 B. Case law supports broad discretion when distributing the property of a marriage.

22 In Dissolution proceedings, the trial court abuses its discretion only if the
23 property distribution is manifestly unreasonable or is based on untenable grounds or
24 made for untenable reasons. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976
25 P.2d 102 (1999). In addition, the trial court need not divide community property
equally. *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977).

"A fair and equitable division by a trial court 'does not require mathematical
precision, but rather fairness, based upon a consideration of all the
circumstances of the marriage, both past and present, and an evaluation of the
future needs of [the] parties.'" *In re Marriage of Zahm*, 138 Wn.2d 213, 218-19,

1 978 P.2d 498 (1999) (quoting *In re Marriage of Crosetto*, 82 Wn. App. 545, 556,
2 918 P.2d 954 (1996)).

3 The trial court is in the best position to determine what is "fair, just and equitable
4 under all the circumstances." *Brewer*, 137 Wn.2d at 769 (quoting *Hadley*, 88
5 Wn.2d at 656).

6 Furthermore, property does not necessarily have to be divided equally to make it
7 a fair distribution. *In re Marriage of Nicholson*, 17 Wn. App. 110, 117, 561 P.2d 1116
8 (1977). Instead, the post-dissolution economic position of the parties is a "paramount
9 concern" when dividing property. *In re Marriage of Bulicek*, 59 Wn. App. 630, 635,
10 800 P.2d 394 (1990).

11 Here, the Husband has engaged in extensive drug use, which had led him to
12 forsake the payment of bills and refuse to find employment. Any and all assets that
13 he has been able to take from the marriage have all likely been sold for drug money.
14 The only chance that Ms. Roth may have to salvage what remains is in the instance
15 that the community property that she seeks is awarded to her.
16

17 DEBTS & LIABILITIES

18 The parties currently own a home on Village Drive, which had an outstanding
19 principal balance on the mortgage of approximately \$115,000.00 as of March 2015.
20 Neither party resided in the family home during the marriage as it used as a rental
21 property.
22

23 Mr. Hicks moved into an adjacent building on the property following his leaving
24 the family home on or about September of 2014. Renters have remained in the main
25 house, with Mr. Hicks in this adjacent building. The monthly mortgage payment is

1 approximately \$850.00 which has not been paid for several months due to Mr. Hicks
2 receiving the rental funds and not paying the monthly mortgage payment.

3 A Notice of Trustee's Sale was obtained by Ms. Roth which indicated a sale on
4 March 18, 2016. It is unknown if this sale occurred. Ms. Roth asks that the Court
5 award her this home so that she may do what she can to prevent the further loss of
6 the home, if possible, and without interference by Mr. Hicks.
7

8 In the event that the home can be saved, Ms. Roth proposes the rental money be
9 paid directly to her until the home can be sold and the proceeds be distributed
10 equally among the parties.

11 Ms. Roth asks that Mr. Hicks be removed from this home to prevent further
12 waste, and that he be disallowed from interfering with her sale of the home, should
13 that be a possibility.

14 During the marriage, the parties took out an auto loan through Chase Auto
15 Finance for the 2003 BMW. The BMW was repossessed for nonpayment. The
16 parties have a joint credit card account with American Express which has an
17 outstanding balance of \$4,500.00.
18

19 Ms. Roth is willing to pay the balance of the American Express credit card debt
20 and any debt associated with the 2002 Chevrolet Impala.

21 It is Ms. Roth's position that any stocks, bonds, mutual funds, or other negotiable
22 instruments in Mr. Hicks' name remain his, and that Ms. Roth will keep all stock,
23 bonds, mutual funds, certificates of deposits, notes, or other negotiable instruments
24 in her name.
25

1 It is Ms. Roth's position that any and all personal property in her possession shall
2 be granted to her, and any and all personal property in Mr. Hicks' possession shall
3 be granted to him.
4

5 Ms. Roth proposes that any and all bank accounts, credit union accounts,
6 savings and loan accounts or other depositories, except as described, where the
7 account is in her name be granted to her. Ms. Roth proposes that any and all bank
8 accounts, credit union accounts, savings and loan accounts or other depositories,
9 except as described, where the account is in his name be granted to Mr. Hicks.

10 Ms. Roth proposes she keeps any and all life insurance on her life.

11 Ms. Roth also proposes that she keep the money in her IRA, approximately
12 \$9,500.00.

13 Ms. Roth's position is each party shall individually keep any rights virtue of past
14 or future employment.

15 The parties currently own a 2002 Chevy Impala. Ms. Roth proposes she keep the
16 2002 Chevy Impala and Mr. Hicks currently owns a truck. Each party should be
17 individually responsible for their auto loans if any and auto insurance.
18

19 Ms. Roth's position is that each party should pay their debts incurred since
20 separation on approximately September 1, 2014.

21 V. RELIEF REQUESTED

- 22 1. Enter the Wife's Proposed Parenting Plan as the Final Parenting Plan in this
23 matter;
- 24 2. Enter the Wife's Proposed Child Support Worksheets and Order of Child
25

1 Support;

2 3. Order that the home at 16530 Village Drive SE, Rainier, WA 98576 be sold, if
3 possible;

4 4. Order that each party receive 50% of any proceeds from the sale of the Village
5 Drive property, following any and all fees related to the sale, arrears and property
6 taxes owed, if possible;

7 5. Order that the Wife shall be responsible for the sale of the home without the
8 interference of the Husband;

9 6. Order that the Husband vacate the home on Village Drive no later than 30 days
10 from the date of entry of all final Orders;

11 7. Order that any stocks, bonds, mutual funds, or other negotiable instruments in
12 the Husband's name remain his, and that those in the Wife's name be awarded
13 to her;

14 8. Order any and all personal property in the Wife's possession to be granted to
15 her, and any and all personal property in the Husband's be granted to him;

16 9. Order that any and all bank accounts, credit union accounts, savings and loan
17 accounts or other depositories, in the name of the Wife be granted to her, and
18 that any and all bank accounts, credit union accounts, savings and loan accounts
19 or other depositories, in the name of the Husband be granted to him;

20 10. Order that the Wife be awarded any and all life insurance on her life;

21 11. Order that the Wife be awarded her IRA in the approximate amount of \$9,500.00;

22 12. Order that each party shall individually keep any rights by virtue of past or future
23
24
25

1 employment;

2 13. Order that the Wife be awarded the 2002 Chevy Impala, and that the Husband
3 be awarded any vehicle in his possession;

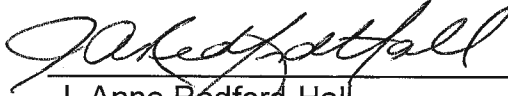
4 14. Order that each party shall be individually responsible for their auto loans if any;

5 15. Order that each party be individually responsible for all debts in their name only
6 since the date of separation on approximately September 1, 2014;

7 16. Enter a Judgment for attorney fees previously ordered by the Court in the total
8 amount of \$4,500.00.
9

10
11 DATED this 23rd day of March, 2016.

12 THE REDFORD LAW FIRM

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16 J. Anne Redford-Hall
17 Attorney for Petitioner, Annette Roth
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