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NO. 67128-6-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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In re: the Marriage of

TODD K. PARKER,

Appellant,

and

SHERRY M. PARKER,

Respondent.

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**REPLY BRIEF**

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The Honorable James Doerty

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FILED  
COURT OF APPEALS DIV. I  
STATE OF WASHINGTON  
2012 APR 27 PM 1:44

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## INTRODUCTION

It is undisputed that Todd's former home was his separate property. Sherry cannot, so does not, support the trial court's unfounded conclusion that Todd gifted his former home to the community, rendering it community property. If the trial court had properly characterized Todd's former home as his separate property, it could not have awarded Sherry a \$205,000 equitable judgment, half the house's current value. Sherry's only response is the untenable assertion that "construing" Todd's former home as a gift to the community is different than "characterizing" it as community property. This Court should reverse.

The trial court's correct conclusion that the Kittitas investment properties are less than valueless undermines its lifetime-maintenance award. The premise of the lifetime-maintenance award is that Todd breached a fiduciary duty by deeding the Kittitas properties to the Parkers to eliminate a \$498,000 debt. Valueless, debt-ridden properties are an albatross. Getting rid of them helped the community, so cannot possibly sustain a lifetime maintenance award Todd has no ability to pay.

This Court should reverse and remand these and other errors, with instructions to reconsider the fee award.

## REPLY STATEMENT OF THE CASE

Sherry's statement of the case is one long effort to vilify Todd, culminating in the assertion that "Todd's strategy is to divert this Court's attention from the trial court's finding that he was not credible." BR 19. But Todd opening acknowledged this fact, stating at page six of his opening brief:

[T]he trial court found that Todd was not credible, where he failed to provide documents or other data establishing the value of his home and the parties' investment properties. CP 125-26. While Todd disagrees with this credibility determination, he does not challenge it, respecting that this Court does not review such determinations.

*In re Detention of Ticeson*, 159 Wn. App. 374, 389 n.49 246 P.3d 550 (2011). As in the opening brief, all facts Todd relies upon here are undisputed, or were testified to by other witnesses, primarily Luther Parker, whom the trial court expressly believed. CP 127-28.

### **A. Todd's former house was his separate property until he deeded it to the Parkers.**

The following facts regarding Todd's former home are undisputed:

- ◆ In 1978, the Parkers gifted Todd the land upon which he built his home. RP 68-69, 261; CP 1.
- ◆ In 1985, the Parkers loaned Todd \$70,000 to build his house. RP 69-70; CP 90, 129.

- ◆ Todd signed a 30-year promissory note for the amount plus 12.5% interest. RP 69, 99, 264-65; Ex 20.
- ◆ Todd and Sherry married in November 1993, years after Todd had finished building his home. RP 66, 68-70, 294.
- ◆ Todd owed the Parkers \$140,000 on the home loan. Ex. 20; BA 8.
- ◆ In 2005, Todd and Sherry quitclaimed Todd's house to the Parkers, satisfying the note in full. Ex 38. Although Sherry was not on title, she signed the deed conveying Todd's house to the Parkers because the parties were married and "thought it was the thing to do." RP 104-05.
- ◆ As part of that transaction, the Parkers permitted the parties to live in their bigger, nicer house, often without paying any rent. RP 143-44, 264-65, 349-50.

Sherry does not point to a single fact indicating that Todd gave the community his separate property house before deeding it to the Parkers (six years before the dissolution). BR 11-13. Rather, she acknowledged that the house was "his." RP 318.

Sherry asserts that it was "disputed" whether the Parkers intended to collect on the promissory note and that "substantial evidence indicated that this debt was illusory." BR 12, 23. Her support for this assertion is that she did not know about the note or Todd's debt to the Parkers. *Id.* This is not surprising – Sherry convinced Judge Doerty that she was completely unaware of the parties' financial matters. CP 127. As further "evidence," Sherry argues that Todd did not pay the note during the marriage. BR 23.

But Todd had ten years left on the thirty-year note when he deeded the house to the Parkers. RP 69, 102, 264-65, Ex 20.

**B. The trial court correctly found that the investment properties the parties deeded back to the Parkers were under water.**

During the parties' marriage, the Parkers gave Todd and Sherry an interest in several investment properties they purchased in Kittitas County. RP 105-06, 261. The Parkers paid all up-front costs, and Todd and Sherry would pay 50% of the costs and receive 50% of the profits when the properties sold. RP 106-07, 237-39, 261. The parties owed the Parkers \$498,000 on these properties. RP 270-71; Ex 41.<sup>1</sup>

Sherry attempts to create a dispute where none exists, claiming it is unclear whether the parties were expected to share in the costs before sharing in any "profits." BR 14. Luther Parker unequivocally testified that Todd and Sherry owed him \$498,000 for their share of the purchase price and development costs. RP 270-71; Ex 41. It was always anticipated that the Parkers would recoup their costs before "profit" sharing with Todd and Sherry – that is the nature of a profit. RP 106-07, 238-39, 241, 261.

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<sup>1</sup> Exhibit 41 was admitted for illustrative purposes. RP 267.

These properties became valueless and impossible to sell when, in 2007 or 2008, Kittitas County enacted a water moratorium affecting the investment properties. RP 108-11, 263-64, 273-74; CP 128. The properties were less than valueless to Todd and Sherry, who owed the Parkers \$498,000 for their share of development costs. RP 270-71; Ex 41. To eliminate this debt – and to get rid of the valueless assets, the parties quitclaimed their interest to the Parkers in April 2008. RP 111-12, 272, 280-81; Exs 6-18, 25-26, 35, 37, 128.

Sherry claims that the value of these properties “‘sky rocketed’ over the years.” BR 13, 16-17. She neglects to mention, however, that the County assessments she refers to occurred before the water moratorium was in place. RP 233, 241-42. The County subsequently reduced the assessed values dramatically. RP 233, 241-42, 274. And the one property Luther Parker sold – at a loss – sold for \$1,250 less than the tax appraisal. RP 274.

The tax-assessed values are irrelevant in any event, where the trial court found “credible evidence by Luther Parker that the Kittitas County investment properties are in fact ‘under water.’” CP 128. This testimony was uncontroverted – there was no evidence

upon which the court could have assigned any value to the properties. *Id.*

Sherry also attacks Luther's credibility, suggesting that he only recorded the deeds transferring the Kittitas properties because Sherry was trying to claim the property in the dissolution. BR 16. Luther Parker knew that the deeds transferred title to the Parkers, so did not see the need to immediately record the deeds. RP 268, 270. He did record the deeds to prevent Sherry from taking his property in the dissolution, but there is nothing nefarious about trying to protect his property. RP 270; Exs 6-18, 25-26, 35, 38.

### REPLY ARGUMENT

**A. The trial court mischaracterized Todd's former home, requiring reversal.**

**1. The house was Todd's separate property until he deeded it to the Parkers.**

Sherry does not disagree with Todd's plain statement that his former home was his separate property:

It is undisputed that Todd's former house was his separate property – Todd built the house on gifted land and borrowed funds eight years before the marriage.

BA 18 (citing *In re Marriage of Shannon*, 55 Wn. App. 137, 140, 777 P.2d 8 (1989); RP 68-69, 99, 374; Ex 20). At trial, Sherry acknowledged that the house belonged to Todd. RP 318. She

never claimed that he gifted it to the community, or even that the house was commingled. CP 125-30, 199-205. Here, too, she cannot and does not cite to any evidence that Todd gifted his former home to the community. BR 19-24.

Nor does Sherry respond to Todd's argument that a writing is required to gift separate real property to the community. BA 18 (citing **Shannon**, 137 Wn. App. at 140). There is no such writing.

Thus, Sherry utterly fails to support the trial court's "equitable conclusion" that the house was gifted to the community:

The court had considered initially the difference between the value at the time of marriage and the value at the time of separation or quitclaim *as the community portion of this property*. However the more fair and equitable conclusion to be drawn from the facts evidenced at trial is that the property, land and house, *should be construed as a gift to the community . . . .* The court establishes the value of *this community asset* as \$411,000 based on the 2005 tax assessed value . . . . The value of this asset is awarded one half to each party.

CP 129 (emphasis added).<sup>2</sup>

Sherry takes the untenable position that the trial court "[d]id not characterize the family residence as community property; it did

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<sup>2</sup> Sherry complains that Todd did not assign error to this memorandum decision, which she agrees "was itself not a final order." BR 20. Todd explained that, he did not think it necessary to assign error to a memorandum decision but that, if "this Court determines otherwise, Todd assigns error to any findings in the memo." BA 4 n.1. In any event, the memorandum decision is relevant to help explain the trial court's findings. **Marriage of Zeigler**, 69 Wn. App. 602, 607, 849 P.2d 695 (1993).

not characterize it at all [but] merely construed the family residence 'as a gift to the community.'" BR 20. This is at odds with the plain language of the trial court's ruling, twice referring to Todd's former house as a "community" asset. CP 129. And there is no difference between *characterizing* the house as community property and *construing* it as a gift to the community – the trial court's conclusion that the house was gifted to the community leads inexorably to its conclusion that the house was community property. *Compare* BR 20 *with* CP 129.

**2. This Court should reverse the trial court's mischaracterization.**

This Court will reverse a property mischaracterization if "(1) the trial court's reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would have divided it in the same way." *In re Marriage of Shui*, 132 Wn. App. 568, 586, 125 P.3d 180 (2005). Mischaracterizing Todd's former home as a "community asset" and a "gift to the community" (CP 129) "significantly influenced" the court's decision to award Sherry a \$205,000 equitable judgment. *Shui*, 132 Wn. App. at 586. In determining whether to award Sherry an equitable judgment, the court simply assumed without any support that the house became

community property through a gift. CP 129. In determining how much to award Sherry, the court considered three different ways to divide the asset, arriving at a 50/50 split. *Id.* Every indication is that the court awarded Sherry half the house's value because it mischaracterized the house as community property. **Shui**, 132 Wn. App. at 587.

Again, Sherry's only response is her untenable assertion that the court "construed" but did not characterize the house. BR 20. Sherry does not respond to Todd's argument that the trial court based its decision on the mistaken belief that Todd "persistently" asserted that the house debt belonged to the community. BA 17-18. Todd once referred to his debt with the marital "we," but then stated "I owe my parents a lot of money." RP 100. This is not sufficient evidence of donative intent. And again, there is no writing in any event. **Shannon**, 137 Wn. App. at 140.

Nor does Sherry respond to Todd's argument that the trial court also mistakenly believed that invalidating the prenuptial agreement altered the house's separate-property character. CP 128-29. The prenuptial agreement attempted to preserve Todd's separate property. This is evidence that the house was separate

property and that there was no donative intent, regardless of the trial court's refusal to enforce the agreement. Ex 21 at 11.

Without any support, Sherry asserts that the trial court's credibility determination is alone sufficient to sustain the equitable judgment. BR 18-19. This is meritless. Nothing would support a \$205,000 penalty for failing to provide "documentary evidence" as to the value of Todd's former house. BR 19. Nor is this the basis of the equitable judgment. CP 129. Again, the trial court plainly, and mistakenly, thought the house was community property when it was deeded to the Parkers. *Id.*

**3. Transferring separate property to pay a separate debt is not a breach of fiduciary duty.**

Mischaracterizing Todd's former house also significantly influenced to the court's conclusion that Todd breached a fiduciary duty to the community when he deeded the house to the Parkers. CP 128-29. An asset's character plainly affects the duty – if any – one spouse owes the other regarding the asset. The trial court could not have found that Todd breached a fiduciary duty to the community by deeding his separate property to alleviate his separate debt. *See, Shui*, 132 Wn. App. at 586.

While spouses have a statutory duty to manage community assets "for the benefit of the community," there is no duty to

manage separate assets for the community benefit. *In re Marriage of Chumbley*, 150 Wn.2d 1, 9, 74 P.3d 129 (2003) (quoting *Peters v. Skalman*, 27 Wn. App. 247, 251, 617 P.2d 448 (1980), citing Harry M. Cross, *The Community Property Law in Washington*, 49 Wash. L. Rev. 729 (1974)); RCW 26.16.030. Although these authorities do not foreclose the possibility that managing separate property could breach a fiduciary duty to the community, Sherry has provided no authority supporting that proposition, nor is Todd aware of any. There is no legal basis for ruling that Todd breached a fiduciary duty by transferring his separate property to eliminate his separate debt.

Sherry claims that “it is irrelevant whether the court considered the family residence ‘as a gift to the community’ or as Todd’s separate property,” arguing that the equitable judgment “account[s] for the wrongful transfer.” BR 23. Sherry plainly misses the point. The transfer was not “wrongful” – Todd’s house was his separate property, and he thus had no duty to manage it for the community benefit. See, *Chumbley*, 150 Wn.2d at 9. If the trial court had the proper character in mind, it would not have awarded Sherry half the value of Todd’s separate property home he had long

since transferred to extinguish his separate debt. *Shui*, 132 Wn. App. at 586-87.

Sherry fails to respond to Todd's argument that his failure to fully account for appreciation was at most a lack of "good judgment," not a lack of "good faith." *Chumbley*, 150 Wn.2d at 9. Unbeknownst to Todd, his house was worth more than his debt. RP 101-02, 104, 264-65. But the community benefited significantly from the conveyance, which enabled Todd and Sherry to move into the Parkers bigger, nicer house, living there for six years often without paying rent. RP 169-70, 318; *Chumbley*, 150 Wn.2d at 9.

**4. The equitable judgment is grossly excessive.**

In his opening brief, Todd raised numerous arguments that the equitable judgment, even if properly awarded, is far too high. BA 22-24. Sherry does not respond.

In sum, this Court should reverse, where the equitable judgment and breach-of-fiduciary-duty finding are plainly based on the trial court's mischaracterization of Todd's former house.

**B. The trial court erroneously awarded lifetime maintenance, failing to consider the statutory factors, and untenably concluding that transferring debt-ridden, valueless assets damaged the community.**

The lifetime maintenance award is plainly based on the trial court's incorrect conclusion that when Todd transferred the Kittitas

investment properties to the Parkers, he breached a fiduciary duty to the community, depleting the community of assets available for distribution. CP 127-28, 201-02, 209. This reasoning is at odds with the trial court's correct ruling that the properties were valueless. CP 128. Sherry does not even address this apparent conflict in the trial court's rulings, arguing simply that this Court should affirm the lifetime-maintenance award because maintenance is a "flexible tool." BR 26 (citing *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984)). Even flexible tools have a breaking point. This Court should reverse.

**1. Lifetime maintenance is disfavored.**

Todd does not disagree that maintenance is a "flexible tool" to achieve an overall just and equitable distribution. BR 26. Nowhere does the opening brief suggest otherwise. BA 24-29. But lifetime maintenance is disfavored. *Cleaver v. Cleaver*, 10 Wn. App. 14, 20, 516 P.2d 509 (1973). It is not intended to be "a perpetual lien on the other spouse's future income," but to support a spouse until she can support herself. *In re Marriage of Sheffer*, 60 Wn. App. 51, 54, 802 P.2d 817 (1990); *In re Marriage of Irwin*, 64 Wn. App. 38, 55, 822 P.2d 797 (1992).

**2. The trial court correctly found that the Kittitas properties are under water.**

The trial court found “credible evidence by Luther Parker that the Kittitas County investment properties are in fact ‘under water’” – *i.e.*, that they have a negative value. CP 128. Luther’s uncontested testimony amply supports this conclusion:

- ◆ Due to the depressed economy and the water moratorium Kittitas County enacted, these properties were “in the tank” – *i.e.*, worth less than nothing. RP 261.
- ◆ Without water, the properties are no more than “camping lots.” RP 274.
- ◆ The properties are virtually impossible to sell, even at a loss. RP 262.
- ◆ Luther did not think he would live long enough to break even, much less see a profit. RP 274, 281.

Based on Luther Parker’s testimony and other “evidence regarding the depressed economy and the water moratorium,” the trial court correctly concluded “that there is no reliable evidence . . . to identify a net community value to the investment properties.” CP 128. In other words, the uncontroverted evidence was that the Kittitas properties were valueless. *Id.*

Sherry does not address this correct conclusion. BR 25-29. Rather, she argues in passing that “the county assessor’s records showed that the properties had increased in value over time.” BR 24. Again, however, Sherry refers to outdated records valuing the

properties before the water moratorium. *Supra*, Reply Statement of the Case § B. This is apparently the “evidence” the court rejected as unreliable. CP 128.

**3. Todd did not breach a fiduciary duty in transferring valueless assets to expunge a \$498,000 debt.**

The trial court’s decision is plainly inconsistent – it correctly ruled that the Kittitas properties are valueless, but also ruled that in transferring the valueless properties, Todd breached a fiduciary duty to the community. CP 128. The latter conclusion is untenable – transferring valueless assets to alleviate a half-million-dollar community debt benefits the community. This Court should reverse.

Deeding the investment properties to the Parkers alleviated a \$498,000 community debt. RP 270-72; Ex 41. At trial, there was no evidence contradicting Luther Parker’s testimony regarding this debt. RP 271-72. Although Sherry now claims that it “was disputed whether Todd and Sherry . . . owed [the Parkers] some amount for” these properties, she refers to Todd’s testimony (1) that the parties owed the Parkers half the purchase price; and (2) that they would split the profits. BR 14. These statements do not conflict – it is irrelevant whether Todd and Sherry had to pay the Parkers \$498,000 outright, or whether the Parkers would take that amount

off to top before splitting profits. *Id.* Either way, the Parkers were owed \$498,000 for Todd and Sherry's one-half interest in the properties before there would be any "profits" to split.

And the uncontroverted evidence was that these properties would not recover in the foreseeable future. RP 264, 274, 281. Luther did not expect a profit in his lifetime. RP 274, 281. Every indication was that Todd and Sherry would never see a penny from these properties. RP 264, 274-75, 281.

In short, deeding away valueless, debt-ridden assets was plainly "in the community interest." ***Chumbley***, 152 Wn.2d at 9 (quoting ***Schweitzer v. Schweitzer***, 81 Wn. App. 589, 597, 915 P.2d 575 (1996)); RP 203, 270-71. There was no breach of fiduciary duty.

**4. The court failed to consider the relevant statutory factors.**

Sherry does not respond to the above argument that deeding away valueless debt-ridden assets does not support a disfavored lifetime-maintenance award. BR 25-28. Rather, her only argument is that the court correctly used lifetime maintenance to equalize the parties' post-dissolution standard of living, where the assets are insufficient to "compensat[e]" Sherry. BR 27 (quoting ***Washburn***, 101 Wn.2d at 178). But the maintenance

award does not strike a balance – Todd must pay maintenance for the rest of his life, although he plainly has no ability to pay maintenance when he can no longer work. BA 30-32. This Court should reverse.

The lifetime maintenance award does not balance the factors enumerated in RCW 26.09.090(1). *In re Marriage of Mansour*, 126 Wn. App. 1, 16, 106 P.3d 768 (2004); *In re Marriage of Matthews*, 70 Wn. App. 116, 123, 853 P.2d 462 (1993). Rather, the trial court focused nearly exclusively on Sherry's need, but "a spouse's need 'is only *one* factor to be considered. RCW 26.09.090(1)(a).'" *In re Marriage of Morrow*, 53 Wn. App. 579, 587, 770 P.2d 197 (1989) (emphasis in original) (quoting *Washburn*, 101 Wn.2d at 179).

The court found that Sherry's income was "unlikely to vary substantially." CP 126, 201. But the court ignored Sherry's significant job-training and work history. BA 30-31. And there was no indication Sherry could not work fulltime at her current job – her sole reason for not doing so was that she wanted to be available to the parties' children. *Id.*, RP 325-26, 369. Trial courts must impute income to a spouse who is "voluntarily underemployed" to care for

children. *In re Marriage of Goodell*, 130 Wn. App. 381, 389-90, 122 P.3d 929 (2005).

The court did not address the standard of living during the marriage. CP 126-28, 201-02; BA 31. The court incorrectly found that the mid-term marriage required placing the parties “on equal economic footing” forever. *Id.*

The findings say nothing about Todd’s ability to pay maintenance and support himself. BA 31-32. Todd has no assets from which he can pay maintenance. *Id.* There was no evidence that his pension would accrue enough to support a maintenance award when Todd can no longer work. *Id.*<sup>3</sup> Todd plainly cannot work forever, particularly in his physically demanding field. *Id.* Although Sherry repeatedly suggests that Todd receives money from his parents, the court rejected her assertion. RP 407-08.

This matter is unlike the cases affirming lifetime-maintenance awards. BA 33-34 (citing *In re Marriage of Hadley*, 88 Wn.2d 649, 565 P.2d 790 (1977); *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989)). Sherry is not seriously ill or otherwise disabled – she is perfectly capable of working. *Id.* Todd

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<sup>3</sup> The court equally divided Todd’s \$4,919.97 pension. CP 208.

did not receive a grossly disproportionate asset distribution from which he could pay maintenance – there were few assets. *Id.*

Again, the trial court's comparison to ***Marriage of Morrow*** is inapt. BA 34-35 (citing 53 Wn. App. at 581-83, 587-89). There, the husband had \$1.3 million at his disposal, the wife's award was less than \$200,000, and the wife could not work full-time because she suffered from temporary blindness. ***Morrow***, 53 Wn. App. 581-83, 588. This Court noted that the husband could pay maintenance from interest on less than half of his assets. *Id.* at 587.

Sherry does not address these cases, or any of Todd's arguments. BR 25-28. The single fact that there were few assets to distribute cannot support a disfavored lifetime-maintenance award, which Todd has no ability to pay. BR 27.

**C. The trial court erroneously ordered that G.P.'s visitation would be discretionary.**

Parenting evaluator Kathleen Kennelly unequivocally opined that fourteen-year-old G.P.'s visitation with Todd should be mandatory. RP 22, 51. Kennelly opined that G.P. was too young to make such a difficult decision, and was concerned that he gave contradictory accounts of Sherry's alcohol consumption. RP 20-22, 51. The court nonetheless left visitation to G.P.'s discretion, citing

“the fairness issue in the context of the alienation.” CP 126. This decision plainly has nothing to do with G.P.’s best interests. BA 36-37 (citing *Shui*, 132 Wn. App. at 590).

Sherry responds that this ruling is “fair to [G.P.]” and “ha[s] nothing to do with fairness to Sherry.” BR 31. It is irrelevant whether the court was attempting to be fair to Sherry or to G.P. Parenting plans are not about fairness, but about the child’s best interest. *Shui*, 132 Wn. App. at 590. G.P. never expressed a desire to make this difficult decision, and the only evidence on the matter was that he should not have to make this difficult decision. BA 36. This Court should reverse.

**D. The trial court must reconsider the fee award on remand.**

Sherry misunderstands Todd’s fee argument, faulting him for not challenging the court’s findings on fees. Todd challenges the fee award only to the extent that this Court reverses on either or both of the fiduciary-duty issues. *Compare* BA 37 *with* BR 31-33. If this Court reverses, it must also remand the fee award, where it is based in part on the incorrect finding that Todd breached a fiduciary duty. BA 37.

Sherry's response is also inaccurate in suggesting that the Parkers financially support Todd. BR 32. Again, the trial court rejected this assertion as unsupported speculation. RP 407-08. Also without any support, Sherry boldly asserts that it is "obvious" that the Parkers will transfer "the properties" back to Todd in the future. BR 32. This unfounded assertion is at odds with Luther Parker's statement that he can no longer help support Todd, which the trial court believed. RP 407-408. In any event, what the Parkers may or may not do at some indeterminate point in the future is not a basis for attorney fees.

Sherry also asks this Court to award appellate fees, arguing that Todd's appeal is frivolous. BR 33-35. This Court should not consider assertions without an argument or authority. ***Sintra, Inc. v. City of Seattle***, 131 Wn.2d 640, 663, 935 P.2d 555 (1997). In any event, Todd raises several "rational" arguments, including (1) the baseless mischaracterization of his former home as community property; (2) the untenable conclusion that deeding valueless, debt-ridden assets harmed the community; and (3) the order making G.P.'s visitation discretionary, against the parenting evaluator's recommendations. ***Skimming v. Boxer***, 119 Wn. App. 748, 756,

82 P.3d 707 (2004) (A “lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts”).

Sherry’s arguments on intransigence and needs versus ability to pay are equally unpersuasive. BR 34-35. Sherry does not allege any intransigence on appeal, and there has not been any. *Id.* And Todd does not “earn[] much more than Sherry,” he is currently unemployed, as his RAP 18.1 declaration will demonstrate. Even if that were not the case, Sherry’s assertion that Todd out earns her four-fold ignores the maintenance award. BR 34-35. And Todd does not have “considerable access to greater wealth through his parents.” BR 34. Again, the court rejected Sherry’s speculation. RP 407-08.

The simple fact is that Todd cannot afford to pay Sherry’s fees. This Court should deny Sherry’s request for appellate fees. If this Court reverses, it should remand with instructions to reconsider the fee award.

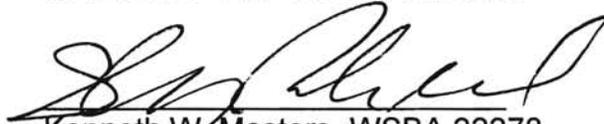
### **CONCLUSION**

The trial court would not have awarded Sherry a \$205,000 equitable judgment, if it had correctly characterized Todd’s former home as his separate property. The lifetime maintenance award irreconcilably conflicts with the trial court’s correct conclusion that

the Kittitas investment properties are less than valueless. And the court abused its discretion in ordering 14-year-old G.P. to decide whether to exercise visitation with Todd. This Court should reverse and remand these untenable decisions with instructions to reconsider the fee award.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of April, 2012.

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**CERTIFICATE OF SERVICE BY MAIL**

I certify that I caused to be mailed, postage prepaid, via U.S. mail, or via email, a copy of the foregoing **REPLY BRIEF** on the 26<sup>th</sup> day of April 2012, to the following counsel of record at the following addresses:

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