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COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION ONE
2012 MAR 25
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No. 68455-8-1

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

C. MICHAEL RIDDELL

Appellant,

vs.

DEBORAH RHEA RIDDELL

Respondent.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. Table of Authorities ii

II. Restatement of Facts 1

III. Argument 12

 A. Sufficient Evidence Supports Trial Court’s Findings 12

 i. Wife’s Social Security Benefits 13

 ii. Continuity of Service 16

 B. Trial Court Properly Valued and Characterized the Husband’s Pensions 19

 i. State Street Pension / Pension Value Plan (PVP) 20

 ii. Principal Insurance Pension Correctly Characterized as Community 22

 iii. Character Not Controlling..... 24

 C. Trial Court Need Not Consider Assets Already Consumed 25

 D. Trial Court Properly Admitted the Expert Testimony of Kevin Grambush, CPA 35

 E. Trial Court’s Division of Property Just and Equitable..... 39

 F. Attorney Fees 42

IV. Conclusion 44

I. TABLE OF AUTHORITIES

State Cases

<i>In re Estate of Borghi</i> , 167 Wn.2d 480, 219 P.3d 932 (2009).....	33
<i>In re Marriage of Bulicek</i> , 59 Wn.App. 630, 800 P.2d 394 (1990).....	19
<i>In re Marriage of Crosetto</i> , 82 Wn.App. 545, 918 P.2d 954 (1996).....	17
<i>In re Marriage of Crosetto</i> , 101 Wn. App. 89, 1 P.3d 1180 (2000).....	13
<i>In re Marriage of Donovan</i> , 25 Wn.App. 691, 612 P.2d 387 (1980).....	36
<i>In re Marriage of Gillespie</i> , 89 Wn.App. 390, 948 P.2d 1338 (1997).....	28
<i>In re Marriage of Hadley</i> , 88 Wn.2d 649, 565 P.2d 790 (1977).....	18,35
<i>Hanson v. Estell</i> , 100 Wn. App. 281, 997 P.2d 426 (2000).....	13
<i>In re Marriage of Harrington</i> , 85 Wn. App 613, 935 P.2d 1357 (1997)...	33
<i>In re Marriage of Hurd</i> , 69 Wn. App. 38, 51, 848 P.2d 185 (1993). ..	23, 33
<i>Katare v. Katare</i> , -- P.3d – WL 3516885 (Wash. Aug 16, 2012)...	12, 27,28
<i>Landauer v. Landauer</i> , 95 Wn. App. 579, 975 P.2d 577 (1999).....	28
<i>In re Marriage of Marzetta</i> , 129 Wn. App 607, 120 P.3d 75 (2005).....	35
<i>In re Marriage of Nuss</i> , 65 Wn.App.334, 828 P.2d 627 (1992).	17, 35
<i>In re Marriage of Rockwell</i> , 141 Wn. App. 235, 170 P.3d 572 (2007).....	15,19,20, 36,41
<i>In re Marriage of Sedlock</i> , 69 Wash.App. 484, 849 P.2d 1243 (1993).....	21
<i>Seizer v. Sessions</i> , 82 Wn.App. 87, 98, n. 31, 915 P 2d. 553 (2006) overruled on other grounds 132 Wn.2d. 642 (1997).....	23
<i>Stachofsky v. Stachofsky</i> , 90 Wn. App. 135, 951 P.2d 346 (1998).	25
<i>State v. Bryant</i> , 78 Wn.App. 808, 901 P.2d 1046.....	14
<i>State v. Lord</i> , 117 Wn.2d 829, 822 P.2d 177 (1991).....	28
<i>State v. Martinez</i> , 76 Wn.App. 1, 884 P.2d 3 (1994).....	13
<i>Stokes v. Polley</i> , 145 Wn.2d 341, 37 P.3d 1211 (2001).....	25
<i>In re Marriage of Wallace</i> , 111 Wn.App.697, 710, 45 P.3d 1131 (2002).43	
<i>In re Marriage of Washburn</i> , 101 Wn.2d 168, 677 P.2d 152 (1984) ...	35,42
<i>Washburn v. Beatt Equip. Co.</i> , 120 Wn.2d 246, 840 P.2d 860 (1992). 14,15	
<i>White v. White</i> , 105 Wn. App. 545, 20 P.3d, 481 (2001).....	26

Statutes

RCW 26.09.080.....	17, 34
RCW 26.09.140.....	42

Court Rules

RAP 2.5(a)14
RAP 18.9.....43
RAP 18.1(c)44

Treatises

Wash. St. Bar Ass'n, *Washington Family Law Deskbook* § 38.2 (1989)...33

II. RESTATEMENT OF FACTS

When the parties married in February 1995, Debbie Riddell was 37 years old and the primary support of herself and two children. *CP 4-5; RP 278 at 13-14*. She had a good job, working for Boeing Computing Services in Richland, Washington. *RP 141 at 7*. She had assets totaling \$173,535, including a pension of \$32,566; 401(k) of \$90,319; and a one half interest in her home with a value of \$50,650. *RP 141 at 5, 18; RP 276 at 18-19; Exhibits 80, p. 4, 86, 88*.

Michael Riddell also worked for Boeing Computing Services. *RP 278 at 10*. He had been twice divorced. *RP 242, lines 2-8*. The value of his separate property was substantially the same as Ms. Riddell's: \$178,966. His separate property consisted of his Boeing pension with a value as of the date of marriage of \$72,548 and a 401(k) of \$106,418. *Exhibits 61b, 84, 85*. He was 51 years old. *CP 4*.

Immediately after the parties married, Ms. Riddell had to give up her job. *RP 278 at 7-8*. Nepotism rules did not allow her to work with Mr. Riddell. *RP 278 at 1-11*. Her Boeing pension was cashed out and rolled over into an IRA along with her 401(k). *Exhibits 86, 88*. She spent her time as Mr. Riddell asked her to, helping him as president of the company by volunteering with charities. *RP 278 at 16-25; RP 279 at 1-9*.

In 1997, the parties moved to Seattle. *RP 285 at 20-25, 286 at 1-8.* Ms. Riddell sold her home in Richland and Mr. Riddell acknowledges that the proceeds of sale were used to purchase their home in Bellevue. *RP 146 at 18-21.*

In Seattle, Mr. Riddell got a job for Ms. Riddell at the larger Boeing offices, where nepotism rules did not apply. *RP 285 at 20-25.* Because Ms. Riddell's gap in employment with Boeing was longer than one year, she had to restart her years of service with Boeing. *RP 421 at 25, 422 at 1-11.* This meant that she had to start her pension accrual over.

Over the next few years, she grew in her position at Boeing. She worked as a liaison, where she helped communicate between employees, who needed computer services, and employees, who provided those services. *RP 449 at 14-16.* She traveled internationally to provide computing liaison services for overseas Boeing employees. *RP 302 at 17-18; RP 450 at 13-15.* She was well respected by her subordinates. *RP 329 at 12-20.* Her salary and compensation increased until she was earning \$124,000 per year plus incentive awards, pension, VIP retirement contributions, and stock options. *Exhibit 89, pp. 4-14.*

In 1999, the parties started planning for their retirement. *RP 291 at 1-13.* They saved 42% Mr. Riddell's paycheck to take advantage of

Boeing's generous executive matching contributions. *RP 291 at 20-21, 292 at 4-6; CP 354.* They lived on Ms. Riddell's earnings. *RP 291 at 19-25, 292 at 12-16; CP 354.* They built a home in a retirement golf community in Arizona (Mr. Riddell acknowledges that the proceeds from the sale of the Bellevue home were later used to build their Arizona home). *RP 298 at 15-20; RP 146 at 18-21; RP 147 at 1-4.* They purchased a second home on Hood Canal. *RP 294 at 10.*

In 2003, Mr. Riddell was offered a lucrative early retirement package and he took it. *RP 296 at 4-25.* He was 61 years old. *CP 4.* Ms. Riddell continued to work. They believed that an early retirement package might also be offered to her. *RP 301-302; 307 at 5-9.* She telecommuted and traveled back and forth between Arizona and Seattle. *RP 301-302.* Her international travel was significant. Many months, she was traveling up to two weeks of that month. *RP 302 at 19-20.*

By 2005, they realized that no early retirement package would materialize for Ms. Riddell. *RP 306 at 22-25.* There was no point in waiting for it any longer. Moreover, Boeing no longer liked her telecommuting from Arizona. *RP 302 at 1-11, 377 at 1-9.* They contemplated her retirement.

Mr. Riddell had been retired for two years. *RP 307 at 5-7.* They were missing out on vacations and dinner parties and other activities with

friends because Ms. Riddell's work schedule interfered. *RP 304-05.*

Financially, Ms. Riddell no longer needed to work. *RP 109 at 11-14.* Mr. Riddell's social security and pension income totaled approximately \$5,569 per month or \$66,828 per year. *Exhibit 61(b) at 2; Exhibit 13.* They had nearly \$1 million in IRA funds and \$550,000 in investments. *Exhibit 62 at 3.* They had another half million dollars' worth of real estate. Their total estate was worth approximately \$2 million. *Exhibit 62 at 3.*

Still, the economic consequences to Ms. Riddell if she retired would be significant. 70% of her pension benefit would disappear, reducing her benefit from \$3,698 per month at age 62 to \$1,097. *Exhibits 61a, 89; RP 314 at 11-25.* She would lose the ability to contribute to and have the company match her retirement savings plan, which Boeing estimated would deliver to her another \$3,766 per month in income at age 62. *Exhibit 89, p. 4, 13.* She would also forfeit her stock options. *RP 310 at 10-15; Exhibit 89.* She would no longer have independent access to health insurance, but instead have to rely on Mr. Riddell's insurance as his spouse. *Exhibit 89; RP 175 at 3-5; RP 315 at 2-5.* Even her social security benefit would be affected. Because she would no longer contribute social security taxes, her estimated benefit would decline. *Exhibits 81, 82.*

Most of all, she would lose her earning capacity. Ms. Riddell has a

high school diploma. *CP 354; RP 313, 1*. Her only experience from the age of 25 had been with The Boeing Company. *RP 448 at 13*. She was successful at Boeing because she knew the people there and she knew Boeing's unique organizational environment. *RP 331-334; RP 356 at 16-25*. Those skills were not directly transferrable to other companies and in fact, the skills she acquired at Boeing have a low value in the marketplace today. *RP 456 at 19-21; 457 at 7-9*.

Ultimately, the parties did not need her to maximize her retirement income. They didn't expect her to work again, so losing earning capacity wasn't important. They wanted to travel, play golf, tennis and enjoy their home in Arizona. *CP 354; RP 109 at 21-22*. They agreed that Ms. Riddell should leave her employment and she did. *CP 354*.

Four years later, Mr. Riddell left the parties' home in Arizona with the intent to divorce Ms. Riddell. *RP 322 at 9-10, 323 at 1-4*. Then, he discovered he had health problems and needed a biopsy. *RP 339 at 1-9*. He asked her to reconcile. *RP 339 at 1-5*. After a diagnosis of cancer, Ms. Riddell nursed him through his surgery and ultimate recovery. *339 at 9-25; 340 at 1-15*. By the fall of 2010, he was recovered, traveling and hiking in the mountains. *RP 340 at 18-25*. In November 2010, he left Ms. Riddell for good and commenced this action. *RP 341 at 8-10; CP 1*.

At trial, Mr. Riddell requested that he be awarded all of his pension income of \$4,069 per month in addition to his social security benefit of \$1,700 per month. *Exhibit 61(b)*, 83. Within a year, he was also going to commence mandatory IRA withdrawals of \$3,088 per month. *CP 148, lines 17-20; Exhibit 62*. His income, exclusive of any investment income he received, would be \$8,857 per month.

He expected Ms. Riddell to return to work and to pay him maintenance. *CP 148, lines 20-22*. It was his position that she could earn \$5,000 per month in income. *CP 148, 160*. He also expected her to take her Boeing retirement benefit at a reduced value in the sum of \$606 per month. *CP 159, at lines 16-17*. It was his position that her income would be \$5,606 per month.

Mr. Riddell proposed that she keep the first \$2,000 per month she earned. Thereafter, she was to pay him 50 cents for each dollar she earned over \$2,000 per month. *CP 148, lines 20-22*. Thus, if she earned the \$5,000 per month he believed she could, she would be paying him \$1,500 per month so that his total monthly income would be \$10,357 per month.

Ms. Riddell's remaining earnings and reduced pension income would total \$4,106 per month. From that, Mr. Riddell posited that she could pay her federal income tax, health insurance, monthly living expenses of \$5,247,

and save for her retirement. *Exhibit 55; CP 156, lines 13-15.*

By the end of trial, he had conceded his maintenance claim. *RP 540 at 10-11.* But he still believed that Ms. Riddell could pay her taxes, meet her expenses, and save for retirement on his estimate that she could earn \$5,000 per month. He wanted all of his separate property and 55% of the remaining community assets. *CP 158; RP 543 at 15-16.* He considered Ms. Riddell's separate investment of \$50,000 into their Bellevue and then Arizona home to be a gift to the community and he wanted 55% of it. *CP 154, 158.*

His position elucidated the central questions to be answered at trial: what was Ms. Riddell's earning capacity post-dissolution and what property division would be equitable after applying that capacity? By the time of trial, Ms. Riddell was nearly 55 years old and had been out of the workforce for almost seven years. *CP 353-54.* She could not return to her old job at Boeing. Her department had changed drastically. *RP 333 at 3-5.* The people were different, which meant that her political connections that enabled her to do her job no longer existed. *RP 333 at 23-25, 334 at 6-15.* Over the last seven years, the computer systems Boeing used had also radically changed. *RP 333 at 12-14.* Her position at Boeing had been filled. *RP 332 at 6-20.*

Returning to Boeing in another capacity would not restore the

pension benefits she had lost. Because she had been gone from Boeing for more than a year, she had once again lost her continuity of service at Boeing. *RP 422 at 1-11.*

Before trial, Ms. Riddell tried to obtain employment elsewhere. *Exhibit 94.* She went on-line to learn how to prepare a good resume and she followed the advice she received. *RP 346 at 17-25, 347 1-25.* She sought the help of Sandy Farnum, who was familiar with Ms. Riddell's work and how to navigate on-line job searches. *RP 347 at 1-25.* She used trigger words in her on-line description of her qualifications that would hopefully catch a recruiter's attention. *RP 349 at 1-11.*

There were no jobs available like what she had done at Boeing. *RP 349 at 25, 350 at 106.* Instead, she applied for anything that sounded close, even those jobs that she knew she did not have the technical skills to perform. *RP 350 at 1-6.* When she did not get calls for interviews, she called Raytheon Corporation directly to find out what she could be doing differently. *RP 350 at 8-18.* She was directed back to the on-line process. *RP 350 at 15-18.* In the end, all she received were rejection letters because she was not qualified. *RP 349 at 12-18.* She did not have the required college degree. *RP 350 at 19-21; 352 at 3-7.* She did not have the technical skills the employers were seeking. *RP 351 at 11-18.*

Her experience was consistent with what Sandy Farnum encountered. Ms. Farnum had worked at Boeing with Ms. Riddell and had done the same type of work. *RP 376-77.* Ms. Farnum sought similar employment with other employers in Seattle and Tucson. *RP 374 at 1-3.* She was more qualified than Ms. Riddell because she had a college degree. *RP 374 at 8-10.* Still, she was unsuccessful in finding employment. *RP 378-80.*

At trial, William Skilling, the vocational expert, testified that it was too late for Ms. Riddell to obtain a college degree and reenter the workforce. *Exhibit 63.* By the time she got out of school, she would be nearly 60 years old. *RP 454 at 21-23.* Even if she did get a degree, she would not start out earning \$60,000 per year. *RP 455 at 1-5.* Like every new graduate, she would have to start at the bottom and work her way up again. *RP 455 at lines 6-7.*

All that was practically available to her was to learn Microsoft Office skills and obtain a job as a receptionist or administrative assistant. *RP 455 at 11-25; 456.* In those positions, she could earn \$25,000 to \$30,000 per year. *CP 354.* On that income, she could not meet her monthly living expenses, let alone save for retirement. *Exhibit 55.*

Both parties' experts testified that for Ms. Riddell to commence

pension benefits at age 55 would result in such a significant drop in monthly benefit (\$1,096 to \$606), that doing so would reduce the overall value of the asset. *RP 417 at 16-25, 492 at 22-25, 493 at 1-16.* It was better for her to take her benefit at age 62. *RP 493 at 1-16.*

Thus, once Ms. Riddell found employment, her total income would be approximately \$2,100 per month.

Mr. Grambush, CPA, testified about how various property divisions would affect the post-dissolution economic circumstances of the parties. *Exhibit 62.* His goals were to maximize the value of the parties' estate and provide for their future economic well-being. *RP 485 at 13-15; Exhibit 62.* He described how a 50/50 division of property would leave Mr. Riddell a millionaire at death, but would leave Ms. Riddell at risk of running out of resources with which to support herself. *RP 491 at 25, 492 at 1, 495 at 21-25, 495 at 1-7.* This was in large part because although Mr. Riddell would pass away at age 83, Ms. Riddell would continue to live much longer, where her fixed retirement income could not keep up with the increase in her cost of living. *RP 478 at 3-16.* Because she would live longer, she would have more expenses to cover, which would require her to have more funds to start with. *RP 526 at 4-6.* Applying all of Ms. Riddell's post-dissolution earnings would not make up for this

deficit. *Exhibit 62.*

Mr. Grambush opined that after applying all of Ms. Riddell's post-dissolution earnings to the analysis, she would still need 58/42 division of property in her favor to create parity between the parties. *Exhibit 62.* His testimony was unrebutted.

At the end of trial, the evidence showed that each party had entered the marriage with equivalent separate estates. They both worked the same number of years during marriage and then jointly decided to cease their employment. But for her departure from Boeing, Ms. Riddell's pension and social security would have been comparable to Mr. Riddell's. Ms. Riddell's reduced earning capacity would not allow her to recover from an equal division of property. Rather, Ms. Riddell would need more than 50% of the property in order to make it last over the course of her much longer life expectancy.

Ultimately, the Court found that Ms. Riddell could find employment within six months, earning \$25,000 - \$30,000 per year. *CP 354.* Thereafter, it divided the property as follows:

Property	Husband	Wife
Arizona home		\$385,000
Washington home	\$134,579	0

Property	Husband	Wife
Net present value - Husband's pensions ¹	243,413	243,413
Net present value – Wife's survivor benefit ²	0	107,830
Net present value – Wife's pension ³	0	113,830
IRA - Husband	619,127	0
IRA – Wife	0	310,752
Morgan Stanley investment account	105,498	400,000
Total:	\$1,102,617	\$1,560,825

The overall division of property, including the pensions, was 58.6% to Ms. Riddell and 41.4% to Mr. Riddell. The trial court made no award of attorney fees. Mr. Riddell appealed.

III. ARGUMENT

A. Sufficient Evidence Supports Trial Court's Findings. Mr. Riddell first argues that insufficient evidence supported two of the trial court's findings of fact. An appellate court reviews findings of fact for substantial evidence. *Katara v. Katara*, -- P.3d --, 4, WL 3516885 (Wash. Aug 16, 2012). Substantial evidence is a sufficient quantum of evidence

¹ The Husband's pensions are in pay status and were divided equally as income between the parties.

² The Wife's survivor benefit constituted the net present value of the future income stream she would receive when Mr. Riddell passed away. *Exhibit 7*. It was not a tangible asset available to her now.

³ The Wife's pension listed above constituted the net present value of the future income stream she would receive when she reached age 62. *61(a)*. It is not a tangible asset available to her now.

to persuade a fair-minded person of the truth of the declared premise. *Hanson v. Estell*, 100 Wn. App. 281, 286, 997 P.2d 426 (2000). Findings that are supported by substantial evidence in the record are verities on appeal. *In re Marriage of Crosetto*, 101 Wn. App. 89, 98, n. 5, 1 P.3d 1180 (2000).

1) Wife's Social Security Benefit. Mr. Riddell argues that the trial court erred in finding that the Wife's eventual social security benefit would be less than the Husband's. At present, Ms. Riddell receives no social security benefits. Mr. Riddell receives \$1,702 per month. *Exhibit 116*. In 2019, when Ms. Riddell starts receiving benefits, she is expected to receive approximately \$1,407 per month. *Exhibit 82*. By then, Mr. Riddell's benefit will have grown to \$1,838 per month. *Exhibit 62*. The Court's finding is supported in the record.

Mr. Riddell cites to the trial court's oral decision to support his position that the trial court placed undue weight on this finding. An oral opinion is a tentative ruling and may be used to clarify, but not to contradict, a court's written decision. See *State v. Martinez*, 76 Wn.App. 1, 3-4 n. 3, 884 P.2d 3 (1994) (oral opinion does not become final unless it is incorporated in written findings of fact and conclusions of law; oral decision can be used to interpret but not to impeach written findings and

conclusions); State v. Bryant, 78 Wn.App. 808, 812-13, 901 P.2d 1046 (1995) (an appellate court may consider a trial court's oral decision so long as it is not inconsistent with the trial court's written findings and conclusions).

In this case, the trial court made its tentative oral ruling, which was then refined and reduced to written findings of fact. The trial court placed no greater weight on the parties' receipt of social security benefits than any other factor. In its oral decision, the trial court characterized the parties' respective receipt of social security as an "intangible" consideration. *02/23/2012 RP at 12*. Its consideration included not only the difference in the monthly benefit amount to each party, but also the fact that social security would not be available to Ms. Riddell for awhile. *02/23/2012 RP at 12*. There is no error.

Mr. Riddell next attempts to assign a lump sum value to each of the parties' social security benefits and then argue that Ms. Riddell's total social security benefit is greater than Mr. Riddell's. First, he made no such argument to the trial court. *CP 312-21*. An appellate court may decline to review any claim of error which was not raised in the trial court. RAP 2.5(a). See also, Washburn v. Beatt Equip. Co., 120 Wash.2d 246, 290, 840 P.2d 860 (1992) (Arguments or theories not presented to the trial

court generally not considered on appeal). The purpose of RAP 2.5(a) is to ensure that the trial court has an opportunity to consider the issue and rule on relevant authority. Washburn, 120 Wash.2d at 291, 840 P.2d 860. Because Mr. Riddell did not raise this issue below, the Court need not consider the issue.

Substantively, his assertion is both legally and factually misplaced. Social security benefits are separate property that may not be divided or directly offset with an award of other assets. *In re Marriage of Rockwell*, 141 Wn. App. 235, 244-45, 170 P.3d 572 (2007). But a trial court must consider a party's receipt of social security benefits when making a property division. *Rockwell*, 141 Wn. App at 244-45. Otherwise, a court could not properly consider the post-dissolution economic circumstances of the parties. *Rockwell*, 141 Wn. App. at 245.

In this case, Mr. Grambush included the parties' monthly social security benefits in the income stream each party would receive upon retirement. *Exhibit 62*. He did not calculate a lump sum value of these benefits; neither did he suggest an offset.

Even if such a valuation were allowable under the law, neither expert made such a calculation. Valuing an annuity payment (*e.g.* defined benefit pension plan) requires the expert to calculate its net present value,

which includes applying a discount rate to the sum of the total expected payments. *See e.g. Exhibits 6, 61.* Both Mr. Kessler and Mr. Grambush provided calculations of the net present value of the parties' pensions in this matter. Neither made any valuation of social security. The trial court made no impermissible offset of social security benefits.

Contrary to Mr. Riddell's next contention, the court also made no findings about when it expected Ms. Riddell to retire. The evidence showed that the value of her social security/pension, combined with her optimal cashflow position, were maximized if she took them at age 62. *RP 492 at 13-25.* Mr. Riddell retired at age 61. A retirement date of 62 for Ms. Riddell is both prudent and equitable under the circumstances.

2) Continuity of Service. Mr. Riddell next claims that no evidence supported the finding that Ms. Riddell lost her continuity of service at Boeing, which affected her pension. He is mistaken. At trial, Ms. Riddell offered evidence that when she left The Boeing Company, her expected pension benefit fell from \$3,698 per month to \$1,096, a drop of nearly 70%. *Exhibits 61a, 89; RP 314 at 11-25.* If she had returned to Boeing within one year, she would have been able to preserve her years of service at the company and restore her ability to earn that part of the pension she had lost. *RP 421 at 25, 422 at 1-11.*

Counsel for Mr. Riddell asked Ms. Riddell if she had applied for re-employment at The Boeing Company. *RP 57 at 25, 58 at 1*. But because she had been seven years away from Boeing, becoming re-employed there would have been no different than working for a completely new company. In either case, she would be starting from zero for the purposes of accumulating years of benefit service and thus additional pension benefits. The trial court correctly found that because she had been absent from Boeing for more than one year, she lost her continuity of service and it affected her pension.

Mr. Riddell asserts Ms. Riddell's reduction in pension benefits should not have been considered by the court when making its division of property. At the end of a marriage, a court is charged with dividing the parties' estate fairly and equitably. RCW 26.09.080. While a court considers the statutory factors that include age and health of the parties and duration of the marriage, these factors are not exclusive and courts may consider other relevant factors not barred by statute from consideration. *In re Marriage of Nuss*, 65 Wn.App. 334, 341, 828 P.2d 627 (1992). Reaching an equitable division requires 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 Crosetto*, 82 Wn.App. 545, 556, 918 P.2d

954 (1996). The ultimate question is whether the overall division of property is just and equitable under all the circumstances. *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977).

In this case, Ms. Riddell showed that had she remained employed with Boeing, she would have enjoyed a comparable retirement benefit to Mr. Riddell's benefit: \$3,700 per month and \$4,069 per month respectively. There would have been no need for a disparate division of property because they would have both been comparably situated. But the parties jointly decided that she would leave her employment at Boeing. CP 354. It was a decision that worked to her financial detriment and put her in the position of being the economically disadvantaged spouse. It was equitable for the trial court to make a property division that would put the parties on more equal economic footing.

Mr. Riddell next argues that if the trial court considered the diminution of Ms. Riddell's pension, it should have also considered the impact of Mr. Riddell's early retirement on his pension. First, Mr. Riddell offered no evidence of what his pension would have been had he not retired early. A court does not err by failing to consider evidence that was not put before it. This Court need not consider his argument.

Substantively, the court was not asked to divide property based upon pension benefits Mr. Riddell could have received had he not retired early; it was asked to divide the property that existed, taking into considering the disparate financial circumstances of the parties. There was no error.

B. Trial Court Properly Valued and Characterized the Husband's Pensions. Mr. Riddell next argues that the court failed to properly characterize two of his four Boeing pensions. Pension benefits are property in the nature of deferred compensation. *In re Marriage of Bulicek*, 59 Wash.App. 630, 636–37, 800 P.2d 394 (1990). If a pension is earned partly prior to marriage and partly after marriage, it is proportionately allocated so that the portion acquired during marriage is characterized as community property. *In re Marriage of Rockwell*, 141 Wn. App. 235, 251, 170 P.3d 572 (2007).

The subtraction method of allocation takes the value of the pension as of the date of marriage and deducts it from the total value of the pension to allocate what percentage of the pension is separate and what is community. This method freezes the value of the separate portion of the pension as of the date of marriage and fails to account for any appreciation of that value during marriage. *Rockwell*, 141 Wn. App. at 253.

Under the time rule, the number of years of service during the marriage is divided by the total years of service to determine the community value of the pension. *Rockwell*, 141 Wn. App. at 250-51. The remainder is separate property. This method recognizes that a party's service before marriage increases the value of the pension during marriage. That separate portion of the pension earned before marriage thus appreciates in value during the marriage. *Rockwell*, 141 Wn. App. at 253.

In this case, one of the equitable considerations before the trial court was the nature and extent of the separate property each party had at the time of marriage and its disposition during marriage. Mr. Grambush correctly used the subtraction method to calculate the value of Mr. Riddell's pension *as of the date of marriage*. *Exhibit 61(b)*. He neither testified nor did Ms. Riddell assert that this was the current value of the separate portion of Mr. Riddell's pension. *Exhibit 51*. The purpose of Mr. Grambush's testimony was to show that the parties each entered the marriage with approximately the same value of separate property.

His testimony also elucidated what happened to the parties' respective separate property after marriage. *RP 507 at 3-25; 508 at 1-9*. Ms. Riddell's separate pension had a value of \$30,000. *Exhibit 88*. After

marriage, she was forced to terminate her employment with Boeing and she was cashed out of her pension. *RP 360 at 14-15*. Because she was not able to produce each and every IRA statement after marriage, she was unable to show how that separate pension grew in value after marriage. The result was that whatever increase in value her pension had was characterized as community property.

By contrast, Mr. Riddell did not experience a break in service at Boeing. The time rule was appropriately applied to his pension and it grew in value from \$72,548 as of the date of marriage to \$122,509 by the time of his retirement, an increase of nearly 69%. *Exhibit 61(b); CP 358*.

This, too, was another factor that rounded out the totality of the circumstances of the parties' respective economic positions post-dissolution. There was no error.

a. State Street Pension/Pension Value Plan (PVP). Mr. Riddell contends that the trial court assigned an incorrect value to the separate portion of his Pension Value Plan that has a monthly benefit payment of \$2,228. *Exhibit 85*. When determining the value of property, a court may adopt the value asserted by one party or the other, or any value in between the two. *In re Marriage of Sedlock*, 69 Wash.App. 484, 491, 849 P.2d 1243 (1993). At trial, Mr. Riddell's expert, Mr. Kessler,

opined that the pension had a total value of \$281,870, of which \$159,361 or 56% was separate property and \$122,504 or 44% was community property. *Exhibit 6*.

Ms. Riddell's expert, Kevin Grambush, testified that Mr. Kessler used the wrong date of hire for Mr. Riddell when allocating the separate and community portions of the plan. Mr. Kessler assumed a hire date in 1984, instead of the actual hire date in 1987. *Exhibits 6, 61(b)*. This mistake erroneously increased the number of years of service before marriage upon which Mr. Kessler calculated the separate portion of the pension. The result was that Mr. Kessler produced an inflated value of the separate portion of the pension.

Mr. Grambush opined that the consequences of this error could actually reverse the percentages so that only 44% of the pension was separate and 56% was community. *RP 504 at 22-25; 505 at 1-6*. Mr. Kessler testified that the total value of the pension was \$281,870 *Exhibit 6*. Mr. Grambush concluded that the total value was \$266,555. *Exhibit 61(b)*. Thus, the separate portion of the pension (44%) would have been either \$122,509 or \$117,000, respectively.

The court accepted Mr. Grambush's opinion of total value of the pension and found the separate portion to have a value of \$122,509.

Exhibit 61(b), CP 356, lines 3-4. Its finding was within the range of evidence presented at trial. There is no error.

b. Principal Insurance Pension Correctly Characterized as Community. Mr. Riddell also complains that the trial court did not allocate a portion of his Principal Insurance Group pension as separate property. The law is well settled that assets acquired after marriage are presumptively community property. *In re marriage of Hurd*, 69 Wn. App. 38, 49, 848 P.2d 185 (1993) *overruled on other grounds*, *In re Estate of Borghi*, 167 Wash.2d 480, 219 P.3d 932 (2009). This presumption can only be rebutted with clear and convincing evidence that traces the separate source of the funds with which the asset was acquired. *Seizer v. Sessions*, 82 Wn.App. 87, 98, n. 31, 915 P 2d. 553 (2006) *overruled on other grounds*, 132 Wn.2d. 642 (1997).

In this case, Mr. Riddell acknowledged that both of his supplemental executive retirement plans were earned during marriage and were therefore 100% community in character. *RP 149 at 1-8.* Up until two months before trial, he made no separate property claim to his Principal Insurance pension. *RP 150-51.* Then, two months before trial, he asserted for the first time that his Principal Insurance Group annuity

was partially separate in character and should be awarded to him. *RP 150-51*.

In support, he offered a letter he received from Boeing on November 17, 2011. *Exhibit 15*. This letter identified for the first time his Principal annuity as “PVP” (Pension Value Plan).⁴ *Exhibit 15*. This letter was not consistent with Boeing’s letter of August 4, 2011 that described Mr. Riddell’s pensions at the time of marriage. *Exhibit 85*. That letter did not include the Principal annuity at all. *Exhibit 85*. Although Boeing identified the value of Mr. Riddell’s Pension Value Plan at the time of marriage, it made no such allocation for the Principal annuity. *Exhibit 85*. Mr. Riddell admitted that the new letter came after he, a retired company executive, made a call to Boeing requesting the letter. *RP 150-51*.

Regardless of whether the Principal Insurance annuity was renamed “PVP” in the last Boeing letter or not, no one from Boeing identified the time period in which the pension was earned. At trial, Mr. Riddell could not identify any documents or other evidence that would show that he earned a portion of the pension before marriage. *RP 155 at 18-24*. Mr. Grambush saw no documents that indicated that the Principal Insurance pension had a pre-marriage component or was earned during a

period prior to marriage. *RP 506 at 1-6*. No evidence was offered to prove when it was earned. The trial court did not err in concluding that the Principal Insurance Group annuity was community in character.

c) Character Not Controlling. Mr. Riddell next asserts that the trial court's division of property would have been different had the property been characterized as he contends it should have been. In a dissolution of marriage, all property, separate and community, is before the court for division. *Stokes v. Polley*, 145 Wn.2d 341, 347, 37 P.3d 1211 (2001). While the character of property is relevant to determine a just and equitable distribution, it is not controlling. *Stokes*, 145 Wn.2d at 347. Ultimately, if the trial court clearly states that it is not influenced by the character of property and would make the same division of property regardless of its character, no remand is required. *Stachofsky v. Stachofsky*, 90 Wn. App. 135, 147, 951 P.2d 346 (1998).

In this case, the trial court expressly stated in its conclusions of law, "Regardless of the classification of property above as community or separate, the division of property is fair and equitable." CP 359 at 18-19. The court's characterization of property did not influence its ultimate division of property. No remand is required.

⁴ This Boeing letter also erroneously characterized one of the supplemental

C. Trial Court Need not Consider Assets Already Consumed.

Mr. Riddell next faults the trial court for not considering the parties' expenditure of his pension benefits on their living expenses during marriage. He claims that this contribution should have offset the trial court's alleged consideration of Ms. Riddell's separate real estate contribution. Mr. Riddell made no such argument at trial. The Court need not consider it here.

Substantively, his claim lacks merit. When fashioning an equitable division of property, a trial court focuses on the assets before it at the time of trial. *White v. White*, 105 Wn. App. 545, 549, 20 P.3d, 481 (2001). If the parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial. *White*, 105 Wn. App. at 549. In this case, Ms. Riddell's investment of real estate proceeds continued to exist as of the date of trial. Both parties agreed that the proceeds of sale of her home were invested in the purchase of their Bellevue home, which proceeds were later invested into their Arizona home. *RP 146 at 18-21; RP 147 at 1-4*. The Arizona home was to be awarded to one party or the other at trial. Ms. Riddell's investment into it had to be characterized and divided.

executive retirement plans as a "PVP" (Pension Value Plan) as well.

By contrast, the pension benefits received by Mr. Riddell during marriage were consumed monthly as they were received. The trial court could not divide them at trial because they no longer existed. More to the point, where the benefits no longer existed, they could not change either party's post-dissolution economic circumstances. The court had to provide for the parties from what remained.

Second, Mr. Riddell's complaint about the effect the house proceeds had on the trial court's division of property is not supported in the record. The trial court agreed with Mr. Riddell that Ms. Riddell's separate investment of real property proceeds converted to community property during the marriage. It made no express or implied conclusion that Ms. Riddell's award of property should be greater because of that investment. *CP 357-59*. It made no allocation of property based upon the source of that real estate. *CP 362-65*. The trial court placed no discernable weight on the source or character of Ms. Riddell's separate investment into the community. There was no error.

D. **Trial Court Properly Admitted the Expert Testimony of Kevin Grambush, CPA.** Mr. Riddell next argues that the expert testimony of Kevin Grambush regarding the parties' future economic circumstances was based upon "pure speculation" and should have been

excluded. Determining the admissibility of expert testimony lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *Katare*, -- P.3d --, 5, 2012 WL 3516885 (Wash) (August 16, 2012) (Expert testimony of likelihood of child abduction based upon risk factors borne of prior conduct properly admitted). Expert testimony is admissible so long as the expert is qualified, relies on generally accepted theories, and assists the trier of fact. ER 702; *Katare* -- P.3d at 5.

While Mr. Riddell is correct that expert testimony based upon pure speculation is not admissible, there is no requirement that it be absolutely certain. Less than certain expert testimony is routinely admitted at trial. *State v. Lord*, 117 Wn.2d 829, 853, 822 P.2d 177 (1991) (Expert's testimony that trace evidence "could have" shared a common source was properly admitted). The lack of certainty of an expert's conclusion goes to its weight, not its admissibility. *Lord*, 117 Wn.2d at 853, 855. It is the trier of fact, who determines the weight to give such conclusions. *Lord*, 117 Wn.2d at 192.

Here, the trial court was faced with how to divide the property of the parties, taking into consideration their future economic circumstances. A court's paramount concern is the future economic circumstances of the

parties. *Landauer v. Landauer*, 95 Wn. App. 579, 589, 975 P.2d 577 (1999) (Indian trust land could not be divided, but was factor to be considered in division of property); *In re Marriage of Gillespie*, 89 Wn. App. 390, 399, 948 P.2d 1338 (1997) (The court's paramount concern in a dissolution action is the economic condition in which the decree leaves the parties).

Mr. Grambush offered expert testimony as to what effects various divisions of property would have on the parties. He testified that for nearly 30 years, he had regularly prepared future net worth analyses in his professional practice. *RP 474 at 14-19*. Because of the length of time he had been using the analyses, he testified that he had a high degree of confidence in their reliability. *RP 475 at 1-10*. Although he conceded that his conclusions were not absolutely certain, they were pretty close and would give the parties an idea of what to expect. *RP 475 at 8-10*. He testified that he used these analyses successfully in his own financial planning. *RP 474 at 20-25*. His testimony regarding the validity of using net worth analyses was not rebutted.

At page 2 of his report, Mr. Grambush set forth the major underlying assumptions upon which he relied for his analyses. *Exhibit 62*. These assumptions included expected returns on investment, expected cost

of living increases, and the parties' tax rates. He also used mortality tables to estimate the parties' respective life expectancies. *RP 479 at 2-5*. Mr. Kessler, expert for Mr. Riddell, testified that he also relies on mortality tables, investment rates, and cost of living increases in his accounting work. *RP 426 at 4-8; RP 427 at 1-15; RP 428 at 15*. Indeed, Mr. Riddell did not object to Mr. Grambush's qualifications. The only assumption he took issue with was the life expectancy, but his own expert, Mr. Kessler, testified that he regularly relies on mortality tables in his work.

Beyond that, Mr. Riddell's objection to Mr. Grambush's testimony at trial was not specific in nature, except for his contention that Ms. Riddell could remarry. He made a general standing objection based upon speculation. Because any uncertainty in Mr. Grambush's testimony goes to weight and not admissibility, the trial court acted within its discretion to admit the testimony. There is no error.

As to Mr. Riddell's specific alleged errors raised now on appeal, his concerns were either accounted for by the trial court, contrary to law, or lack support in the record. He first argues that Mr. Grambush's entire testimony should be excluded because he estimated that Ms. Riddell would return to work 18 months after trial, where the trial court found she would find employment in six months. *Exhibit 62, p. 8; CP 354*.

Where both the trial court and Mr. Grambush determined her first year salary to be \$25,000, the effect of the trial court's finding put an additional \$21,000 of after-tax earnings in Ms. Riddell's column. *CP 354; Exhibit 62, p. 8*. The trial court took this into account in its division of property. Instead of awarding Ms. Riddell \$443,000 out of the Morgan Stanley account as Mr. Grambush had proposed, it instead awarded her \$400,000, a reduction of \$43,000. *Exhibit 62, p. 12; CP 358*. There is no error.

Mr. Riddell next argues that Mr. Grambush's entire testimony should have been excluded because he calculated that Ms. Riddell would spend \$600 per month in health insurance costs in the first year after trial. The parties had agreed that she would avoid these costs by staying legally separated for one year. The amount at issue is \$7,200. Mr. Grambush had calculated that Ms. Riddell should receive \$6,397 of the IRA standing in the name of Mr. Riddell. *Exhibit 62, p. 9*. The trial court awarded no funds to Ms. Riddell of Mr. Riddell's IRA. *CP 358*. Mr. Riddell's contention was considered and offset. There was no error.

Mr. Riddell also argues that Mr. Grambush erroneously projected a \$30,000 increase in his IRA investments in the first year after trial, ignoring his withdrawals during the same period. Mr. Riddell

misapprehends the evidence. At page 14 of Exhibit 62, Mr. Grambush expressly showed that Mr. Riddell would take no IRA withdrawal in 2012. At page 13, he showed that in that year, Mr. Riddell's IRA, which had an opening balance of \$588,000 would realize a 5% increase by the end of the year to have a value of \$617,000. *Exhibit 62*. In fact, between the time Mr. Grambush completed his report and the time of trial, Mr. Riddell's IRA had increased in value from \$588,000 to \$619,000. *Exhibit 62; CP 355 at 12-13*. There is no error.

Next, Mr. Riddell complains that Mr. Grambush should not have projected that Ms. Riddell would cease work at age 62. Mr. Grambush testified that it made the most sense for her to take both her social security benefit and her retirement benefit when she was 62 because it maximized the value of her social security and she would need the cashflow from her pension. *RP 492 at 15-25; RP 493 at 1-5*.

Ms. Riddell's retirement at age 62 parallels Mr. Riddell's retirement at the age of 61. At trial, Mr. Riddell admitted that the parties had an estate that was large enough that neither of them ever needed to work again. *Exhibit 113, p. 3; RP 263 at 17-22*. His insistence that she work longer than age 62 is inconsistent with his own retirement history, the value of her social security/retirement at age 62, the equities of the

case, and his own admissions at trial.

Finally, Mr. Riddell argues that both Mr. Grambush and the trial court should have anticipated that Ms. Riddell would remarry when fashioning a division of property. Mr. Riddell offers no authority for his position. In fact, his position is contrary to established law.

Property before a court for division may be tangible or intangible, but it must be something to which a party has a right. *In re marriage of Harrington*, 85 Wn. App. 613, 624, 935 P.2d 1357 (1997). “A mere expectancy is not a right and as such is not property.” *Harrington*, 85 Wn. App. at 624, *citing*, Wash. St. Bar Ass'n, *Washington Family Law Deskbook* § 38.2 (1989). For instance, a bequest in a will while the testator is still living is merely an expectancy. *In re marriage of Hurd*, 69 Wn. App. 38, 49, 848 P.2d 185 (1993) *overruled on other grounds*, *In re Estate of Borghi*, 167 Wash.2d 480, 219 P.3d 932 (2009). Only when the testator has passed away and the will can no longer be changed, does the bequest become a vested interest to the extent of its actual value. *Hurd*, 69 Wn. App. at 49. Trial courts may not consider expectancies when dividing property.

In this case, Mr. Riddell argues that Ms. Riddell might remarry, implying that she might acquire the assets and income of a new husband.

At trial, there was no evidence that either party was planning to remarry. In fact, such a position is belied by the fact that they agreed to enter into a legal separation, not a dissolution of marriage at the end of trial. *CP 361*. The trial court could no more take into consideration the potential remarriage of either party than it could have considered the likelihood that Mr. Riddell would inherit an estate from his mother, who was age 96 at the time of trial. *RP 255 at 21*.

The interchange between Mr. Anderson and the trial court on the subject was not as Mr. Riddell claims. When addressing the issue of a legal separation as opposed to a dissolution of marriage, counsel for Mr. Riddell stated that Mr. Riddell would never again remarry. *RP 521*. The trial court's comment in passing was, "Never say never." *RP 521 at 11*. The trial court did not consider the possibility of the remarriage of either party when making its distribution of property. Mr. Riddell's assignment of error on this basis has no basis in law or fact.

E. **Trial Court's Division of Property Just and Equitable.**

Mr. Riddell argues that because the duration of the parties' marriage was 15 years, the court could not create economic parity between them into the future. At the end of a marriage, a court is charged with dividing the parties' estate fairly and equitably. RCW 26.09.080. As stated earlier, it

must consider not only the length of the marriage, but also the education and earning capacities of the parties, the nature and extent of separate and community property, and the health and ages of the parties. RCW 26.09.080. None of these factors carries greater weight than another. Moreover, these factors are not exclusive and courts may consider other relevant factors not barred by statute from consideration. *In re Marriage of Nuss*, 65 Wn.App.334, 828 P.2d 627 (1992). A court's paramount concern is the economic condition in which the dissolution decree will leave the parties. *In re Marriage of Washburn*, 101 Wn.2d 168, 181, 677 P.2d 152 (1984). Ultimately, the question is whether the overall division of property is just and equitable under all the circumstances. *In re marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790.

Reported cases demonstrate the necessity of flexibility at the trial court level. That is because the fact patterns of each case are unique; one cannot apply the template of one case to another and assume it will produce an equitable result. For instance, in *In re Marriage of Marzetta*, 129 Wn. App. 607, 120 P.3d 75 (2005), the trial court awarded 20 years of maintenance at the end of a 13 year marriage. Applying Mr. Riddell's undue emphasis on the duration of the marriage, it would seem absolutely unfair that a maintenance term should far exceed the length of the

marriage. But a court places no greater weight on one factor over another. The overall task is to achieve fairness considering all of the circumstances. In *Marzetta*, the wife had multiple sclerosis and the husband had millions of dollars in separate property, which made the maintenance award equitable. See also *In re Marriage of Donovan*, 25 Wn.App. 691, 612 P.2d 387 (1980) (14-year marriage where wife received 66% of assets; wife had little earning potential, received only two years of maintenance; husband was an airline pilot with a “substantial salary” and a “secure” future).

In the same way, *In re Marriage of Rockwell*, 141 Wn. App. 235, 244-45, 170 P.3d 572 (2007) cannot be used as a template for this case. But its consideration of the equities of the parties is absolutely applicable. In *Rockwell*, the parties dissolved a 26 year marriage. The central question was, what were the parties’ respective economic capacities post-marriage that should be considered when dividing their property? The court in *Rockwell* observed that the wife was already 61 years old and in poor health. It did not require her to return to work until the age of 65. Accordingly, she had no further economic capacity. What she received in the divorce was what she would have to live on for the rest of her life.

By contrast, the husband was 55 years old and in excellent health.

More importantly, he had two advanced college degrees. *Rockwell*, 141 Wn. App. at 246. The court concluded that his earning capacity was \$70,000 per year and that he should work until he was 62 years old. *Rockwell*, 141 Wn. App. At 246. Over those next seven years, he had the capability to economically produce a substantial income post-trial that would offset the disparate property award.

In this case, the trial court applied the same equitable considerations. The parties agreed that Mr. Riddell, at 70 years of age, would not return to work. He had no more economic work life. Thus, the question was, what future circumstances should be considered when determining the award of property that was equitable for him?

Mr. Grambush testified that Mr. Riddell's life expectancy was another 13 years. *RP 475 at 17-22*. Both experts testified to their confidence in mortality tables and that they used them regularly. *RP 426 at 408*. Mr. Kessler testified that the only time he would shorten the mortality of a person was if a physician opined about a serious medical condition. *RP 426 at 21-22*.

Mr. Riddell indeed testified that his health was poor. *RP at 110*. That testimony, if found to be true, could have two economic consequences: 1) he would die sooner, or 2) he would have significant

medical costs that could be expensive. Mr. Riddell did not claim he was going to die sooner than his life expectancy. He also testified to no increased health costs as a result of his health conditions.

To the contrary, Ms. Riddell testified that Mr. Riddell enjoys double insurance coverage: Medicare and a supplemental Boeing executive retirement policy. *RP 316 at 12-14*. Because of this, when Mr. Riddell had biopsies and a surgery to remove a tumor from his lung in 2010, his total out of pocket costs in that year were \$1,317. *RP 316 at 6-11; Exhibit 102*. His medical costs were modest.

Mr. Grambush opined that if the parties' divided the pension income equally and Mr. Riddell was awarded 42% of the property, he could maintain his current standard of living until his death and still have an estate of approximately \$900,000.

Then, the focus shifted to Ms. Riddell. Mr. Grambush testified that she had a life expectancy of 26 years, twice as long as Mr. Riddell. He testified that the parties' equal life expectancies to age 83 was because Ms. Riddell was much younger and that, as she grew older, her life expectancy, too, would increase. *RP 476 at 1-6*. Thus, Ms. Riddell had to make her property award and post-dissolution earnings last at least twice as long as Mr. Riddell and likely longer.

Ms. Riddell testified that she has Barrett's Esophagus, a pre-cursor to esophagus cancer. *RP 317 at 19-20*. While it is under control when treated, the cost of the twice yearly tests is \$2,000 each. *RP 318 at 1-2*. The uninsured cost of Ms. Riddell's medications is \$400 per month. *RP 318 at 3-5*. She also testified that she has bleeding ulcers. *RP 318 at 8-10*. She testified that COBRA through Mr. Riddell's insurance was not available to her and that she had allocated \$600 per month to purchase health insurance. *RP 315 at 4-5; RP 321 at 2-4*.

After that testimony, the parties stipulated that they would remain legally separated for one year so that she could remain covered on Mr. Riddell's health insurance for that period. *CP 361*.

When it came to Ms. Riddell's future earning capacity, William Skilling testified that the skills she acquired at The Boeing Company were unique to Boeing and not directly transferrable to other employers. *RP 456 at 16-23*. This testimony was corroborated by Sandy Farnum, who testified that she had done the same type of work at Boeing and had been unsuccessful in finding work through other employers, despite the fact that she had a college degree and years of experience. *RP 374 at 8-10; RP 378-79*. The consequence was that Ms. Riddell could not replicate the type of job or compensation she had enjoyed at Boeing.

A career recovery was also not possible for her. Ms. Riddell has no college degree and she is 55 years old. *CP 353-54*. She has been out of the workforce for nearly seven years. *CP 354*. Mr. Skilling opined that it was not practical for Ms. Riddell to go to college to obtain a degree, because she would be nearly 60 years old by the time she completed it and she would still have to start at the bottom and work her way up. He concluded that the only practical option available to her was to take a job as a receptionist or administrative assistant at a salary of \$25,000 per year (this is consistent with the trial court's finding). *RP 355 at 11-17; Exhibit 63; CP 354*

Mr. Grambush testified that if the court divided the parties' property equally, Ms. Riddell was at risk of running out of resources before she died. *RP 495 at 23-25, 496 at 1-4*. By age 82, she would have consumed all of her IRA, all of her investments, and would be living off of a reverse mortgage on her house. *Exhibit 62, p. 1; RP 495 at 23-25, 496 at 1-4*. Because the life expectancy of Ms. Riddell is expected to increase as she gets older, the effects of such a property division would be even more onerous. *RP 476 at 1-9*. If she lived longer than anticipated, she was faced with having no resources upon which to live. *RP 479 at 19-21*.

Mr. Grambush testified that awarding Ms. Riddell 58% of the

property would give her the financial security she needed. *Exhibit 62*. Although Ms. Riddell's net worth started out higher, it precipitously declined over time, even with the addition of her post-separation earnings. *Exhibit 62*. But because she started with more funds at the outset, she had more time before she ran out of money. *RP 503 at 18-20*. In effect, at a 58/42 property division, both parties could live comfortably well beyond their life expectancies.

Mr. Riddell nevertheless claims that a court may only equalize the parties' economic positions at the end of a long-term marriage of 25 years or more. It is true that in long-term marriages, a court equalizes the parties' economic positions for the rest of their lives. *Rockwell*, 141 Wn. App. at 243. At the end of a 25 year marriage, the parties have spent the bulk of their economic work life together. Often, the economically disadvantaged spouse does not have the ability to financially recover from the divorce. It is appropriate that the court equally provide for those parties into the future.

Mr. Riddell cites no authority for his contention that this equalization may only occur in long-term marriages. His emphasis on the duration of the parties' marriage in this case impermissibly places greater weight on that factor than on the other factors a court is required to

consider, such as the ages of the parties. His position necessarily ignores the overarching concern of the court to fairly and equitably divide the property after considering the totality of the circumstances.

In this case, the parties ended their marriage later in life. The choices they made during their marriage severely curtailed Ms. Riddell's ability post-dissolution, to economically recover from the marriage. Up until 2005, the parties had stood in parity with one another. They had entered the marriage with equivalent separate property. They both worked the same number of years during the marriage before leaving their employment. They each anticipated comparable retirement and social security benefits.

Ms. Riddell lost her financial footing when they both decided that she should leave her employment in 2005. Her greatest earning capacity now will not meet even half of her monthly living expenses. Mr. Riddell believes that she, alone, should bear the economic consequences of their joint decision that she retire. The trial court disagreed.

To be sure, the trial court required Ms. Riddell to do all she could to financially make up for the dissolution of marriage. It required her to return to work within 6 months and earn \$25,000 per year. But after that, there was no equitable basis to leave Ms Riddell financially insecure in her

later years. The trial court properly considered all of the equities and factors involved in this case, not just the duration of the marriage. It made a decision that was equitable under the totality of the circumstances.

J. Attorney Fees. RCW 26.09.140 expressly authorizes this Court to order one party to pay for the cost and attorney fees to the other party of maintaining an appeal. In re Marriage of Wallace, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002) (Attorney fees on appeal justified where husband appealed the results of his intransigence at trial). The Court may also award attorney fees and costs for based on intransigence of a party, demonstrated by litigious behavior. *Wallace*, 111 Wn. App at 710. If intransigence is established, the Court need not consider the parties' resources. *Wallace*, 111 Wn. App. at 710. Finally, an award of fees are authorized when a party brings a frivolous appeal. RAP 18.9.

On appeal, Mr. Riddell's assignments of error based upon insufficiency of evidence were unsupported. Had he read the record, he would have realized that the trial court's findings were well supported by substantial evidence. He also made legal arguments that were unsupported by citation to authority. He repeatedly misstated the evidence in the record.

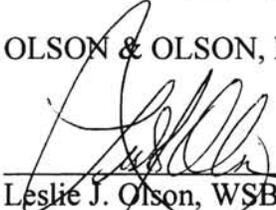
Three weeks before trial, Ms. Riddell had incurred \$31,000 in attorney fees. *Exhibit 55*. Trial preparation and fees incurred during trial increased that figure. The fees have significantly eroded her financial security post-trial. To date, she has incurred another \$14,310 in defending this appeal. She cannot afford to litigate these issues. She should be awarded her attorney fees and costs on appeal. She will submit an affidavit of financial need as provided by RAP 18.1(c).

IV. CONCLUSION

Substantial evidence supported the trial court's findings. It properly characterized the property of the parties. The trial court rightly considered the post-dissolution economic circumstances of the parties in fashioning an equitable division of property. Its exercise of discretion was proper. The judgment should be affirmed and Ms. Riddell should be awarded her attorney fees and costs on appeal.

RESPECTFULLY SUBMITTED this 22nd day of August 2012.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am employed at Olson & Olson, PLLC. On August 22, 2012, I caused to be served in the manner indicated below a true and correct copy of the Brief of Respondent and Certificate of Service on:

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Signed at Seattle, Washington this 22 day of August, 2012.



Jessica Green