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State of Washington

No. 73415-6-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

BARBARA TEMPLIN  
(f/k/a Klavano),

Appellant/Cross-Respondent,

and

JAMES KLAVANO,

Respondent/Cross-Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE JULIE SPECTOR

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REPLY BRIEF OF APPELLANT/CROSS-RESPONDENT'S BRIEF

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## I. INTRODUCTION

Both Jim Klavano's cross-appeal and his response to Barbara Templin's appeal epitomize an almost unbelievable desire to punish her for not only having had the audacity to leave the marriage and temporarily remove monies from a *joint account* that were a tiny fraction of the marital estate, but for having fantasized of leaving the marriage earlier. His vindictive purpose dominated the litigation below, poisoning the proceedings and causing the trial court to abandon any pretense of applying the RCW ch. 26.09 statutory factors and instead impermissibly rely on what it perceived to be the wife's marital misconduct in dividing the marital estate and denying her maintenance or a fee award. As a result, the trial court's decision wrongly places the parties in patently disparate economic situations – the husband leaves the marriage with more than 90% of the marital estate and assets valued at more than \$7.7 million dollars while the wife is saddled with a crippling attorney fee obligation that far exceeds the cash awarded to her.

Despite "winning" with his reprehensible litigation strategy below, the husband cross-appeals, seeking even greater retribution on appeal, asking this Court to further reduce the wife's miniscule property award and order her to pay *his* attorney fees because "she

knows she neither needs nor deserves” *anything* after the parties’ 10-year marriage. This Court should reject the husband’s hatred, and his cross-appeal, remand to a different judge to make financial orders based on the statutory factors without consideration of “fault,” and award the wife attorney fees for both her appeal and for having to respond to the husband’s cross-appeal.

## II. REPLY ARGUMENT

### A. **The trial court’s decisions were based on the wife’s alleged “marital misconduct,” not the RCW ch. 26.09 statutory factors.**

Each, and all, of the trial court’s financial orders rely upon its perception of the wife’s “fault” and “marital misconduct,” which is prohibited under RCW 26.09.080 and RCW 26.09.090. *See Marriage of Muhammad*, 153 Wn.2d 795, 803-04, ¶ 12, 108 P.3d 779 (2005); *Urbana v. Urbana*, 147 Wn. App. 1, 10, ¶ 15, 195 P.3d 959 (2008) (App. Br. 28-31, 41-42). Even though the trial court gave lip service to Washington as a “no fault” state (Resp. Br. 16-17; 1/21/15 RP 197), it indisputably relied on what it perceived was the wife’s “fault” in making its decisions. It could not otherwise have awarded the wife, at age 55 and with income that is only a fraction of the husband’s, less than 10% of the marital estate, no maintenance, and no attorney fees.

Rather than base its decision on the statutory factors, the trial court was led by animosity towards the wife for her “thought crime” of detailing in writing a “fantasy” to escape a marriage that she believed was abusive. The wife’s 2008 “escape note” (Ex. 301) was the touchstone of the husband’s successful litigation strategy below; he referred to it as often as possible in any motion and response filed in the superior court, attached it to his trial brief, and then belabored its existence throughout the trial. (See CP 38-41, 449-52, 1563-66, 2755-58, 4693-97; RP 109-11, 127, 257-71, 280-97, 641, 684-85, 1040-45, 1244-46, 1361-62; 1/21/15 RP 161-64) The husband’s misuse of the 2008 note went far beyond testing the wife’s “credibility and to show her motivation to fabricate false claims of domestic abuse” (Resp. Br. 17) – it was wrongly used to impugn her character and prove fault and marital misconduct.

For instance, during opening statements, husband’s counsel argued: “All these claims of abuse and how she’s afraid of Mr. Klavano, none of this came up until after separation and I submit that it was all there to just be a push back against this March 8, 2008 journal entry, to try to make my client the bad guy, *when we know who the bad person was in this case.*” (RP 127, *emphasis added*) During closing arguments, counsel relied on the note to claim that

the wife had an “incredible sense of entitlement,” that her note showed “loathing and really sinister stuff,” and that she believed she had a “license to steal.” (1/21/15 RP 161, 163, 164)

The husband continues his trial court litigation strategy of discrediting the wife in this Court, once again trumpeting the sinister nature of this private note even though appellant is not challenging the trial court’s rejection of her claims of domestic abuse. The husband claims it proves the wife “hated” him and “faked her affections,” relating how “emotionally crushed” he was when, under dubious circumstances, long before the parties separated, he discovered the note. (Resp. Br. 6-9) In defense of the trial court’s grossly inadequate award, the husband argues his wife should leave the marriage with nothing but significant debt because she “deserves” no more, did not contribute financially to the community, wrote the “escape” note fantasizing about leaving the marriage five years before the parties separated, and withdrew \$90,000 from a joint account when she left the marriage:

- “Barbara worked, but Jim paid for everything.” (Resp. Br. 3)
- “Barbara plans to leave the marriage.” (Resp. Br. 6)
- “Barbara puts her plan into operation.” (Resp. Br. 8)
- “Barbara’s theft of \$90,000.” (Resp. Br. 46)

- “[H]er complaint that the court did not award her future maintenance is just part of her ongoing effort to extract more money from Jim which she knows she neither needs nor deserves.” (Resp. Br. 27)
- “She was always angry.” (Resp. Br. 38)<sup>1</sup>

The trial court clearly was persuaded by the husband’s arguments that the wife was at fault. For instance, the trial court refused to acknowledge any significant accumulation of community property during the parties’ ten-year marriage, finding that “there is little evidence that the petitioner contributed any significant income to meet the expenses of the marital community (other than groceries, and other household expenses that Mr. Klavano reimbursed her for routinely.)” (FF 2.8.1, CP 2327) The trial court also refused to give any consideration to the fact that the community benefitted the husband’s separate property, on the grounds that such consideration was unnecessary because the wife had not personally contributed any “significant income” to the community. (FF 2.8.1, CP 2327)

But “the fact one spouse, be it husband or wife, may be the major income producer will not justify giving him a larger share of

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<sup>1</sup> If persistent anger is a valid reason for leaving his ex-spouse a pauper, respondent’s litigation strategy below and the tone of his briefing in this Court suggests that this is an additional reason that the husband was allowed to leave the marriage with far too large a portion of the marital estate.

the community property.” *Marriage of DeHollander*, 53 Wn. App. 695, 701, 770 P.2d 638 (1989). A spouse’s “intangible contributions” benefit the marital community just as does the other spouse’s generation of wealth. *Marriage of Larson & Calhoun*, 178 Wn. App. 133, 145, ¶ 25, 313 P.3d 1228 (2013), *rev. denied*, 180 Wn.2d 1011 (2014). The community is entitled to the “fruits of *all* labor performed by either party, because each spouse is a servant of the community.” *Marriage of Lindemann*, 92 Wn. App. 64, 72, 960 P.2d 966 (1998), *rev. denied*, 137 Wn.2d 1016 (1999) (*emphasis added*). Even if the trial court could consider whether the property to divided should be attributed to the “efforts” of one spouse (Resp. Br. 19), the “paramount concern” is the economic circumstances that the parties will be left as a result of the property division. *Urbana*, 147 Wn. App. at 11, ¶ 20.

In this case, the trial court did not consider the wife’s economic circumstances (*See infra*, Reply Arg. § II.B.1), and instead relied on its own perception that she did not contribute adequately to the community. Further, in providing only a *de minimis* award from the marital estate and no maintenance, the trial court found that the parties had a “short marriage” of only 4 years, instead of acknowledging the actual 10 years they were married, based solely

on the 2008 “escape note” detailing a fantasy of leaving a marriage that she perceived as abusive. (FF 2.8(3), CP 2332: “The parties separated on July 22, 2013, almost ten years later. Even so, the evidence established that the Petitioner had been planning to leave the marriage at least as early as March 8, 2008. Trial Exhibit 301.”; CP 2384: “The marriage between Barbara Klavano and James Klavano was a short-term marriage of four years. Trial Exhibit 301.”)

The husband concedes that the trial court erred in finding that “this was a short term marriage of four years,” but argues the error was “harmless” because the trial court had earlier acknowledged that the parties were married for ten years. (Resp. Br. 17-18) However, that was *before* its “additional findings of fact” that the parties were married for “four years.” (CP 2384) Contrary to respondent’s claim, this finding was not solely related to the trial court’s order denying reconsideration of its decision to not award attorney fees (Resp. Br. 17-18) – although it would have been wrong on that basis as well. Instead, it fully illustrates the wrongful, fault-based reasons behind the trial court’s financial decisions.

The trial court made other “additional findings of fact” on reconsideration, including that the wife’s “claims of costs for daily living needs were inflated and there was insufficient evidence to

support her stated claims,” and her “testimony was not credible.” (CP 2384) These findings were unrelated to the denial of her request for attorney fees on reconsideration, but show that the trial court intended to punish the wife by making additional unnecessary negative findings simply for exercising her right to seek reconsideration and appeal. The trial court clearly made these “additional findings” to try to justify its grossly unfair decision that leaves the wife in a significantly disparate economic position compared to her husband.

Finally, in refusing to award attorney fees, the trial court blamed the wife for a “secret withdrawal” of monies from a joint account prior to separation that the trial court found “started the dissolution on an unnecessarily contentious path.” (FF 2.15, CP 2341; *see also* CP 2385: “It was upon the advice of counsel that this litigation began its troubled path and ended with over \$220,000 in attorney fees.”) The \$90,000, withdrawn from a joint account, constituted little more than 1% of the entire marital estate, and was removed by the wife as a “safety net” due to concern that the husband would make good on his threat to leave her “penniless” if she ever left him. (RP 227, 677) Yet the removal of these funds, which by court order were returned to the husband’s control a few weeks later,

served as the basis for the trial court denying an award of attorney fees years later, despite interim, undisputed, findings that the husband and his counsel were responsible for this “scorched-earth” divorce from the wife. (*See e.g.* CP 92, 103, 352-53, 1545)

The trial court’s financial decisions were not based on a proper consideration of the statutory factors and must be reversed. On remand, the matter should be considered by a different judge, as it is unlikely that the current trial judge could make a fair decision having previously determined that the wife is at fault. *See Muhammad*, 153 Wn.2d at 807, ¶ 19; *Custody of R.*, 88 Wn. App. 746, 763, 947 P.2d 745 (1997) (App. Br. 31-32).

**B. The trial court abused its discretion by awarding the wife, the economically disadvantaged spouse, less than 10% of the marital estate after a 10-year marriage.**

**1. The trial court’s property division created a patent disparity in the parties’ economic circumstances.**

Regardless whether this was a short- or mid-term marriage, the trial court abused its discretion by failing to consider “the economic circumstances of each spouse [ ] at the time the division of property is to become effective.” RCW 26.09.080(4). If a “decree results in a patent disparity in the parties’ economic circumstances, [the Court] will reverse its decision because the trial court will have

committed a manifest abuse of discretion.” *Urbana v. Urbana*, 147 Wn. App. 1, 10, ¶ 15, 195 P.3d 959 (2008) (*citations omitted*).

Here, under the portion of its findings purporting to consider the parties’ “economic circumstances,” the trial court commented on the parties’ health, ages, employment, and expenses. (FF 2.8(4), CP 2333) While these are relevant considerations, they are separate from the statutory factor requiring the trial court to consider the “the economic circumstances of each spouse [ ] at the time the division of property is to become effective.” *See Urbana*, 147 Wn. App. at 11, ¶ 19. Other than stating generally (and inaccurately) that each party will be awarded “substantial property” (FF 2.8(4), CP 2333), nowhere in 21 pages of “findings of fact” and “conclusions of law” does the trial court in fact consider the *actual* economic circumstances the wife is left in as a result of its property award. Nor did the trial court appear to consider her economic circumstances relative to the husband, who leaves the marriage with almost \$8 million (in fact more since the trial court undervalued the husband’s award while overvaluing the wife’s award) and more than 90% of the marital estate. Had it done so, the trial court would have been forced to conclude that its property division was untenable.

Despite the husband's repeated claims that the wife was awarded \$945,074 (Resp. Br. 25, 28), she in fact only received \$812,115 - \$132,959 of her award was "pre-distributions" that was no longer available to her at the time of trial. (See App. Br. 26) The remaining assets awarded to her included illiquid retirement accounts of \$390,000, an over-valued car,<sup>2</sup> jewelry,<sup>3</sup> a little over \$150,000 in cash,<sup>4</sup> and litigation costs still owed that are almost double her cash award. (See App. Br. 26) Further compounding the trial court's inequitable property division is the fact that it treated the wife's temporary maintenance and automobile rebate and warranty refund as "pre-distributions" towards her purported half share of the community property.<sup>5</sup> (FF 2.8(2), CP 2332; FF 2.12, CP 2338; CP 2350) Thus, rather than the \$284,348 that she would have been awarded to purportedly "equalize" the community property award, the wife received only \$151,389, little over half that amount.

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<sup>2</sup> The trial court valued the wife's car based on its purchase price of \$62,954 when it was bought new two years earlier. (RP 218-19; CP 2350)

<sup>3</sup> Most of the jewelry that the trial court valued at \$142,320 belonged to the wife's mother. (RP 1444; CP 2350)

<sup>4</sup> The "cash" award included an account that had contained \$9,616 nearly two years before trial. (CP 2349) There was no evidence that those funds were still available at the time of trial.

<sup>5</sup> Respondent's claim that the trial court's decision to treat her earlier award of temporary maintenance as a pre-distribution is uncontested (Resp. Br. 27) is simply wrong. (See App. Br. 32-34)

There is no dispute that the more than \$132,000 credited as pre-decree distributions was no longer available to the wife by the time the final orders were entered. As a consequence, it was error to consider it part of the distribution to the wife. *Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (“if one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial.”); *see also Marriage of Kaseburg*, 126 Wn. App. 546, 559, ¶ 36, 108 P.3d 1278 (2005) (value of real property lost to foreclosure before trial was not before the court for valuation or distribution) (*both discussed at* App. Br. 33-34). By “awarding” the wife these illusory assets, the trial court could not have truly considered the “economic circumstances of each spouse [ ] *at the time the division of property is to become effective.*” RCW 26.09.080(4) (*emphasis*). Despite purportedly awarding the wife 50% of the community estate, she in fact only received 40.8% of what the trial court concluded was the community estate. Of her purported half share of the community property, 15% consisted of illusory pre-distributed “assets,” and another 37% was illiquid retirement accounts. This was an abuse of discretion under *White*, *Kaseburg*, and *Marriage of Pea*, 17 Wn. App. 728, 730-31, 566 P.2d 212 (1977).

In *Pea*, the parties' assets included \$8,500 in cash, furnishings, and the husband's military pension. The husband earned four times the income of the wife. Upon separation, the wife took the cash and used it to buy a car and pay living expenses. After trial, the trial court ordered that half the sum of \$8,500 taken by the wife should be credited against her share of the husband's military pension. Division Two reversed, holding that the "funds were not in existence at the time of trial, and there is no evidence to support a conclusion that the monies taken by appellant were used for other than necessary living expenses." *Pea*, 17 Wn. App. at 730. The court held that "even if it were proper for the court to consider this depleted fund as an asset, there is a patent disparity, not only in the award, but in the economic circumstances in which the parties were left by the decree." *Pea*, 17 Wn. App. at 731.

Likewise here, the funds awarded to the wife as a pre-decree distribution were depleted by the time of trial; there is no dispute that these funds were used toward her living expenses. Further, there is a patent disparity in the economic circumstances in which the parties are left by the decree, with the wife leaving the marriage with a tenth of the assets awarded the husband.

The husband misplaces his reliance on *Glorfield v. Glorfield*, 27 Wn. App. 358, 617 P.2d 1051, *rev. denied*, 94 Wn.2d 1025 (1980) (Resp. Br. 20) in arguing that the trial court had discretion to reduce its “equalizing payment” to the wife by treating temporary maintenance as a pre-decree distribution. In *Glorfield*, the court affirmed the trial court’s decision to deduct \$5,000 that the husband had paid to the wife for maintenance before final orders were entered from a \$408,729 property award – a 1% reduction in the wife’s overall award. Here, the impact is much greater – 15% of the wife’s award of community property.

Further, unlike here, the property division in *Glorfield* did not leave the parties in patently disparate economic circumstances. In *Glorfield*, the wife was awarded 43% of the marital estate and 52% of the community property. Had the trial court here properly considered the parties’ economic circumstances “at the time the division of property is to become effective” it would have recognized that the wife was left with, at best, a little over \$160,000 in liquid assets while the husband leaves the marriage with at least \$7.7 million, including over \$1 million in cash investment accounts. The wife was awarded less than 10% of the marital estate and little more than 40% of the purported community property.

Further, in addition to the \$7.7 million in ready assets, the trial court awarded the husband rights to patents he had developed and put in his name during the marriage. While the husband complains that the wife provides no authority for her contention that the patents were community property (Resp. Br. 21), the fact that they were developed during the marriage and are thus presumptively community is the very touchstone of community property laws. RCW 26.16.030 (property acquired after marriage is community property); *Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003) (“it is presumed that assets acquired during marriage are community property”). The husband’s testimony that he transferred those patents to his separate property business (Resp. Br. 21) is not “clear, cogent, and convincing evidence” to rebut the presumption that the patents were community property, but proof that the trial court once again allowed the husband’s separate estate to benefit to the detriment of the community.

The trial court’s property division failed to account for the parties’ economic circumstances when the division became effective. Instead, the trial court’s property division “results in a patent disparity in the parties’ economic circumstances,” requiring reversal.

**2. The trial court's error was compounded by its failure to acknowledge that the community had enhanced the husband's separate property.**

The trial court failed to properly consider the nature and extent of the husband's separate property. Not only did the trial court award the husband all of what it found was his separate property, which based on the trial court's accounting constituted more than 80% of the marital estate, it also awarded him more than half of what it found was the community property. It did so without giving any real consideration to the fact that the community had benefited his separate property business because he was not adequately compensated for his services during the marriage.

Contrary to his claim on appeal (Resp. Br. 23), it was undisputed at trial that the husband's W-2 wages did not adequately compensate the community for his efforts during the marriage. The husband's own expert witness testified that in 2004, the husband's W-2 wages were only \$64,500, when an executive such as the husband would have been expected to earn approximately \$142,500. (RP 1170; Ex. 517) The husband never sought to segregate the income of the community from his separate property businesses during the marriage. His failure to do so thus commingled community earnings with the husband's separate property. *See e.g.*

*Koher v. Morgan*, 93 Wn. App. 398, 402-04, 968 P.2d 920 (1998) (male cohabitant's separate property business was commingled with community-like property because he was paid an artificially low salary), *rev. denied*, 137 Wn.2d 1035 (1999).

In fact, the trial court recognized that the husband's expert testified that the community was undercompensated, but disregarded that undercompensation on the grounds that Jim had contributed separate property to the community. (See FF 2.8 (1), CP 2328-29) The trial court's reasoning is nonsensical, and in fact double penalizes the community. Even if the husband partially funded the parties' lifestyle with his separate property, very little community property was actually created because he was not paid a proper salary during the marriage. If the community had been properly compensated for his services, it could have paid its own expenses and amassed community property, which would then have been available for distribution.

The community's contributions to the husband's separate property should have been considered in the property division. See *Estate of Borghi*, 167 Wn.2d 480, 491, n.7, 219 P.3d 932 (2009); *Byerley v. Cail*, 183 Wn. App. 677, 688, n. 1, 334 P.3d 108 (2014) (App. Br. 35-36). The husband cannot hide behind his claim that his

separate property already compensated the community by funding their lifestyle to evade a determination that the community had an interest in his separate estate, particularly since there was very little accumulation of community property. The only substantive community property at the end of this 10-year marriage was each party's retirement and the equity in the family residence – less the down payment the trial court attributed to the husband's separate property. (CP 2349-50) And on appeal, the husband seeks to deprive the community of that equity, claiming that the family residence should have been considered entirely his separate property. (*See infra*, Cross-Response § III.A)

The husband unilaterally (and obsessively) controlled the parties' finances during the marriage, leaving his wife in the dark as to what, if any, community assets were being amassed. (*See App. Br.* 14-15) While it may be true that “a marital community is not duty-bound to create any particular amount of community property” (*Resp. Br.* 20), spouses nevertheless “owe each other the highest fiduciary duties.” *Marriage of Lutz*, 74 Wn. App. 356, 370, 873 P.2d 566 (1994). In this case, the trial court instead rewarded the husband's surreptitious handling of marital finances to the detriment of the community, and ultimately the wife.

Even if the community's efforts had no positive impact on the husband's separate property, under the circumstances, the trial court should have at least awarded the wife a disproportionate share of the community property, a portion of the husband's separate property, or both. This is particularly true when his (undervalued) separate estate of \$6.8 million dwarfs the community estate. As this Court held, there is "no doubt that separate property is no longer entitled to special treatment." *Marriage of Larson & Calhoun*, 178 Wn. App. 133, 140, ¶ 16, 313 P.3d 1228 (2013). Separate property can and should be awarded to the other spouse if necessary to achieve a "just result" that will ensure both "short- and long-term financial security." *Larson & Calhoun*, 178 Wn. App. at 144, 145, ¶¶ 15, 26. Here, the trial court's decision leaves the wife with no security at all.

**C. In light of her limited property award, the trial court abused its discretion in not awarding the wife any maintenance.**

The trial court also took up the maintenance sword to punish the wife, denying her any spousal support at all. While purporting to give lip service to the RCW 26.09.090 factors, the trial court's decision was in fact driven by its perception that the wife was not credible in describing the pain she suffers after three decades as a flight attendant, its disbelief that the husband had been abusive, and

its disapproval of claimed monthly expenses. (FF 2.12, CP 2336-38) But the facts that were *undisputed* warranted an award of maintenance under RCW 26.09.090:

The wife, at age 55, is trained only as a flight attendant. Her ability to continue in that line of work depends on her physical ability to keep up with its requirements, which include pushing heavy carts and helping customers stow luggage overhead. (See App. Br. 6-7) It is unlikely that she will find any employment of comparable pay due to her lack of any other skills when she can no longer do the job. (See RP 548-49) Even if the wife could “continue to work full-time as a Senior Flight Attendant for many years,” as the trial court found (FF 2.8(4), CP 2334), her income is dwarfed by the husband’s, who concedes the “fact” that his income is “significantly greater than Barbara’s.” (Resp. Br. 32)

The parties had what was described as both an “upper middleclass” lifestyle (FF 2.12(3), CP 2339) and an “above average lifestyle.” (RP 1202) The husband acknowledged (and complained) that the wife’s monthly expenses during the marriage were \$10,000. (RP 764) Even using the husband’s exaggerated claim that the wife’s monthly gross income was \$4,250 (Ex. 474), her income is inadequate to meet even half of the standard of living that the parties

had during the marriage, while the husband, in partial retirement, claims gross income of over \$8,000 per month, and has at least \$7.7 million in largely liquid and income producing assets. (Ex. 474)

That the trial court gave only lip service to the RCW 26.09.090 factors is also evident in its finding that the wife has “no financial obligations beyond her monthly living expenses and whatever debts she may have incurred since separation.” (FF 2.12(b), CP 2339) Among those “debts” was the over \$280,000 in attorney fees and costs incurred in this action. (*See infra*, Reply Arg. § II.C) The wife’s property award was largely illiquid, consisting of her retirement accounts she cannot access for several years without paying substantial penalties, and the only liquid asset awarded to her was an equalizing judgment of \$151,389. (App. Br. 26)<sup>6</sup> Even if the trial court declined to award sufficient maintenance to allow the wife to *maintain* the lifestyle the parties had enjoyed, it should have awarded some maintenance because of the standard of living during the marriage when the wife was awarded so little property.

The paramount concerns in maintenance decisions are the parties’ standard of living during the marriage and their

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<sup>6</sup> The husband sought to deprive the wife of even this amount while the appeal was pending by seeking to stay enforcement of the judgment. (CP 2524)

postdissolution economic circumstances. *Marriage of Sheffer*, 60 Wn. App. 51, 57, 802 P.2d 817 (1990). Where, as here, there is a great disparity in the parties' earning power and the property allocated to each, this Court "must closely examine the maintenance award to see whether it is equitable in light of the postdissolution economic situation of the parties." *Sheffer*, 60 Wn. App. at 56. The trial court should have used maintenance as "a flexible tool to equalize the parties' standard of living for an appropriate time." *See Marriage of Estes*, 84 Wn. App. 586, 594, 929 P.2d 500 (1997). Its refusal to do so was an abuse of discretion because it leaves the wife a relative pauper. This Court should reverse and remand for reconsideration by a different judge, without consideration of the wife's supposed fault.

**D. The trial court erred in refusing to award the wife attorney fees when she had the need and the husband had the ability to pay.**

The trial court erred in denying the wife's request for attorney fees under RCW 26.09.140. Nothing in the trial court's findings show any consideration whatsoever of the parties' financial resources. *See Marriage of Scanlon & Witrak*, 109 Wn. App. 167, 181, 34 P.3d 877 (2001) (lack of findings as to either need or ability to pay requires reversal), *rev. denied*, 147 Wn.2d 1026 (2002);

*Marriage of Nelson*, 62 Wn. App. 515, 521, 814 P.2d 1208 (1991) (reversing when the record does not reflect any consideration of appellant’s request for fees under RCW 26.09.140) (App. Br. 47-48). Instead, the trial court’s findings focused solely on its belief that “both parties needlessly increased the costs of this litigation” and its belief that the wife’s “secret withdrawal of \$90,000 [ ] started this dissolution on an unnecessarily contentious path.” (FF 2.15, CP 2340-41) As addressed in answer to the cross-appeal, this is not true – none of the wife’s actions “needlessly increased the costs of this litigation.” (*See infra*, Cross-Response § III.B)

The husband claims that “Barbara has always had the financial resources to pay her own attorney fees.” (Resp. Br. 32) But his support for this claim is her testimony on cross-examination that she had credit cards available to charge her attorney fees, and could have sold her engagement ring. (RP 1465-66) The wife “need not pauperize herself by selling her assets to make the cash outlay necessary for the litigation. The wife is not put to the election of spending her money for living expenses or the preparation of her case.” *Stibbs v. Stibbs*, 38 Wn.2d 565, 567, 231 P.2d 310 (1951). But that is exactly the result of the trial court’s decision denying her attorney fees.

The husband claims that the trial court properly denied the wife's request for attorney fees because it had not found her financial declaration "credible." (Resp. Br. 33) Even if the trial court believed that the wife's claimed monthly expenses of \$11,000 were inflated, just half that amount would absorb her entire income. The wife can only look to her property award to pay her attorney fees, and the only cash available to the wife to pay her attorney fees and litigation costs of over \$280,000 (CP 2116) is the \$151,000 equalizing judgment. The trial court's decision requires the wife to liquidate her retirement, at great cost, or borrow funds (provided, given her limited resources and income, she can find a lender), just as she was forced to do to pay *some* of her fees and costs before trial.

The husband also claims that even if the wife has the need for her attorney fees to be paid (and she does) that "it is [not] clear that Jim has the ability to pay." (Resp. Br. 34) But it is incredible for the husband to claim that he does not have the ability to pay the wife's attorney fees from the millions awarded to him, particularly when over \$1 million is cash.

Finally, the husband claims that "Barbara failed to provide evidence of what attorney fees she actually incurred." (Resp. Br. 34) But the wife offered to provide the trial court with a "redacted set of

billing statements, so you could have some basis for the order.” The trial court declined, stating “I’m not even there yet.” (1/21/15 RP 198) That true statement is yet another reflection of the trial court’s failure to consider a fee award under proper RCW 26.09.140 factors.

**E. This Court should award the wife attorney fees on appeal, and deny the husband’s request for fees.**

This Court should award attorney fees to the wife for both the fees incurred in her appeal, and in having to respond to the cross-appeal. Fees are warranted under RCW 26.09.140 based on the wife’s need and the husband’s ability to pay. RAP 18.1(a).

This Court should deny the husband’s request for attorney fees. This appeal challenging a decision that leaves the wife with less than 10% of the marital estate, no maintenance, and a massive fee debt after a 10-year marriage, based not on the statutory factors, but on an improper consideration of fault, is wholly meritorious, and not frivolous. (Resp. Br. 35-36) *Marriage of Gillespie*, 77 Wn. App. 342, 349, 890 P.2d 1083 (1995) (citations omitted) (“All doubts as to whether an appeal is frivolous should be resolved in favor of the appellant.”). This appeal was necessitated by the husband’s punitive litigation strategy, which he clearly hopes will work as effectively in this Court as it did below. Regardless whether this Court reverses or affirms, the appeal is not frivolous and the wife’s need relative to the

husband's ability to pay warrants an award of fees on appeal under RCW 26.09.140. *Marriage of Rideout*, 150 Wn.2d 337, 357, 77 P.3d 1174 (2003) (whether a party should be awarded attorney fees "has nothing to do with prevailing parties").

The wife will comply with RAP 18.1(c).

### III. RESPONSE TO CROSS-APPEAL

**A. The husband's challenge to the characterization of the family home and the trial court's illusory "refusal" to enforce an unfair postnuptial agreement is meritless.**

The husband's challenges related to the parties' invalidated postnuptial agreement and family residence are wholly without merit. (Resp. Br. 37-43) If the trial court had enforced the postnuptial agreement as he requested, it would have reached the same result the husband challenges on appeal. Contrary to its finding that the agreement was "unfair," the trial court nevertheless followed its terms by finding the family residence was part separate and part community property. (FF 2.7, CP 2326) Because this is the exact result the husband sought in the trial court,<sup>7</sup> his challenge on appeal that the family residence should have been considered entirely

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<sup>7</sup> With the exception of the down payment of \$207,009 and the \$142,173 the parties paid when they refinanced during the marriage, the husband conceded the family residence was community property. (See CP 454)

separate property fails because he invited any error concluding otherwise. *Marriage of Morris*, 176 Wn. App. 893, 900, ¶ 14, 309 P.3d 767 (2013) (“The invited error doctrine prohibits a party from setting up an error below and then complaining of it on appeal.”).

The postnuptial agreement purported to establish the down payment on the family residence as the husband’s separate property. (Ex. 213) The agreement further provides that if the marriage were to survive 18 months (as it did),<sup>8</sup> the parties would share equally in any increase in the equity of the property, not including the “down payment, closing costs, taxes, insurance,” which were to be treated as the husband’s separate property. (Ex. 213)

The trial court found the postnuptial agreement “questionable” and “unfair, and therefore invalid.” (FF 2.7, CP 2325, 2326) This finding is supported by substantial evidence. The wife was forced to sign the postnuptial agreement because of the husband’s escalating “anger” on the day he confronted her with it, without any opportunity to consult with a lawyer. (RP 164, 166-69)

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<sup>8</sup> Miraculously, in light of the onerous terms the husband imposed in the agreement, which required that the wife immediately vacate and quit claim her interest in the home, and that any mortgage payments and expenses associated with the property were gifts by the community to the husband’s separate estate if either party filed for divorce within 18 months of purchase. (Ex. 213)

The agreement was unfair because, as the trial court found, “it reads as if it is intended to be community property but in the long run, Mr. Klavano’s intent was to insulate his investment in the family home as his separate property.” (FF 2.7, CP 2326)

In any event, despite finding it “unfair” that the husband “insulate” his separate property, the trial court nevertheless gave him “credit for the down payment he made on the Sammamish home as his separate property” and otherwise characterized the family home and its equity as community property (FF 2.7, CP 2326), wholly consistent with the “unfair” agreement. Included in that equity is the \$142,173 that the parties paid when refinancing the mortgage before separation. Even though the husband now challenges the characterization of the \$142,173 as part of the community equity in the family residence, this is the exact result if the trial court had *enforced* the postnuptial agreement, as he argued in the trial court – and argues in this Court.

Under the postnuptial agreement, the only funds preserved as separate property were “the down payment, closing costs, taxes, insurance and costs of repair and improvements.” (Ex. 213) Otherwise, “the parties shall share equally in any increase in the equity of the property, not including the separate property identified

in paragraph 1.” (Ex. 213) Thus, while the trial court purported to not enforce the postnuptial agreement, its decision was the same as had it done so. The trial court apportioned \$207,009 from the equity of the family residence as the husband’s separate property, representing the down payment on the family residence. The remaining equity of \$586,774, less post-separation mortgage payments, was treated as community property. (CP 2349)

In any event, the trial court properly declined to credit the husband with the \$142,173 the parties used to pay down the mortgage during the marriage. The only evidence presented that these funds were separate property was the husband’s self-serving statement that the funds came from an account that he described as his “separate” account. (RP 1258-60) “The requirement of clear and satisfactory evidence” to prove separate property “is not met by the mere self-serving declaration of the spouse claiming the property in question that he acquired it from separate funds and a showing that separate funds were available for that purpose. Separate funds used for such a purpose should be traced with some degree of particularity.” *Berol v. Berol*, 37 Wn.2d 380, 382, 223 P.2d 1055 (1950). The husband utterly failed to provide this tracing.

Even if the funds were separate, the trial court found that “all funds used to create community property were from gifts of the respondent’s separate property.” (FF 2.8(2), CP 2331) The husband neither assigns error to this finding nor substantively challenges it in his brief – instead heavily relying on it as a basis for the trial court’s grossly disproportionate property division. (See Resp. Br. 4-5, 24) The trial court’s “gift” finding is a verity on appeal. *Brewer v. Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999) (if a party does not challenge the finding of fact, it is verity on appeal). Further, the trial court relied on payments like this to avoid characterizing any portion of the husband’s businesses as community property despite the fact that the community was undercompensated by the businesses. (FF 2.8(2), CP 2331) While the trial court committed many errors, it did not err in concluding that the equity in the family residence, including the \$142,173 mortgage payment, was community property.

**B. The trial court properly did not award the husband any attorney fees, as there was no finding (nor any evidence) that the wife was intransigent.**

The husband continues his campaign to punish his ex-wife by arguing in his cross-appeal that he should have been awarded attorney fees for her alleged intransigence. But his claim for fees seems equally aimed at her trial counsel, Camden Hall, against whom

the husband filed an unsuccessful Bar complaint. The husband calls Mr. Hall out by name no less than 23 times in his brief, usually in reference to Mr. Hall's claimed "assistance" in alleged intransigent conduct.<sup>9</sup> The husband's tactic appears to be intended to inoculate himself against an award of attorney fees below and on appeal by throwing out enough allegations against his wife and her counsel that this Court will throw up its hands, declare a "pox on both houses," and deny both parties' request for attorney fees.

There is no basis for a finding of intransigence against the wife. As set out in the opening brief at pages 19-23, the wife was largely successful in the parties' pretrial motions – most of which *the husband* brought or compelled. (See CP 164, 204-05) In granting two motions to compel discovery from the husband, Judge Laura Inveen noted, "this is a disputatious case involving, among other things, questions about the character of significant property. Respondent's discovery abuse seems to be a tactical attempt to prejudice petitioner in her preparation of her case and protection of her legitimate interests." (CP 103) In another order, Judge Inveen

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<sup>9</sup> The husband appears almost as eager to punish Mr. Hall as his ex-wife, repeatedly asking this Court to "find" Mr. Hall "unethical" despite the Bar Association's rejection of his grievances against Mr. Hall. (See Resp. Br. 12, 56)

noted that the husband had provided “2272 pages of documents electronically w/o any semblance of organization to the production request the document is responsive to.” (CP 352) This “bulk production [ ] appears to have been purposefully designed to obscure the significance of produced documents, undermine the usefulness of production and prevent petitioner from determining which documents are responsive to her requests.” (CP 352-53)

Further, none of the claimed “intransigent conduct” by the wife would justify an award of attorney fees, because it did nothing to increase the husband’s fees:

- 1. The wife’s temporary withdrawal of \$90,000 from a joint account.**

The wife’s withdrawal of \$90,000 from an account on which she was a signor does not warrant an award of attorney fees. (Resp. Br. 46) The wife took these funds as “safety net” because she was (correctly) concerned that the husband would resist providing any support to her since he previously threatened to “devastate her in every way” and “leave her penniless” if she were ever to divorce him. (RP 229, 677; *see also* App. Br. 19-21) Despite the husband’s claims that this constitutes “theft” or “stealing” (Resp. Br. 11, 46-47) the wife was never charged with a crime (and could not have been) and his civil lawsuit against her was dismissed with prejudice.

In any event, less than two months after she withdrew these funds, which were presumptively community property since they were acquired during the marriage, the wife complied with an order to return \$76,000 of the \$90,000 to the husband, while the remaining \$14,000 was treated as her first two months of temporary maintenance. (CP 89, 90; FF 2.12, CP 2335) The remaining \$14,000 was eventually returned to the husband as a credited “pre-distribution” to the wife after trial. (CP 2338, 2350) There was (and is) no reason to continue to belabor the issue of this \$90,000 but for the husband’s continuing need to inject the wife’s supposed “fault” into these proceedings.

**2. The wife’s request for temporary maintenance.**

The wife was not intransigent in pursuing temporary spousal maintenance. (Resp. Br. 47) When the parties separated, the wife (with her husband’s agreement) was working part-time as a flight attendant, and her income was insufficient to meet her monthly expenses. (CP 7, 15, 17-24; RP 186) Even if the trial court later found that the wife’s claimed expenses were inflated (FF 2.12(3), CP 2337-38), it does not change the fact that her net monthly income was only \$1,289 when she sought temporary maintenance. (CP 17) The wife had just moved out of the \$1 million family home, where the husband

was still living, and needed funds to pay rent for a new residence and meet her usual expenses, which historically were paid with community funds that the husband controlled. (CP 7-15) The wife's request for temporary maintenance was fully warranted and not a basis to award attorney fees to the husband based on intransigence.

**3. The wife's protection against discovery of her therapy records and journals from her psychiatrist.**

The wife was also not intransigent in seeking an order protecting her therapy records from discovery. (Resp. Br. 49) Contrary to his claim on appeal (Resp. Br. 50), the husband did not seek these records to establish whether the domestic abuse that the wife suffered during the marriage "affected her present employability and the prospective earning capacity and/or the validity of the parties' Post-nuptial agreement." Instead, it is crystal clear that the husband was on a fishing expedition to gain evidence of alleged misconduct by the wife, despite Washington being a "no-fault" state.

The husband's stated reason for pursuing discovery of the wife's therapy records was that he believed the wife had "no moral compass" (CP 2701) and he "need[ed] to know how dangerous Barbara really is. I believe that her psychiatric records in particular, will show – as her subsequent actions have – how serious she has

been in carrying out her plan of deception, as well as her lethality.” (CP 2703) The husband also claimed that “it is important to discover what, if anything, these records will show about what Barbara’s mental health issues are, her medications, her plans to fake our marriage so she could defraud me, and how serious she may be about hastening my demise.” (CP 2703-04)

In granting the wife’s motion for a protective order, Judge Susan Amini acknowledged that “any intrusion into her therapy will interfere with the therapeutic process.” (CP 2634, 2708) Judge Amini also acknowledged that discovery of the wife’s therapy records “will adversely affect the therapeutic process and [her] ability to speak candidly with [her psychiatrist].” (CP 2637, 2708) This decision was well within the trial court’s discretion. *Shields v. Morgan Financial, Inc.*, 130 Wn. App. 750, 759, ¶ 22, 125 P.3d 164 (2005) (standard of review for the trial court’s grant of a protective and for controlling discovery is abuse of discretion), *rev. denied*, 157 Wn.2d 1025 (2006).

Likewise, Judge Amini properly denied the husband’s subsequent motion to obtain the wife’s journals from her psychiatrist. (CP 91-92) The husband gave no reason for his request to obtain the wife’s private journals (which in any event were

destroyed by a computer virus) except his desire for a second expedition fishing for evidence of fault. The husband's declaration in support of his second motion focused entirely on the one "journal" entry he already had – the "escape note" written by the wife in 2008, describing her fantasy of leaving the marriage, that the husband used to such great effect at trial. (CP 2749-53) Judge Amini properly denied the husband's motion and sanctioned him \$750 because his motion was directly contrary to the court's earlier order protecting discovery from the wife's psychiatrist, and was "litigious." (CP 92)

The wife's successful protection of her psychiatrist's records was not intransigent, and is not a basis for an award of attorney fees to the husband.

#### **4. The wife's response to discovery.**

The wife was not intransigent in failing to "admit" or "deny" the husband's claims that certain properties were his separate property. (Resp. Br. 51) As the wife stated in answering the husband's request for admissions, in most instances, she did not have enough information: "discovery is incomplete and respondent has not been forthcoming." (See CP 3399-3415) Although the husband claims that he provided the discovery from which the wife could answer his requests, (Resp. Br. 52-53), Judge Inveen found

that the husband's "bulk production [ ] appears to have been purposefully designed to obscure the significance of produced documents, undermine the usefulness of production and prevent petitioner from determining which documents are responsive to her requests." (CP 352-53)<sup>10</sup>

Judge Inveen also properly denied the husband's request to deem all his requests for admissions as admitted. (CP 3581-82) "The purpose of [CR 36] is to eliminate from controversy factual matters which will not be disputed. However, a party is not required to concede legal conclusions." *Brust v. Newton*, 70 Wn. App. 286, 295, 852 P.2d 1092 (1993), *rev. denied*, 123 Wn.2d 1010 (1994). And while the wife admitted to the *presumptive* character of the properties (CP 3514-37), she was not obligated to admit to the conclusive legal character of the property or concede matters "central to the lawsuit." *Marriage of Mueller*, 140 Wn. App. 498, 504, ¶ 12, 167 P.3d 568 (2007), *rev. denied*, 163 Wn.2d 1043 (2008) (the characterization of property is a question of law).

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<sup>10</sup> Although Judge Inveen ordered the wife to "in good faith supplement" her response to the husband's requests for admission (CP 160), the problem remained the same due to husband's discovery abuses (*See* CP 3514-37), which Judge Inveen acknowledged in later chastising the husband for his "bulk production." (CP 352-53)

Further, the wife was not intransigent in providing discovery regarding her expenses. (Resp. Br. 54) The wife provided all of the documentation that she had available to support the expenses set out in her financial declaration, and there is absolutely no evidence that she “refused” to provide the documentation. In any event, it is unclear how the husband was harmed by the wife’s purported failure to provide adequate discovery since he admits “at trial, [the wife] produced the same documents showing [her] monthly expenses that had been provided in discovery.” (Resp. Br. 54) The trial court found that the documentation the wife did provide did not support her claimed monthly expenses and denied her request for maintenance as a result. (FF 2.12(3), CP 2337)

**5. The wife’s removal of a file related to the husband’s earlier divorce from the family home.**

The wife’s removal of a file related to the husband’s prior divorce from the parties’ shared family residence does not warrant an award of fees for intransigence. (Resp. Br. 55) The husband never treated this file as private, and had often discussed his prior divorce with the wife. (CP 3303-04) The husband viewed the file as proof of his “win” in his previous divorce, and spoke proudly of the fact “that he was burying his first wife in legal paperwork and was determined to win at all costs.” (CP 3304)

Because the husband never treated this file as private, the wife took it when she moved out of the residence. (CP 3304) After the wife provided the file to Mr. Hall, he contacted the husband's attorney to advise him that he had the file, had not yet looked at the file, and after consulting with the Bar Association was providing notice that he would wait 10 days before reviewing the file. (CP 3311) At the husband's attorney's request, Mr. Hall provided a CD copy of the file to the husband's attorney without looking at the file, so that the husband could review the file and determine what if any documents constituted privileged materials. (CP 3332)

The wife disputed that any of the documents were privileged because the husband waived any privilege by actively discussing the case with her and leaving the file available for her to read. (CP 3339-40) There is no basis for an award of attorney fees to the husband over this issue. Neither the wife nor her attorney was required to return the file until there was a judicial determination as to what if any documents were privileged. (CP 3340-41) There is no dispute that once the court made its ruling (CP 3359-61), the wife complied with the decision.

**6. The wife's disclosure of expert witnesses.**

The wife was also not intransigent in disclosing her expert witnesses. (Resp. Br. 56-63) The wife timely disclosed all of her expert witnesses and produced their preliminary reports before the discovery cut off. The husband, on the other hand was less forthcoming. For instance, the husband disclosed that Steve Kessler would be testifying for the first time on the *seventh* day of trial, purportedly to provide "rebuttal" evidence. (CP 3817) Although Mr. Kessler had previously been disclosed as a "possible" primary witness, his opinion was never disclosed prior to trial, despite the fact that the issues that he would be testifying on were well know prior to trial. (CP 3815) Further, even the trial court acknowledged that it was the husband who had been dilatory in providing discovery regarding his expert witnesses, and not the wife:

Respondent has had the repeated opportunity to "fully Answer and Respond" to petitioner's expert witness discovery. Respondent has failed to do so. This case is heavily dependent on expert testimony especially about property issues. Petitioner is significantly prejudiced by respondent's willful refusal to "fully" provide the required discovery about his experts, their work for him and their anticipated testimony – for which the petitioner cannot full prepare – or adjust her case-in-chief accordingly – because of the refusal.

(CP 1545) Despite this strongly worded rebuke, the trial court "considered various sanctions for respondent's willful and

prejudicial behavior [but] decided not to exclude the respondent's experts as requested by the petitioner. (CP 1545)

Unlike the husband, the wife timely disclosed her experts and their proposed testimony. For instance, the wife timely disclosed Vicki Boyd, Ph.D. (CP 4780), and as the husband acknowledges, produced her report at least "a week before the discovery cut off." (Resp. Br. 57; *see also* CP 3796) The wife even accommodated the husband's request to depose Dr. Boyd after the discovery cut off. (CP 3796)

The wife also timely disclosed Ben Hawes. (CP 4779) The husband concedes that he received Mr. Hawes' report at least "11 days before the discovery cut off." (Resp. Br. 59; *see also* CP 3795) The wife produced Mr. Hawes' supplemental report on the last day of discovery – not the day after the discovery cut off as the husband claims.<sup>11</sup> (Resp. Br. 59; *see* CP 3795) To the extent there was any delay in the issuance of Mr. Hawes' reports, it was caused by the husband's failure to timely produce discovery, which the trial court acknowledged when the husband complained about the timeliness of the reports: "respondent has argued petitioner was late in providing

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<sup>11</sup> King County Local Rule 37(d) requires that all discovery be provided by 35 days before trial. October 14, the day the wife produced the supplemental report, was the 35<sup>th</sup> day before trial on November 17, 2014.

her expert discovery. However, the several declarations of Ben Hawes that are in the Court file demonstrate the timing of his reports was largely affected by the late or non-existent relevant discovery Answers and Responses of respondent.” (CP 1544; *see also* CP 103, 206-07, 337, 352-53; RP 798-804)

The husband also complains that Mr. Hawes “opined [] for the first time at trial” that if the marital community were undercompensated by the husband’s separate property businesses that the community would have a claim against his separate property. (Resp. Br. 59) This is not true. In his report, issued two months before trial, Mr. Hawes reported that the husband was not adequately compensated by his separate property businesses, and that as a result community and separate property were commingled:

The earned income from AUI is not commensurate with his labor efforts toward the growth and stability of the company and his own inventions. In our opinion, a material portion of the unearned income received from the various Klavano enterprise entities, including shareholder distributions were in fact compensation for Mr. Klavano’s labor efforts on their behalf. Consequently, material amounts of both separate and community funds have been intermixed throughout the Klavano enterprise which has not been properly traced.

(Ex. 5 at 11)

Finally, the wife also timely disclosed William Skilling (CP 4783), and provided Mr. Skilling's report before the discovery cut off. (CP 3495) Although Mr. Skilling provided a second report two days after the discovery cut off, the husband had the opportunity to depose Mr. Skilling a month before trial. (CP 3795)

The husband fails to show how the wife's timely disclosure of expert witnesses increased his attorney fees. His complaints are more focused on his disagreement over the merits of each expert's testimony, rather than the disclosure (*See Resp. Br. 56-62*), which is not a basis to award him fees.

"The party requesting fees for intransigence must show the other party acted in a way that made trial more difficult and increased legal costs, like repeatedly filing unnecessary motions or forcing court hearings for matters that should have been handled without litigation." *Marriage of Pennamen*, 135 Wn. App. 790, 807, ¶ 27, 146 P.3d 466 (2006). None of the alleged acts of the wife were intransigent; it was the husband, not the wife, who increased the litigation costs. The husband's "tactical attempt[s] to prejudice petitioner in her preparation of her case and protection of her legitimate interests" (CP 103) forced the wife to file several motions to compel discovery, caused delays in obtaining her expert witness reports, and in general forced her to play

“catch up” at every turn. If any fees due to intransigence were warranted, it was an award to the wife.

#### IV. CONCLUSION

The husband’s cross-appeal is meritless, and another attempt to inject fault into the proceedings. This Court should reject the cross-appeal and reverse on the wife’s appeal. The trial court failed to do justice to the wife, leaving her in a significantly worse financial situation than the husband based not on a proper consideration of the RCW ch. 26.09 factors, but on what the trial court perceived was the wife’s “fault.” The trial court’s award leaves the wife, the more economically vulnerable spouse, with a small fraction of the property awarded to the husband, no maintenance, and an obligation to pay fees that far exceed the liquid assets awarded to her. This Court should reverse, remand to a new judge for a redistribution of property and an award of maintenance and fees, and award the wife all of the fees she incurs in this Court.

Dated this 18<sup>th</sup> day of March, 2016.

SMITH GOODFRIEND, P.S.

By: 

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Attorneys for Appellant/Cross-Respondent

**DECLARATION OF SERVICE**

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

That on March 18, 2016, I arranged for service of the foregoing Reply Brief of Appellant/Cross-Respondents Brief, to the Court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
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C. Nelson Berry Berry & Beckett PLLP 1708 Bellevue Ave Seattle, WA 98122-2017	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 18<sup>th</sup> day of March, 2016.

  
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Jenna L. Sanders