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NO. 35635-0-II

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COURT OF APPEALS,  
DIVISION II  
OF THE STATE OF WASHINGTON

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FILED  
BY  
STATE CLERK  
MARGARET BROST  
APPELLANT  
2018 JUN 14 10:00 AM  
APPELLANT

In re the Marriage of:  
GORDON FRIEND RENNIE, Respondent  
and  
CYNTHIA RENNIE, Appellant

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APPEAL FROM THE SUPERIOR COURT FOR  
THURSTON COUNTY

The Honorable Christine Pomeroy, Judge

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BRIEF OF RESPONDENT

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**A. INTRODUCTION**

This appeal is merely a lukewarm challenge to the discretion of the court to make a just and equitable distribution of assets and liabilities in a marital dissolution action. It's primary purpose is to delay the implementation of the court's ruling and to harass the Petitioner, Husband.

**B. ISSUES IN RESPONSE TO APPELLANT'S BRIEF**

1. Did the trial court abuse its discretion when it made a disproportionate award of the marital assets in favor of the Appellant, Wife, and awarded her maintenance for the period until the Husband's retirement, when she is eligible for social security benefits four years earlier?

**C. MOTION FOR ATTORNEY FEES**

Respondent, Husband respectfully requests an award of attorney fees and cost on appeal, as authorized by statute and by court rule.

**D. RESTATEMENT OF THE CASE**

This is marriage of more than 20 years. RP 20, 54-55. The parties first separated in 1999. RP 113. They separated again in 2004 and remained so throughout the dissolution proceedings.

RP 27. There are three children, for whom college educations are very appropriate. RP 36; 84. The Husband has worked as a physician during most of the marriage (RP 20), except during 2001 when he was recovering from stroke. RP 116.

The Wife is educated with a master's degree and worked before marriage, during the early part of the marriage, and during the first separation in a professional capacity consistent with her education and training. RP 107 - 112. She was successfully employed as a vocational rehabilitation counselor while the parties were separated between 1999 and 2001. RP 113; 115.

During the pendency of this action, the Wife continued to work only part time, with a stated career goal "to obtain long-range maintenance, to supplement part-time employment, to continue working part time." RP 165.

At trial, the Wife received a disproportionate award of the almost 2 million dollars in community assets (55 - 60%); maintenance for a total of 10 years (varying between \$3,200 - \$1,000), and was not required to pay any of the children's post-secondary education expenses. The Husband was required to pay the majority of the community obligations and to use his separate

funds to pay for the children's education consistent with his proposed division of assets and liabilities. RP 35 - 38.

The Wife now complains that the decreasing maintenance award is an abuse of discretion. The Husband contends that her appeal is frivolous.

## **E. ARGUMENT**

### 1. THE STANDARD OF REVIEW IS ABUSE OF DISCRETION

The appellate Court will not disturb an exercise of discretion by a trial court absent a clear showing of abuse. Hecker, et al. V. Cortinas, 110 Wn. App. 865, 869, 43 P.3d 50 (2002), citing, State ex rel. Carroll v. Junker, 79 Wn2d 12, 26, 482 P.2d 775 (1971). A trial court's findings will be upheld on appeal if they are supported by substantial evidence in the record. Pilcher v. State Dep't of Revenue, 112 Wn. App. 428, 435, 49 P.3d 947 (2002), review denied, 149 Wn.2d 1004 (2003); In the Matter of the Contested Election of Schoessler, 140 Wn.2d 368, 385, 998 P.2d 818 (2000). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. Pilcher, 112 Wn. App at 435.

Here, it is not even debatable the trial court acted wholly

within its authority.

2. THE COURT CORRECTLY FOUND THE WIFE TO BE UNDEREMPLOYED.

Despite being well educated with a master's degree in vocational rehabilitation counseling and extensive training and experience in medical imaging, (RP 107) the Wife had made little or no effort toward securing a job appropriate to her education and abilities. (RP 150; 158; 160 - 165). Instead, she continued to pursue low paying part time jobs that amounted to little more than self-indulgent hobbies. (RP 120 -122). During her work with a career counselor, her stated job goal was "to obtain long-range maintenance, to supplement part-time employment, to continue working part time." (RP 165).

The court indeed was convinced that the Wife was, as stated in her brief, "shirking work in order to live off of maintenance," despite the protestations by Ms. Reha (RP 184).

The court specifically raised this issue when it inquired:

THE COURT: I guess what I'm saying is when I see the recommendations, "Career goals: To work part time, to obtain maintenance to supplement," there was never, "I want to get a job, and I want to be self-sufficient." You didn't see this in Cindy, did you?

THE WITNESS: I certainly did. This woman is working four to five different, individual jobs. I work a lot - I mean, I've done this for 30 years. I've worked a lot with older women, and I've seen a lot of them. I see very few who are putting out the effort Cindy does.

RP 182 -183.

The court correctly concluded that the Wife was "underemployed."

### 3. PROPERTY AWARDED IN THE DISSOLUTION IS AN APPROPRIATE CONSIDERATION WHEN AWARDING MAINTENANCE

The non-exclusive statutory factors for assessing maintenance include, but are not limited to, the financial resources of the party seeking maintenance, including the property to be awarded; the ability of the party seeking maintenance to be self-sufficient without assistance, including the receipt of child support; the time and education needed by the party seeking maintenance to become self-sufficient; the standard of living established during the marriage; the duration of the marriage; the age, physical and emotional condition and financial obligations of the spouse seeking maintenance; and the ability of the spouse from whom maintenance is sought to meet his

own needs and obligations while paying maintenance. RCW 26.09.090; In re Marriage of Estes, 84 Wn. App. 586, 929 P.2d 500 (1997); In re Marriage of Williams, 84 Wn. App. 263, 927 P.2d 679, review denied 131 Wn.2d 1025, 937 P.2d 1102 (1996).

However, “nothing in RCW 26.09.090 requires the trial court to make specific factual findings on each of the factors listed in RCW 26.09.090(1). The statute merely requires the court to consider the listed factors.” In re Marriage of Mansour, 126 Wn. App. 1, 16, 106 P.3d 768 (2004); see also, In re Marriage of Rouleau, 36 Wn. App. 129, 672 P.2d 756 (1983).

The general factors to consider in assessing the need for maintenance include: education and employment histories of parties; training and business or occupational experience; prospects of future earnings; age, health and any aptitudes of any children; and amounts, nature, and origin presently owned property as well as property likely to be acquired by parties. Groves v. Groves, 70 Wn.2d 614, 424 P.2d 654 (1967); Stacy v. Stacy, 68 Wn.2d 573, 414 P.2d 791 (1966).

Specifically relevant to the inquiry of need is the amount of property awarded in the dissolution. In re Marriage of Estes, 84 Wn. App. 586, 929 P.2d 500 (1997); In re Marriage of Crosetto, 82 Wn.

App. 545, 918 P.2d 954 (1996).

In this case, the parties had almost two million dollars in assets, of which the Wife received a greater percentage. CP 46 - 48. The court awarded the Wife 55% of the net proceeds of the family home. CP 46. It gave her the timeshare at Whistler worth at least \$15,000, with no offset to the Husband. CP 47. It gave her 55% of the value of the husband's IRA and 60% of his 401(k). CP 47. It gave her all of her IRA worth in excess of \$25,000 and another \$10,000 from a savings account. CP 47. She was awarded more than \$25,000 in vehicles and virtually any items of personal property she wanted. CP 47 - 48. She was required to pay none of the community debt. CP 48. Nor was she obligated to pay any of the considerable college expenses of the parties three children. CP 51.

At the time of trial the Wife had already been receiving \$3,200 per month in maintenance for two years. RP 132. The maintenance received during the pendency of the dissolution together with the amount she will receive under the terms of the decree, total \$223,200 RP 273; CP 50.

The court did not abuse its discretion by awarding maintenance in a decreasing amount for the period until the Husband was eligible

to retire.

4. THE HUSBAND / RESPONDENT IS ENTITLED TO ATTORNEY FEES BECAUSE THIS APPEAL IS FRIVOLOUS

The Wife / Appellant's appeal is frivolous. RAP 18.9 permits this Court to sanction a party who files a frivolous appeal, one where there are no debatable issues upon which reasonable minds could differ and that is so totally devoid of merit that there is no possibility of reversal. Mahoney v. Shinpoch, 107 Wn.2d 679, 691, 732 P.2d 510 (1987). This appeal meets that definition.

**F. CONCLUSION**

For the foregoing reasons, Respondent, Husband respectfully asks this Court to affirm the trial court's decision with respect to maintenance, and to award him attorney fees and costs for having to respond to the Appellant, Wife's frivolous appeal.

Respectfully submitted,

8-16-07  
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DATED

  
\_\_\_\_\_  
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STATE OF WASHINGTON  
COURT OF APPEALS  
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CERTIFICATE OF SERVICE

I certify that on 8-17, 2007, I sent a true and correct  
copy of the foregoing Brief of Respondent by U.S. mail to:

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