

NO. 45767-9-II  
COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

ANTONIO JOSE CARRASCO

Appellant

v.

ANNA MARIE CARRASCO

Respondent

---

**BRIEF OF APPELLANT**

---

Josephine C. Townsend  
Attorney for Appellant,  
WSBA 31965  
211 E. 11<sup>th</sup> Street, Suite 104  
Vancouver WA 98660  
Telephone: 360.694.7601  
Fax: 360.694.7602  
e-mail: JCTownsend@aol.com

## TABLE OF CONTENTS

<b>I.</b>	<b><u>Table of Contents</u></b>	<b><u>2</u></b>
<b>II.</b>	<b><u>Table of Cases and Statutes</u></b>	<b><u>4</u></b>
<b>III.</b>	<b><u>Assignments of Error</u></b>	<b><u>5</u></b>
<b>IV.</b>	<b><u>Issues Related to Assignments of Error</u></b>	<b><u>6</u></b>
<b>V.</b>	<b><u>Statement of the Case</u></b>	<b><u>8</u></b>
<b>VI.</b>	<b><u>Argument</u></b>	<b><u>12</u></b>
	A. THE COURT ABUSED ITS DISCRETION BY NOT IMPUTING ANY INCOME TO ANNA FOR PURPOSES OF CALCULATION OF HER NEED FOR MAINTENANCE AND ANTONIO’S PAYMENT OF CHILD SUPPORT.	<b><u>13</u></b>
	B. THE COURT ABUSED ITS DISCRETION BY AWARDING ANNA "SUPPLEMENTAL" MAINTENANCE "TO COMPENSATE [HER] FOR THE VALUE OF THE MEDICAL DEGREE OBTAINED BY [ANTONIO] DURING THE MARRIAGE"	<b><u>16</u></b>
	1. An order awarding maintenance is reviewed for abuse of discretion.	
	2. The award of supplemental maintenance was an abuse of discretion	
	C. THE COURT ERRED IN AWARDING THE COMMUNITY AN INTEREST IN THAT PORTION OF ANTONIO'S RETIREMENT BENEFITS EARNED POST-SEPARATION.	<b><u>22</u></b>

1. An order disposing property in a dissolution proceeding is reviewed for abuse of discretion.
2. The award to Anna of an interest in Antonio's retirement benefits attributable to his post-separation employment was an abuse of discretion.

D. THE COURT ERRED IN ORDERING ANTONIO TO SECURE HIS OBLIGATION TO PAY ANNA MAINTENANCE WITH AN INSURANCE POLICY ON HIS LIFE THAT WOULD PROVIDE ANNA WITH A WINDFALL IF ANTONIO DIES BEFORE HIS 23 OBLIGATION TO PAY MAINTENANCE TERMINATES.

E. THE COURT ERRED IN ORDERING ANTONIO TO PAY "ALL EXPENSES RELATED TO THE ADULT CHILD SARA'S MEDICAL AND MENTAL HEALTH 26 TREATMENT RELATED TO HER EATING DISORDER".

**VII. Conclusion 29**

## II. TABLE OF CASES & STATUTES

<i>In re Marriage of Griswold</i> , 11 2 Wn. App, 333, 339, 48 P. 3rd 1018 (2002).	12
<i>In re Marriage of Muhammad</i> , 153 Wn.2d 795,803, 108 P.3rd 779 (2005).	12
<i>In re Marriage of Brockopp</i> , 78 Wn. App. 441, 446 n. 5, 898 P.2d 849 (1995)	15
<i>In re Marriage of Bucklin</i> , 70 Wn. App. 837, 841, 855 P.2d 1197 (1993)	15
<i>In re Marriage of Bucklin</i> , 70 Wn. App. 837, 855 P.2d 1197 (1993);	15
<i>In re Marriage of Donovan</i> (1980) 25 Wn.App. 691, 698, 612 P2d 387	25
<i>In re Marriage of Fernau</i> (1984) 39 Wn.App. 695, 694 P2d 1092	18,20
<i>In re Marriage of Goodell</i> , 130 Wn. App. 381, 390, 122 P.3d 929 (2005);	16
<i>In re Marriage of Kim</i> (2014) 179 Wash.App. 232, 252, 317 P2d 555	19
<i>In re Marriage of Kraft</i> , 119 Wn. 2d 438, 450, 832 P.2d 871 (1992).	12
<i>In re Marriage of LaDouceur</i> , 58 Wn. App. 12, 791 P.2d 253 (1990)	15
<i>In re Marriage of Littlefield</i> , 133 Wn. 2d 39, 47,940 P.2d 136 (1997).	13
<i>In Re Marriage of Rockwell</i> , 141 Wn. App.235, 242, 170 P. 3rd 572 (2007).	12
<i>In re Marriage of Manry</i> (1991) 60 Wn.App. 146, 149, 803 P2d 8.	23
<i>In re Marriage of Matthews</i> (1993) 70 Wash.App. 116, 853 P2d 462.	17
<i>In re Marriage of Washburn</i> (1984) 101 Wn.2d 168, 170, 677 P2d 152	18,19,20
<i>In re Marriage of Williams</i> (1996) 84 Wash.App. 263, 267, 9276 P2d 679	17
<i>In re Marriage of Zahm</i> (1999) 138 Wah.2d 213, 226-227	17
<i>In re Marriage of Leslie</i> , 90 Wn. App. 796, 807, 954 P.2d 330 (1998).	29
<i>Lucker v. Lucker</i> (1967) 7 Wn.2d 165, 167, 426 P2d 981.	21
<i>State ex rel. California v. Benjamin</i> , 50 Wn. App. 284, 291, 751 P.2d 1189 (1988);	15
<i>State ex rel. Stout v. Stout</i> , 89 Wn. App. 118, 125, 948 P.2d 851 (1997)	15
RCW 26.09.090	29
RCW 26.09.140	29
RCW 26.09.170(2)	24
RCW 26.16.010	23
RCW 26.16.140	23
RCW 26.19.071(6),	16
CR 2A	26
RAP 18.1	29

### **III. ASSIGNMENTS OF ERROR**

1. The trial court erred in Findings of Fact 2.12 CP110), when it failed to set forth a minimum income for the Wife? (CP145).
2. The trial court erred in extending the amount of time that wife would receive maintenance in order to compensate her for the value of her husband's medical degree and improperly apply the factors as to wife's needs, age, health or other financial resources as required by RCW 26.09.090? ( Findings 2.12 L22) (CP 111).
3. The Trial court erred when it ordered the husband to pay "all expenses related to the adult child Sarah's medical and health treatment related to her eating disorder? (Findings 2.20 ) (CP 112) supplemental findings para 2 (CP167).
4. The trial court erred in calculating the community's interest in Antonio's retirement benefits by using the trial date, 10/29/13, as the cutoff date, rather than the date of separation, 8/18/12? (Findings 2.8) (CP 110; 113)
5. The Trial Court erred in ordering the husband to maintain a policy on his life to secure the maintenance payment without taking into account the tax consequences and present value discounts? (Findings 2.12; CP 111; Decree 3.7 ,CP117) (Decree 3.7, CP117).

**IV. Issues Pertaining to Assignments of Error**

- A. Whether the wife should have been imputed at minimum wage (assignment of error No. 1,2 )
- B. Whether the maintenance award was excessive and should have been limited to five years, and the start date of maintenance should have been when payments commenced. (Assignment of Error No.1,2,&5 ) The court erred in awarding Anna "supplemental" maintenance to compensate her for the value of the medical degree obtained by Antonio during the marriage". Where a spouse obtains a professional degree during marriage without any financial contribution from the other spouse, is the other spouse entitled to compensation for the value of the degree upon dissolution of the marriage?
- C. Whether the court improperly compensated the wife for her husband's education by extending maintenance and improperly applied the factors as to wife's needs, age, health or other financial resources as required by RCW 26.09.090? (Assignment of Error No. 1,2,&5)
- D. Whether the court erred when it ordered the husband to pay "all expenses related to the adult child Sarah's medical and health treatment related to her eating disorder without limitation. (Assignment of Error No. 3). The court erred in ordering Antonio to pay "all expenses related to the

adult child Sarah's medical and mental health treatment related to her eating disorder".

Issue: Did Antonio stipulate to an order that he pay "all expenses related to the adult child Sarah's medical and mental health treatment related to her eating disorder"?

E. Whether the court improperly calculated the community's interest in Antonio's retirement benefits by using the trial date, 10/29/13, as the cutoff date, rather than the date of separation, 8/18/12. (Assignment of Error No. 4). The court erred in awarding the community an interest in that portion of Antonio's retirement benefits earned post-separation.

Issue: Are retirement benefits attributable to a spouse's post-separation employment that spouse's separate property?

Whether the court failed to consider tax consequences and present day values when it ordered the husband to maintain a policy on his life to secure the maintenance payment. (Assignment of Error No. 5 ) The court erred in ordering Antonio to secure his obligation to pay Anna maintenance with an insurance policy on his life that would provide Anna with a windfall if Antonio dies before his obligation to pay maintenance terminates.

Issue: May a court order a maintenance obligor to secure payment of his obligation with a policy of insurance on his life that, on his death, would pay the obligee more than the obligee would have received had the obligor survived and discharged the obligation in full?

F. Whether the husband should be awarded attorney fees for the Cost of this Appeal.

#### **V. STATEMENT OF THE CASE**

Antonio and Anna met in 1993. At the time, Antonio was an undergraduate student at University of California at Santa Cruz and Anna worked as a secretary in San Francisco.. [RP 29] A few months later they learned Anna was pregnant, and they married in January 1994. Anna continued working until May 1994, two months before the child, Sarah, was born. Anna was not employed outside the home after May 1994. [RP 175-177]

In 1996, Antonio graduated from Santa Cruz with a degree in biology and he began graduate studies at the Mayo Graduate School in Rochester, Minnesota. While Antonio attended graduate school, the other two children of the marriage, Marcus and Jose, were born. Antonio was awarded a Ph.D. in Bio-Medical Science in 2002, whereupon he enrolled in the Mayo Medical School, receiving his MD in 2006. From 2006

through 2008, Antonio was a resident in family medicine in LaCrosse, Wisconsin. From 2008 through January 2012, he was a resident and fellow at the Southwest Washington Medical Center in Vancouver, Washington. In January 2011, Antonio was employed by the Medical Center as a physician. [RP 26-28]

From May 1994, when Anna was last employed, until January 2011, when Antonio was first employed as a physician, the family lived on Antonio's student loans, grants, and stipends, and financial and other assistance provided by Antonio's parents. [RP 80, 176, 184, 245, 260] During that period, Anna provided no financial contribution to Antonio's education expenses. [RP 81, 245, 260]. Antonio and Anna separated on August 18, 2012. [CP 111, Findings of Fact and Conclusions of Law, ¶2.5]

At the time of trial, Anna had no earnings from employment while Antonio's monthly net income was \$12,765. [ CP 135, Order of Child Support filed December 13, 2013, ¶3.2(A).]<sup>1</sup> The court ordered Antonio to pay Anna child support for the parties' two minor children, Marcus and

---

<sup>1</sup> As appears from the Child Support Worksheet attached to and incorporated in the Order of Child Support [see ¶2.2], the court found that Antonio's gross monthly income was \$16,210 and he had monthly deductions for income taxes [\$2,207], FICA [\$822], and voluntary retirement contributions [\$416].

Jose, the sum of \$1,613 per month. [ CP 134, Order of Child Support filed December 13, 2013, ¶3.5] In addition, the court found that Antonio had stipulated to an order that he pay "all expenses related to the adult child Sara's medical and mental health treatment related to her eating disorder". [CP 160, Addendum to Decree of Dissolution, ¶2]<sup>2</sup>

The court found that the community property consisted of a residence, a 2011 Toyota Highlander, a 2011 Toyota Avalon, various items of furniture and furnishings, and Antonio's retirement benefits; and that the community debts consisted of loans secured by the residence and the two automobiles, a Citibank credit card with a balance of \$4,019, an Alaska Airlines credit card with a balance of \$15,000, an American Express credit card with a balance of \$3,593, a debt for 2012 income taxes in the amount of \$4,728, and Antonio's student loans totaling \$192,000. (CP 110). The court awarded Antonio the residence, the Avalon automobile, and specified furniture and furnishings, it awarded Anna the Highlander automobile and an equalization payment of \$20,000, it assigned to Anna the debt associated with the Highlander automobile, and

---

<sup>2</sup> The facts relating to the stipulation will be set forth below, in Antonio's argument that the Addendum misstates the terms of the stipulation.

it assigned all other debts to Antonio. And the court awarded each of the parties 50% of Antonio's retirement benefits attributable to his employment from date of marriage, January 22, 1994, through the date of trial, October 29, 2013. [CP 116, Decree of Dissolution, Exhibits W and H] (RP 350).

The court found that Anna had the need for maintenance and that Antonio had the ability to pay maintenance of \$5,500 per month while meeting his own needs and paying child support as set by the court. The court further found that Anna had no education beyond a high school diploma, that she needed maintenance for a sufficient time to allow her to seek education or retraining, and that five years of maintenance would be appropriate. In addition, the court found that the assets acquired during the marriage were "insufficient to compensate [Anna] for the value of the medical degree obtained by [Antonio] during the marriage" and that a "supplemental award of four years of maintenance" was appropriate. [CP 110, Findings of Fact and Conclusions of Law, ¶2.12] Accordingly, the court ordered Antonio to pay Anna maintenance of \$5,500 per month for nine years, commencing November 1, 2013. [CP 116, Decree of Dissolution, ¶3.7]

To secure payment of maintenance in the event Antonio died before fully discharging his maintenance obligation, the court ordered him to "maintain sufficient life insurance on his life naming [Anna] as irrevocable beneficiary in an amount not less than the remaining amount due for maintenance." [ CP 116, Decree of Dissolution, ¶3.7]

## VI. ARGUMENT

Appeal Standard: Appellate courts apply the substantial evidence standard of review to findings made by the trial judge. *Marriage of Rockwell*, 141 Wn. App.235, 242, 170 P.3rd 572 (2007).

Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *In re Marriage of Griswold*, 112 Wn. App, 333, 339, 48 P. 3rd 1018 (2002). A trial judge has broad discretion and the court's decision will be reversed only if there is a manifest abuse of discretion. *In re Marriage of Kraft*, 119 Wn. 2d 438, 450, 832 P.2d 871 (1992). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Muhammad*, 153 Wn.2d 795,803, 108 P.3rd 779 (2005). More

specifically, "the court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *In re Marriage of Littlefield*, 133 Wn. 2d 39, 47,940 P.2d 136 (1997).

**A. THE COURT ABUSED ITS DISCRETION BY NOT IMPUTING ANY INCOME TO ANNA FOR PURPOSES OF CALCULATION OF HER NEED FOR MAINTENANCE AND ANTONIO'S PAYMENT OF CHILD SUPPORT.**

At the time of the trial, Anna Carrasco was healthy and 46 years old. (RP 173 ) She had been employed as an executive assistant to the Chef at Marriot when she and her husband met. (RP 173) She worked for a real estate office during the pendency of the dissolution, but was unemployed at time of trial. (RP 236) Antonio Carrasco had a medical degree obtained during the course of the marriage, however this degree was obtained only recently and his work experience as a doctor was limited. (RP 29). During the pendency of the divorce, Anna Carrasco worked as a secretary for a real estate office for five months, earning minimum wage until she quit. (RP258). She never reported to her husband or the court that she had obtained work. (RP 259). She quit work and admitted that she

made the choice not to work until she found out how much maintenance she would be receiving. Anna Carrasco testified as follows:

A: My younger one gets out at three-thirty.

Q: And could take a bus, yes?

A: Technically, yes.

Q: You choose to drive them to school?

A: It's what I've done their whole life.

Q: But you could also choose to work?

CD: Objection. Argumentative.

Judge: Overruled. Go ahead and answer.

A: **Yes. I choose not to work right now** because I've been waiting to hear what my – where I can go.

Q: You're waiting to see how much maintenance you get isn't it – isn't that true because you're going to determine whether or not you need to work based on how much money you receive from your husband?

A: Well I plan on working but I also plan on 3 catching up with my computer skills because twenty years 4 ago computers weren't the same as they are today and I 5 plan on getting a job. (RP 268)

Anna Carrasco admitted that she did not apply for a single job since the time of her separation. (RP 260). At the time of trial, Antonio Carrasco was employed with Peace Health as a doctor, making \$84.65 per hour (RP 46). Mr. Carrasco had only become a fully employed doctor in January of 2012 and for the duration of the marriage had been a student completing his degree and residency requirements. (RP 27-28). At trial, Anna Carrasco requested that the court award maintenance Ms. Carrasco provided testimony indicating that she had worked prior to marriage and during the pendency of the dissolution. She indicated that she was not

employed at time of trial because she was waiting (inferring to see what she would get in maintenance ) (RP 259). While working during the pendency of the dissolution, Anna Carrasco testified that her secretarial skills came back to her quickly and easily. (RP235). Despite this, she quit the job and decided to volunteer at a hospital while the divorce was pending. (RP 236). She had no significant liabilities other than fees owed to her attorney and her car payment. She also reportedly received an inheritance of \$10,000.00 during the pendency of the dissolution. (RP 82). Parents have a common law obligation, as well as a statutory obligation, to support their children. *State ex rel. California v. Benjamin*, 50 Wn. App. 284, 291, 751 P.2d 1189 (1988); A parent's actual income may not be calculated in disregard of the evidence in the record or by guesswork. *State ex rel. Stout v. Stout*, 89 Wn. App. 118, 125, 948 P.2d 851 (1997); *In re Marriage of Bucklin*, 70 Wn. App. 837, 841, 855 P.2d 1197 (1993) Failure to consider all sources of income is reversible error. *In re Marriage of Bucklin*, 70 Wn. App. 837, 855 P.2d 1197 (1993); *In re Marriage of LaDouceur*, 58 Wn. App. 12, 791 P.2d 253 (1990). The evidence at trial was that Anna had both the ability and recent past history of employment. She was capable of contributing to the benefit of her children and for the court to impute her at zero income contradicted the clear evidence at trial that she was both capable of work and voluntarily

unemployed. Voluntary unemployment has been defined as “unemployment that is brought about by one’s own free choice and is intentional rather than accidental....” *In re Marriage of Brockopp*, 78 Wn. App. 441, 446 n. 5, 898 P.2d 849 (1995). Imputing income to a voluntarily unemployed or underemployed parent is mandatory. RCW 26.19.071(6), See also *In re Marriage of Goodell*, 130 Wn. App. 381, 390, 122 P.3d 929 (2005); The court erred when it imputed no income to Anna for any purpose of its calculation of child support or maintenance.

**B. THE COURT ABUSED ITS DISCRETION BY AWARDING ANNA "SUPPLEMENTAL" MAINTENANCE "TO COMPENSATE [HER] FOR THE VALUE OF THE MEDICAL DEGREE OBTAINED BY [ANTONIO] DURING THE MARRIAGE"**

The Decree of Dissolution awarded Anna spousal maintenance for nine years. [CP 116, Decree, ¶3.7] The court explained in its Findings of Fact and Conclusions of Law that the award consisted of two components: Anna was awarded "basic" maintenance for five years "to allow her to seek education or retraining" and "supplemental" maintenance of four years "to compensate [her] for the value of the medical degree obtained by [Antonio] during the marriage". [CP 110, Findings, ¶2.12]

Antonio submits the court abused its discretion in awarding Anna "supplemental" maintenance.

**1. An order awarding maintenance is reviewed for abuse of discretion.**

A trial court has discretion when awarding maintenance, *In re Marriage of Zahm* 138 Wah.2d 213, 226-227 (1999). The party who challenges a maintenance award must demonstrate that the trial court abused its discretion, *In re Marriage of Williams* 84 Wash.App. 263, 267, 9276 P2d 679 (1984). A trial court abuses its discretion when it does not base its award upon a fair consideration of the statutory factors under RCW 26.09.090, *In re Marriage of Matthews* 70 Wash.App. 116, 853 P2d 462 (1993).

**2. The award of supplemental maintenance was an abuse of discretion**

Antonio concedes the court acted within the bounds of its discretion in awarding Anna maintenance for five years to allow her to seek education or retraining, and in setting the amount of maintenance at \$5,500 per month. However, he contends the court abused its discretion in awarding her maintenance in that amount for an additional four years -- an

additional \$264,000 -- "to compensate [her] for the value of the medical degree obtained by [Antonio] during the marriage."

When one spouse supports the other through professional school in the mutual expectation that the community will enjoy the financial benefit flowing from the resulting professional degree, but the marriage is dissolved before that benefit can be realized, the supporting spouse may be compensated by an award of more than half the marital property or by an award of maintenance, *In re Marriage of Washburn* 101 Wn.2d 168, 170, 677 P2d 152 (1984), *In re Marriage of Fernau* 39 Wn.App. 695, 694 P2d 1092 (1984). And, where compensation is warranted, the trial court must consider the following four factors in determining the amount of compensation: (1) the amount of the supporting spouse's contribution for "direct education costs" [e.g. tuition, fees, books, and supplies]; (2) the amount that would have been earned had the efforts of the student spouse not been directed toward his or her studies; (3) the educational or career opportunities that the supporting spouse gave up; and (4) the future earning prospects of each spouse, including the earning potential of the student spouse with the professional degree, *In re Marriage of Washburn*, *supra*, 101 Wn.2d, at 180.

The trial court erred in concluding that Anna was entitled to compensatory maintenance because Anna did not satisfy her burden of

BRIEF OF APPELLANT 18

Josephine C. Townsend  
Attorney At Law  
211 E. 11<sup>th</sup> Street Suite 104  
Vancouver WA 98660  
360-694-7601

proving she supported Antonio through professional school. On the contrary, it was undisputed that she contributed no financial assistance to his educational costs; instead, all of those expenses were paid with Antonio's grants, stipends, and loans (all of which the decree assigned to him for repayment), and financial assistance from Antonio's parents. In these circumstances, a compensatory award is not warranted; see *In re Marriage of Kim* 179 Wash.App. 232, 252, 317 P2d 555 (2014) [husband not entitled to compensation for value of wife's medical degree obtained during marriage where education expenses were paid by wife's parents].

Moreover, in those cases where compensation was warranted because one spouse supported the other through professional school, no court has awarded compensation beyond reimbursing the supporting spouse for the contributions or awarding maintenance the supporting spouse required to obtain an education or retraining. Thus: In *In re Marriage of Gillette*, which was consolidated with *Washburn*, the wife worked full time to support the family while the husband attended veterinary school. She also contributed money from a personal injury settlement, and she made other sacrifices for the husband's benefit, such as turning down offers of job promotions so she could move with him to his veterinary school, all in reliance on the husband's promise that she would never have to work again after he graduated. The trial court divided the

community property equally and awarded the wife \$19,000, which included restitution for half of her financial contributions, and reimbursement for reduced living standards and a reduced opportunity to accumulate property, during the years when the husband was in school. The Supreme Court affirmed, characterizing the payment as "lump sum maintenance", *In re Marriage of Washburn, supra*, 101 Wn.2d, at 182. The wife was awarded her out of pocket expense and loss, but not "supplemental" maintenance. Nor was there an award of "supplemental" maintenance in *In re Marriage of Fernau, supra*, 39 Wn.App. 695. In that case, as in *Gillette*, the wife was employed outside the home and she contributed her earnings to finance her husband's professional school education. When the parties divorced, the wife was enrolled in graduate school. The appellate court affirmed the trial court's order awarding the wife maintenance for so long as she continued to be enrolled as a full-time graduate student [but for no more than two years], in an amount equal to 5% of the husband's net income [but no more than the wife's living and educational expenses]. Thus, the wife was awarded maintenance sufficient to enable her to obtain her education, but no more than that.

Indeed, the contrast between *Fernau* and the case at bar is striking.

In *Fernau*, where the wife contributed financially to the husband's medical school education: she was awarded "compensatory" maintenance for the

two years the court determined she would require it to obtain her education; her right to payment was conditioned on her actually pursuing her education; and the amount of maintenance was limited to no more than 5% of the husband's net income. Here, where Anna did not contribute financially to Antonio's medical school education: she was awarded maintenance for the five years the court determined she would require to obtain her education; her right to payment was not conditioned on her actually pursuing her education; the amount of maintenance, \$5,500 per month, was 43% of Antonio's net income; and, *in addition*, Anna was awarded "supplemental" maintenance in that amount for an additional four years, a total of \$264,000. Read together, *Washburn*, *Gillette*, and *Fernau* stand for the proposition that, where one spouse supported the other through professional school and the marriage is dissolved before the community realizes the financial benefits of that education, the supporting spouse is entitled to "compensation" for that failed expectation, and the "compensation" may consist of reimbursement of the supporting spouse's contributions, as in *Gillette*, or an award of maintenance by which the spouse who obtained the degree "returns the favor" by contributing to the supporting spouse's education, as in *Fernau*. But those cases do not support an award of any "compensation" -- let alone a "bonus" of four years of maintenance -- to a spouse who did not contribute financially to

the other spouse's education expenses. The trial court abused its discretion in awarding Anna an additional four years of maintenance beyond what the court found she required to obtain an education or retraining. The decree should be modified to strike that portion of the maintenance award.

**C THE COURT ERRED IN AWARDING THE COMMUNITY AN INTEREST IN THAT PORTION OF ANTONIO'S RETIREMENT BENEFITS EARNED POST-SEPARATION.**

The trial court awarded each party 50% of Antonio's retirement benefits attributable to his employment from date of marriage, January 22, 1994, through the date of trial, October 29, 2013. The court erred; the parties separated on August 18, 2012, and those retirement benefits attributed to Antonio's employment subsequent to that date were his separate property.

**1. An order disposing property in a dissolution proceeding is reviewed for abuse of discretion.**

A court has broad discretion in the disposition of property in a dissolution proceeding, and that disposition will not be disturbed absent a manifest abuse of discretion, *Lucker v. Lucker* 7 Wn.2d 165, 167, 426 P2d 981 (1967).

**2. The award to Anna of an interest in Antonio's retirement benefits attributable to his post-separation employment was an abuse of discretion.**

RCW 26.16.010<sup>3</sup> and RCW 26.16.140<sup>4</sup> each requires that a spouse's retirement benefits accruing subsequent to separation be designated as that spouse's separate property; accordingly, the non-employee spouse has no interest in the employee spouse's retirement benefits attributable to his employment after separation and before trial, *In re Marriage of Manry* 60 Wn.App. 146, 149, 803 P2d 8 (1991).

**D. THE COURT ERRED IN ORDERING ANTONIO TO SECURE HIS OBLIGATION TO PAY ANNA MAINTENANCE WITH AN INSURANCE POLICY ON HIS LIFE THAT WOULD PROVIDE ANNA WITH A WINDFALL IF ANTONIO DIES BEFORE HIS OBLIGATION TO PAY MAINTENANCE TERMINATES.**

"Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the

---

<sup>3</sup> RCW 26.16.010 provides, "Property and pecuniary rights owned by a spouse before marriage and that acquired by him or her afterwards by gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his or her spouse, and he or she may manage, lease, sell, convey, encumber or devise by will such property without his or her spouse joining in such management, alienation or encumbrance, as fully, and to the same extent or in the same manner as though he or she were unmarried."

<sup>4</sup> RCW 26.16.140 provides, "When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse or domestic partner who has their custody or, if no custody award has been made, then the separate property of the spouse or domestic partner with whom said children are living."

death of either party or the remarriage of the party receiving maintenance ..., " RCW 26.09.170(2). Here, the decree expressly provided that, upon Antonio's death, his obligation to pay future maintenance would not terminate, but could be satisfied only out of the proceeds of the policy of insurance on his life he was ordered to maintain. Where an obligor is ordered to maintain an insurance policy on his life and pledge the benefits to secure payment of the obligation, it cannot require him to pledge an amount greater than the obligee would receive if the obligor survived and paid all installments as they accrued, since that would provide the obligee with a windfall. The order provides Anna with a windfall in two ways:

First, it requires Antonio to pledge the insurance proceeds equal to \$5,500 multiplied by the number of unpaid future installments. Thus, if Antonio were to die five years before the final installment is due [i.e. when there are 60 unpaid future installments], the order would entitle Anna to proceeds equal to \$5,500 x 60, or \$330,000. However, if Anna prudently invested \$330,000, after five years she would have considerably more than \$330,000; that is, \$330,000 paid to Anna today is worth considerably more than \$5,500 paid to her each month for the next five years. To avoid providing Anna with this windfall, the order should require Antonio to pledge only that portion of the insurance proceeds equal to *the present value* of the unpaid future installments, see *In re*

*Marriage of Donovan* 25 Wn.App. 691, 698, 612 P2d 387 (1980) [where parent is ordered to maintain insurance policy on his life to secure child support obligation, decree should provide that children (or their guardian) receive proceeds equal to sum of any unpaid past support payments plus present market value of future payments]. Additionally, the duty to pay maintenance terminates upon the death of Antonio. The court erred in having Antonio secure *after* death payments of maintenance because Antonio's obligation terminates upon his death. The order of the court was not made to secure child support as in the *Donovan* case – it was made specifically to secure the maintenance payments for the wife.

Even if the award of the life insurance payment could be awarded, the order fails to take into account the income tax consequences. Anna must pay tax on the maintenance payments; she would not have to pay tax on the insurance proceeds. To avoid providing Anna with this windfall, if the court was able to direct payments after death despite the statute, the order should have required Antonio to pledge insurance proceeds in an amount equal to the present value of the number of unpaid future installments multiplied by the net [i.e. after tax] amount of each installment.

**E. THE COURT ERRED IN ORDERING ANTONIO TO PAY "ALL EXPENSES RELATED TO THE ADULT CHILD SARA'S MEDICAL AND MENTAL HEALTH TREATMENT RELATED TO HER EATING DISORDER".**

Trial concluded on October 29, 2013 and the court's Findings of Fact and Conclusions of Law and the Decree of Dissolution were filed on December 13, 2013. (CP 116). Following a a post trial hearing on January 31, 2014, the court issued an Addendum to the Decree of Dissolution in which the court made the supplemental finding that, during trial, the parties entered into a stipulation on the record, pursuant to Superior Court Rule 2A<sup>5</sup>, "that [Antonio] has to paying all expenses related to the adult child Sarah's medical and mental health treatment related to her eating disorder." (CP 160). The Addendum directed that an order pursuant to that stipulation become a part of the Decree of Dissolution. [ CP 160, Addendum to Decree of Dissolution, ¶2]. The order set forth in the Addendum did not conform to the parties' agreement. The obligation imposed on Antonio has no limits or restrictions. It requires him to pay any expense, whenever incurred and regardless of amount, "related" to Sarah's "treatment" by any provider, regardless of the provider's

---

<sup>5</sup> Rule 2A provides, "No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same."

qualifications or lack of qualifications. If, twenty years from now, Sarah submits herself to the care of a faith healer in Switzerland whose cure for Sarah's eating disorder involves joint counseling sessions with Sarah and Anna, the order obligates Antonio to pay for it. That was not what Antonio agreed to. At trial, the question of payment for Sarah's treatment was first raised during the opening statement of Antonio's attorney, Josephine Townsend ["JT"]. Anticipating that Anna would be requesting maintenance in an amount sufficient to cover payment for Sarah's treatment, Ms. Townsend said:

" In [Anna's] Memorandum she asks for additional income because she would be taking care of Sara's in-patient program and the evidence will show that she hasn't paid anything for Sara that, in fact, my client is the one with the health-savings fund and he's used that money for all of his children – all three of his children." [RP 12-13]

Then, during the opening statement of Anna's attorney, Carolyn Drew ["CD"], the following colloquy occurred:

"CT: They do have three children. I am thrilled this morning to hear for the first time that [Antonio] is willing to pay for Sara's treatment program. That is the first that we've heard of that. [¶] Sara actually has a plane ticket out here this coming week. She has acknowledged she needs to be back in treatment and if that's the stipulation that will shorten our testimony and alter our request somewhat. And I'm hearing that it is a stipulation that [Antonio] will pay for the --

"JT: Yes.

"CD: -- treatment program.

"JT: It's already – he's sent her money for her plane ticket and –

"Judge: So your client is stipulating that he will pay for all treatment costs?

"JT: Yes.

"CD: Fabulous. Thank you.

"Judge: Okay. So noted on the record then." [RP 12:18 - 13:11]

In his testimony, Antonio discussed Sara's medical history, her upcoming visit to submit to treatment, and his agreement to pay for that treatment: He said Sara began suffering from bulimia in 2008, when she was in high school. She received treatment from medical doctors and behavioral health providers and she was in an out-patient eating disorder treatment program, but she stopped receiving treatment in 2012, when she graduated from high school. Then, in October 2013, a few days before the trial, Sara told him she wanted to go back into treatment, and he told her he would help her. He was uncertain whether Sara would agree to an in-patient program, or whether the program would accept her, but he estimated it would cost \$15,000 to \$20,000. When asked whether he was stipulating "to undertake this step", he responded, "Yes". [RP 20:17-25:9]

On cross-examination, asked whether he had "indicated he will pay for Sara's treatment program", he again answered, "Yes". [RP 106:11-13]

Thus, Antonio's agreement was to pay up to \$20,000 for Sara's treatment for bulimia as an in-patient upon her arrival in Vancouver in late October or early November, 2013. Because it vastly exceeds the scope of that agreement, the order set forth in the Addendum to Decree of Dissolution should be stricken.

## V. CONCLUSION

The trial court's decision failed to balance all the statutory factors contained in RCW 26.09.090 and abused its discretion. Appellant respectfully requests that this court reverse the trial court's decisions regarding maintenance, disposition of the property and debts and award attorney's fees. Antonio Carrasco seeks attorney fees under RAP 18.1 and RCW 26.09.140. The court may award attorney fees after considering the relative resources of the parties and the merits of the appeal. RCW 26.09.140; *In re Marriage of Leslie*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998).

Respectfully submitted this \_\_30th\_\_ day of June 2014

*s/Josephine C. Townsend*

Josephine C. Townsend  
Attorney for Appellant WSBA 31965

# TOWNSEND LAW

**June 30, 2014 - 9:36 PM**

## Transmittal Letter

Document Uploaded: 457679-Appellant's Brief.pdf

Case Name: In Re Carrasco

Court of Appeals Case Number: 45767-9

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Josephine Townsend - Email: [jctownsend@aol.com](mailto:jctownsend@aol.com)

A copy of this document has been emailed to the following addresses:

[novotnylaw@comcast.net](mailto:novotnylaw@comcast.net)

[carolyn@carolynmdrew.com](mailto:carolyn@carolynmdrew.com)