

No. 47937-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:

VICTOR K. CHENG,

Appellant,

and

JULIA A. CHENG,

Respondent

APPEAL FROM THE SUPERIOR COURT
FOR KITSAP COUNTY
THE HONORABLE SALLY F. OLSEN

REPLY BRIEF OF APPELLANT

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I. REPLY TO STATEMENT OF THE CASE

In a transparent attempt to bias this Court against Victor, Julia's "Statement of the Case" focuses on assertions wholly irrelevant to the issues on appeal. For instance, Julia spends four pages belaboring Victor's decision at the outset of this action to seek a restraining order (Resp. Br. 11-15) after a series of events that Victor believed were caused by Julia led to an "unprecedented level of emotional stress" on the children and "an overall general level of fear." (V. Cheng RP 736-38) These events culminated in one of the daughters being taken to the emergency room for an injury received while in Julia's care, two of the daughters alleging that Julia had "slapped" the daughter, and Julia demanding a divorce from Victor in front of the children, causing them great distress. (*See* V. Cheng RP 140-43, 145-47; J. Cheng RP 425-26; Ex. 2)

Based on these events, Victor sought a restraining order until an interim order on parenting could be entered and a parenting evaluator appointed to conduct an evaluation. (*See* Ex. 2) After a full evaluation was completed, the parenting evaluator found no basis for restrictions on either parent and recommended that the children reside equally with both parents. (Exs. 3, 4) The parties thereafter

followed an equal residential schedule pending trial – a plan similar to the one that Victor advocated at trial. (*See Exs. 15, 23*)

The trial court ultimately rejected Victor's request and instead granted him 5 out of 14 overnights with the daughters (CP 803), finding that Victor had made a "gross error in judgment by getting a restraining order" at the outset of the case (Finding of Fact (FF) 2.19 (58), CP 747), and awarding Julia attorney fees based on Victor's purported intransigence. (CP 1563-71) While Victor does not agree with the trial court's parenting decision and its finding that he was intransigent, he has not challenged either order in this appeal. It is Julia who unnecessarily perpetuates any parenting dispute, undoubtedly because she hopes these "facts" will wrongly influence this court's decision on the financial issues, just as they did below.

In the same vein, Julia alternates between casting Victor as an unsuccessful "ne'er do well" whose early failed startups caused stress and anxiety on the family – even though she herself was not working .. and as a successful "captain of industry" who will continue to earn significant income into the future. (*See Resp. Br. 4, 7-10*) Here, too, the trial court seemed persuaded that the "significant stress [] caused when [Victor] quit his job on more than one occasion to pursue entrepreneurship" (FF 2.8.2, CP 725) was somehow a reason

to disproportionately favor Julia in its financial decision even though the community benefitted from Victor's efforts as evident by his successful endeavor with FFM. The trial court's consequent erroneous financial decisions granted Julia a "double dip" from the property award with maintenance, improperly imposed interest on the "equalizing" judgment even after finding that Victor could not pay it immediately, failed to credit Victor for post-separation payments toward community obligations, incorrectly calculated the parties' proportionate share of the child support obligation, and improperly awarded child support above the standard calculation. This Court should recognize Julia's restatement of facts for the diversion it was intended to be from the true issues before it, and not take the bait to affirm those decisions based on irrelevant matters.

II. REPLY ARGUMENT

A. The trial court erred in awarding the wife spousal maintenance that gives her a share of the income from the business awarded to the husband.

1. Maintenance based on goodwill income from the business the husband was awarded is an improper double dip.

The wife misses the point in defending the concept of "goodwill" and the trial court's valuation of FFM. (Resp. Br. 21-24) The husband is not challenging the trial court's determination that

FFM had goodwill or the \$3.6 million valuation of FFM. Instead, he challenges the trial court's award of maintenance to the wife based on goodwill income that he receives from FFM, the business he was awarded as his separate property.

It is undisputed that the business income in excess of the husband's replacement compensation was the basis of both experts' and the trial court's valuation of FFM. The trial court compensated the wife for her interest in the business by awarding her a cash judgment that represented half the value of FFM, less offsets. To count this income that formed the value of FFM as funds available for maintenance and as an asset in the property division is improper "double dipping." See *Marriage of Barnett*, 63 Wn. App. 385, 388, 818 P.2d 1382 (1991); *Marriage of Mathews*, 70 Wn. App. 116, 124-25, 853 P.2d 462, *rev. denied*, 122 Wn.2d 1021 (1993).

The wife in *Barnett* was awarded her share of the business in the form of a lien; in addition, she was awarded maintenance. The husband appealed the maintenance award because it was based on income he would receive from the business awarded to him. The *Barnett* court agreed and reversed, noting that the maintenance, which was to be paid from the future sales of business inventory,

would effectively allow “the same property [to be] distributed twice.” *Barnett*, 63 Wn. App. at 388 (discussed App. Br. 22-23).

The wife attempts to distinguish *Barnett* because the business there was valued based on tangible inventory that was to be sold. (Resp. Br. 28-29) This is a distinction without a difference; the concept is the same. When the value of the business is based on what the spouse awarded the business will receive from the business in the future, be it from a tangible or intangible business asset, any maintenance based on its future income is a “double dip.”

This is most clearly shown here by the fact that the husband must pay the wife monthly maintenance of \$20,000, which is 100% of his replacement compensation, *and* amortized monthly payments of more than \$12,000, to compensate the wife for her interest in the business. Both of these payments must be paid from the same income stream – the income the husband is to receive from the business he was awarded. This is an improper double dip under *Barnett* and *Mathews*, 70 Wn. App. at 124-25 (“clear error” to require husband to pay maintenance from his retirement income because it would in effect distribute property to wife that husband was awarded in the dissolution)(discussed App. Br. 23-24).

The wife attempts to distinguish *Mathews*, by claiming that it “does not even address double-dipping.” (Resp. Br. 29) While *Mathews* does not use the term “double dip,” it certainly describes the concept, holding that it was “clear error” to award the wife maintenance past the date of the husband’s retirement because the only income available to him at that point would be the income from his half of the retirement awarded to him in the dissolution. 70 Wn. App. at 124-25. The *Mathews* court reasoned that because the trial court had already awarded the wife her half interest in the retirement, “the effect of the indefinite maintenance is to require [the husband] to pay maintenance out of his remaining retirement or disability income.” 70 Wn. App. at 125. In other words, by first awarding the wife one-half of the retirement, and then awarding her maintenance from the husband’s one-half share of the retirement, the wife was allowed to receive the same income stream twice, resulting in an improper “double dip.”

None of the cases cited by the wife regarding goodwill (Resp. Br. 21-25) addresses the issue presented by the husband here – whether, when the value of the business awarded to the husband is calculated based on its earnings in excess of the husband’s replacement compensation, the wife can be awarded maintenance

based on those excess earnings when she was already compensated by an award of other assets and/or an “equalizing” judgment. For instance, the wife cites (and the trial court relied on) *Marriage of Lukens*, 16 Wn. App. 481, 486, 558 P.2d 279 (1976), *rev. denied*, 88 Wn.2d 1011 (1977) for the proposition that “goodwill is not synonymous with the spouse’s expectation of future earnings.” (Resp. Br. 21-22; CP 761) But in holding that goodwill is not synonymous with future earnings, the *Lukens* court did not address whether maintenance could be awarded when the value of a business awarded to the husband is based on goodwill calculated on a projection of future earnings, as here.

Goodwill is “defined as the expectation of continued public patronage.” *Marriage of Hall*, 103 Wn.2d 236, 239, 692 P.2d 175 (1984). Even if goodwill is not “synonymous” with the “expectation of future earnings,” the goodwill in this case was in fact valued based on those earnings. Both parties’ experts used the “capitalization of excess earnings” method to value FFM. (FF 2.8.2.1, CP 726) As the *Hall* Court described, this method calculates goodwill by determining the average net income of the business, deducting “an annual salary of average employee practitioner with like experience,” and multiplying that number by a fixed capitalization rate. 103

Wn.2d at 244. The trial court acknowledged that the difference between the experts' two values came down to "*projected income, replacement compensation for Mr. Cheng, tax rate, and capitalization rate.*" (FF 2.8.2.1, CP 726) (emphasis added) The trial court then chose a figure between the two experts' values. (See FF 2.8.2, CP 725-28) Thus, the value of FFM was based on the projected "average net income" that FFM could expect to receive from "continued public patronage" after the dissolution. In other words, the value was based on FFM's "future earnings."

By awarding the wife maintenance that consumed 100% of the husband's replacement compensation, the trial court clearly considered and expected that the husband would use the future earnings from the business to pay maintenance even though she was already compensated for those future earnings in the judgment awarded to her. (See FF 2.12(2), CP 730) Because the trial court's maintenance award was based on the future income of the business awarded to the husband, it was an improper double award. The wife already received her share of this income when she was awarded a judgment that represented her half interest in the business.

2. The maintenance was excessive in light of the wife's earning capacity and property award.

The wife argues that even if the maintenance award was an improper "double dip," this court should nevertheless affirm because of the "distinct purposes underlying a property distribution and maintenance award." (Resp. Br. 25-28) But maintenance cannot be considered in a vacuum, the trial court must also consider the property awarded to each spouse. *See Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997). In deciding maintenance, the trial court must consider the "financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently." RCW 26.09.090(1)(a). Here, the trial court utterly failed to consider the wife's property award and ability to independently meet her needs.

The trial court should have considered the fact that in addition to her maintenance award, the wife would be receiving a judgment of \$1.455 million, with above-market interest at 6% interest, which she will receive in monthly payments of over \$12,000 over the next 15 years. The interest alone provides her with an additional \$57,000 annually. Those property payments were to offset the award of the business to the husband. Therefore, even though the husband was

awarded the business and its income as his separate property, he must pay both maintenance and property payments from its monthly income regardless of the fact that the business income is not (unlike the wife's judgment) guaranteed.

The wife complains that in challenging the maintenance award, the husband seeks to "set aside \$60,000 for himself." (Resp. Br. 34) But what the wife fails to recognize is that all the husband seeks to retain is the business and its income that he was awarded. This income not only was the basis for the trial court's valuation of the business, but is a benefit that he alone should be entitled to, as it was awarded to him as his separate property. Complaining that the husband is allowed to keep the income from the business that he was awarded, and for which the wife was compensated, would be akin to the husband complaining that the wife is allowed to reside in the family residence that she was awarded. Instead, each party is entitled to the benefits of owning any property awarded to them.

The wife also argues that she is entitled to her maintenance award because she "worked while Victor's startup attempts failed," and her "sacrifice and support, and the community's investment in his education and training." (Resp. Br. 31) But to the extent the community invested in the husband's training, the community

equally (if not more) invested in the wife's education, enabling her to quit work in 1997 to take classes at NYU (for which the community paid), and to quit work again in 2000 to earn her MBA at Harvard (for which the community also paid). Despite these "investments" in the wife, she has never sought outside employment after 2000, and continues to assert her "right" to not earn any income, much less income commensurate with her abilities and education.

The wife has been compensated by the community's "investment" in the husband by being awarded half of the \$4.22 million that the community amassed during the marriage. She also leaves the marriage incredibly well-educated (due to the community's investment) with the ability to immediately earn \$80,000 without retraining. (*See* FF 2.12(14), CP 732) In light of her education, and the trial court's acknowledgement that the wife could be self-supporting within a year (*See* FF 2.12, CP 729-32), the award of maintenance giving her 100% of the husband's replacement compensation for the first 8 months after the divorce, 75% for the next two years, and 50% for another year, is an abuse of discretion.

B. The trial court erred in imposing interest on the equalizing judgment when the trial court acknowledged it could not immediately be paid.

The wife claims that 6% interest on her judgment was appropriate because of “the lost opportunity to invest and grow the money she was awarded, and the negative effects of inflation.” (Resp. Br. 36) But the husband is in the exact same boat as the wife. The value of his property award – the business – is only recognized as he receives income from the business. What the trial court really did was give the wife a guaranteed, above-market investment in the husband’s business, leaving all the risk with him.

“The purpose of awarding interest on a judgment is to compensate a party having the right to use money, when it has been denied use of that money.” *Aguirre v. AT & T Wireless Servs.*, 118 Wn. App. 236, 241, 75 P.3d 603 (2003), *rev. denied*, 151 Wn.2d 1028 (2004); *see also Crest Inc. v. Costco Wholesale Corp.*, 128 Wn. App. 760, 775, ¶ 35, 115 P.3d 349 (2005) (discussed App. Br. 29). This right to interest only accrues when “the party has the right to collect funds.” *Aguirre*, 118 Wn. App. at 241.

Here, the trial court acknowledged the husband could not pay the judgment in “a short period,” and crafted a “property payout schedule” requiring equal monthly payments to the wife over 15

years. (FF 2.8.6, CP 729; 769) Under the terms of the decree, the wife's "right to collect" the judgment is based on this schedule. As a result, no interest should have been imposed on the judgment, so long as the husband timely pays according to the schedule.

The wife argues that even though the husband indisputably cannot immediately pay the judgment, he should still be penalized with interest because this is a purported "equalizing judgment," which she presumes, without basis, is awarded anytime "the obligor lacks cash to pay the judgment up front, as opposed to over time." (Resp. Br. 35) But even if the obligor "lacks the cash," there may be other resources from which the obligor could pay the judgment, including tangible assets that could be liquidated. Here, the trial court recognized that the husband had no other resources, as the business was the only significant asset awarded to him, and that his only ability to pay the judgment was from the future income of the business that it presumed could satisfy the \$12,000 monthly payment. (See FF 2.8.6, CP 729)

Contrary to the straw man propped up by the wife (Resp. Br. 35), the husband is not advocating for a rule that there can never be any interest on an equalizing judgment. But interest should not be imposed when there is a finding that the judgment can only be paid

over time, as is the case here and in *Marriage of Young*, 18 Wn. App. 462, 569 P.2d 70 (1977) (App. Br. 30-31). In *Young*, the court affirmed the decision to impose no interest on the wife's judgment when the trial court recognized that the husband did not have access to funds to pay off the judgment and would have to pay the award over time. 18 Wn. App. at 465-66.

The wife attempts to distinguish *Young* by arguing that "pointing to a different result under different facts does not demonstrate an abuse of discretion." (Resp. Br. 35) But the facts here and in *Young* are indistinguishable. In both instances, the husbands were awarded community businesses that constituted a large part of the marital estate and the wives were awarded an offsetting equalizing judgment. Both trial courts recognized that the husbands had no resources to immediately pay off the judgments and would have to pay over time using income from the businesses awarded to them. The only difference between the two cases is the trial court in *Young* properly imposed no interest on the judgment while the trial court here abused its discretion in imposing 6% interest, which over 15 years (the length of time the trial court believed it would take the husband to pay the judgment) will total \$755,140.49 – more than half the amount of the judgment.

The wife relies on *Marriage of Barnett*, 63 Wn. App. 385, 818 P.2d 1382 (1991) to claim that interest is appropriate because interest is intended “to compel timely payment even if the obligor does not default.” (Resp. Br. 35) In *Barnett*, the wife was awarded a judgment to offset the award of the community business to the husband, which he was “was to make all reasonable efforts to sell.” 63 Wn. App. at 386. Recognizing that he might not be able to immediately sell the business, the trial court properly imposed no interest on the judgment for a year; if the husband did not sell the business within one year, 10% interest would then run on the judgment if it remained unpaid. The appellate court affirmed, holding that “the 1-year deferral period serves as a financial incentive to encourage [the husband] to sell the property.” *Barnett*, 63 Wn. App. at 387.

Here, the husband is not being “encouraged” to sell the business. In fact, it is undisputed that due to the intangible value of the business, the husband *must* maintain the business and his participation in it in order to pay the wife’s property and maintenance awards. *Barnett* in fact supports the husband’s argument here that if an equalizing judgment cannot be immediately paid, no interest should be imposed.

Further, unlike in *Barnett*, where there was no due date for payment on the judgment, it is not necessary to impose interest to “encourage” timely payment here. The trial court set out a property payment schedule that already has a built-in “incentive” for timely payments – if the husband defaults, payment is accelerated “and the remaining balance shall become due and owing in full, with interest at the legal rate.” (CP 769)

Both the 6% interest and penalty interest is particularly onerous because the payments go out for 15 years. Whether the husband will continue to have sufficient income to pay \$12,000 to the wife monthly is based wholly on speculation that the husband’s income will allow him to bear that cost. If the trial court’s prediction of the business’ future income is wrong, the husband has no recourse. *See* RCW 26.09.170 (property awards are non-modifiable). This Court should reverse the award of interest on the equalizing judgment, and hold that on remand the interest rate should be eliminated or reduced to 3%, the rate at which the trial court found the business would grow in the long term.

C. The trial court failed to credit the husband with post-separation payments on community obligations.

While the dissolution was pending, the husband paid “retirement and federal taxes currently owing” under an order that

granted him a credit for the payments “at the time of distribution.” (CP 16; Ex. 17) The husband thus was entitled to a credit for these payments as a matter of law under this unchallenged order, and as a matter of fact because these obligations were community obligations that he paid with his post-separation earnings.

The wife acknowledges that the obligation for the mandatory pension payment was incurred “in 2013, before the parties separated.” (Resp. Br. 38) It was thus indisputably a community debt that was indisputably paid with the husband post-separation earnings. Both the trial court and wife somehow rationalize that because the pension plan payment was technically owed by the business, it was “not a personal expense that can be credited to [the husband] as though he paid a community liability.” (Resp. Br. 39) This ignores two crucial facts – first, due to the corporate structure of the business, if the business pays a debt, the husband, as the owner, pays the debt. (*See* V. Cheng RP 252) Second, the pension payment increased the value of a “personal” asset – the FFM defined benefit plan that the trial court found was community property, and divided equally between the parties. (CP 771)

The trial court should have considered the pension plan payment a community debt, since it was paid for the benefit of the

community, and credited the husband with its payment in the asset spreadsheet. *See Marriage of Hurd*, 69 Wn. App. 38, 54-55, 848 P.2d 185, *rev. denied*, 122 Wn.2d 1020 (1993), *rev'd on other grounds by Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009); *Dizard & Getty v. Damson*, 63 Wn.2d 526, 530, 387 P.2d 964 (1964) (both discussed App. Br. 33). Alternatively, to the extent the trial court found the pension payment was a “separate debt because it was a debt of the company awarded to [the husband] as his separate property and the debt was paid from separate funds” (CP 794-95), the trial court should have then found that the increase in the value of the pension as a result of this payment was his separate property. The trial court could not ignore the husband’s post-separation payment of a community debt as it did.

The trial court also erred in failing to credit the husband for the \$94,923 2013 income tax debt that he paid after separation. (CP 16, 316, 795; Ex. 17) The trial court rationalized that because the parties had separated in July 2013 before FFM’s profitable fourth quarter – the husband bore the burden to prove “what portion of the 2013 taxes [the wife] could rightly be held jointly liable for.” (CP 795)

The wife relies on the fact that she was only paid \$10,000 in temporary monthly maintenance during the latter half of 2013,

claiming the husband “was not sharing equally” with her. (Resp. Br. 41) But this ignores that during this period, the husband was wholly responsible for the support of the children and was paying all of the expenses for the family, including mortgage payments and \$400,000 in remodeling costs for the house awarded to the wife, in addition to the wife’s maintenance. Further, the community business was valued as of December 31, 2013, taking into consideration its 2013 income, and the wife was compensated for that value through the asset division. (Exs. 30, 208) Finally, the wife signed the 2013 tax return acknowledging all of the income as joint. (See Ex. 43)

D. The trial court failed to include all income available to the mother or to deduct the father’s mandatory payments in calculating child support.

1. The trial court must impute income to a parent who is voluntarily unemployed.

RCW 26.19.071(6) requires the trial court to impute income to a parent who is voluntarily unemployed or underemployed. *Marriage of Didier*, 134 Wn. App. 490, 496, ¶ 9, 140 P.3d 607 (2006), *rev. denied*, 160 Wn.2d 1012 (2007). Here, the trial court erred in declining to impute income to the mother, a Harvard MBA, who was voluntarily unemployed at the time of trial.

The mother claims that she is not voluntarily unemployed because she made efforts to find employment during the divorce and

that “it should be no surprise” that she was unable to “immediately find work” after leaving the workforce for 14 years. (Resp. Br. 42) But she cannot avoid having income imputed to her based on claims that she has sought, but had not found, employment. *See Goodell v. Goodell*, 130 Wn. App. 381, 391, ¶ 18, 122 P.3d 929 (2005) (regardless of the mother’s earlier purported “attempts to obtain employment,” without a “reasonable explanation about why she failed to hold a job” she cannot avoid having income imputed).

The only bases on which the statute allows a trial court to not impute income is if a parent is “unemployable” or is “unemployed or significantly underemployed due to the parent’s efforts to comply with court-ordered reunification efforts.” RCW 26.19.071(6). The mother is clearly employable; the trial court found that the mother has “job skills” and is “highly educated, intelligent, talented and creative.” (FF 2.12(11), (12), CP 731) While the trial court acknowledged that the wife would require retraining, it acknowledged that it would only take “a year or two at the most.” (FF 2.12(14), CP 732) In the meantime, “she could obtain one of the jobs listed in Mr. Skilling report earning at least \$80,000, and over \$100,000 after two years.” (FF 2.12(14), CP 732)

2. The trial court should have included the interest paid to the wife on her judgment as income.

If this Court upholds the interest award, any interest that the mother receives on her equalizing judgment should be included in calculating her income. “Interest” is income that the trial court must include in calculating a parent’s gross monthly income. RCW 26.19.071(3)(i).

The wife does not deny that the interest she receives is over and above the property payments that she receives. However, she claims that the interest should not be treated as income since “the purpose of the interest is effectively a substitute for having to wait 15 years to obtain the value of the asset she was awarded.” (Resp. Br. 44) But had she been paid the judgment, and deposited those funds into a savings account, there is no dispute that the interest earned on those funds would be income under RCW 26.19.071(3)(i). The treatment should be no different simply because the judgment and interest payments are paid over time.

Similarly, the trial court also should have also deducted the interest payments from the father’s income under RCW 26.19.071(5)(h), which requires the trial court to deduct “normal business expenses” from a parent’s income. To maintain his income

from the business he is awarded, the father must pay interest to the wife as part of her buy out in the business, making it a normal business expense deductible under RCW 26.19.071(5)(h). *Marriage of Mull*, 61 Wn. App. 715, 722, 812 P.2d 125 (1991) (App. Br. 38-39).

The wife ignores the plain holding of *Mull* on the grounds the business here was awarded to the husband as part of a “just and equitable property distribution.” (Resp. Br. 45) But a parent cannot be precluded from deducting normal business expenses simply because the business was awarded to him in a dissolution. The father was entitled to have the interest he pays deducted from his income as a normal business expense.

3. The trial court must deduct mandatory pension payments from the father’s gross income.

The trial court erred in not deducting the father’s “mandatory pension plan payments” from his gross income before calculating child support. RCW 26.19.071(5)(c); *see also Mull*, 61 Wn. App. at 718 (mandatory pension plan payments must be deducted). The mother claims that the trial court was not required to deduct the pension payments because FFM, not the father, makes the payment. But whether FFM pays it or the father pays it directly, the pension payment reduces the father’s income. Either it reduces the cash in

FFM that otherwise would be distributed to him as income or it would be paid out of pocket. (*See V. Cheng RP 252*)

Had the trial court properly calculated the parties' incomes, it would have determined that the father's proportionate share of the children's support was closer to 47%, not the 72% found by the trial court. The standard calculation for father's obligation towards the children's support would have been closer to \$1,374, not \$2,106 – less than a third of the transfer payment ordered. (*See App. Br. 37, 39, 40*)

E. The trial court erred in awarding child support above the standard calculation.

The trial court erred in ordering the father to make a transfer payment that exceeds the standard calculation established by the child support schedule by more than double. (CP 781-82) The mother claims that the transfer payment was appropriate because of the "children's lifestyle," pointing to the children's horseback riding, ballet, soccer, tennis, and archery. (Resp. Br. 47) But the father is already responsible for those expenses beyond the transfer payment, since he is required to pay his proportionate share of those costs. (CP 783-84) These purported "lifestyle" expenses are thus not a basis to increase his transfer payment.

As set out in the opening brief, the mother's (inflated) expenses for the children's clothing, food, and vacation total little

more than \$4,000 per month. (App. Br. 42-43, *citing* Exs. 402, 403) The transfer payment of \$5,000 exceeds these expenses, and makes the father more than 100% responsible for the children's support, when the "duty of support rests equally upon both parents." *Hughes v. Hughes*, 11 Wn. App. 454, 458, 524 P.2d 472 (1974).

The mother relies on the fact that her housing costs are nearly \$7,500 as a basis for increased child support. (Resp. Br. 49) The family residence was awarded over the father's objection that it be sold, since the cost of maintaining it was very high, and selling it would allow both parents to acquire similarly situated homes. (V. Cheng RP 689-90) The father even acknowledged that he did not want the family residence because of the "financial pressure" to maintain it. (V. Cheng RP 691) The trial court nevertheless awarded it to the wife, finding that "it will benefit the children to remain in the family home," even though it acknowledged that the children had only "become accustomed to it" for the last year and half, and because "the wife can afford it." (FF 2.8.1, CP 725) But the mother's decision to reside in a home that is expensive to maintain should not be a basis to increase the father's transfer payment above the standard calculation. This is particularly true under these circumstances when as a result of the trial court's maintenance and

child support awards, the father is unable to maintain similar housing for when the children reside with him 5 of 14 overnights.

III. CONCLUSION

This Court should reverse and remand with directions to the trial court to reconsider its maintenance award, to eliminate or reduce interest on the judgment to the wife, to adjust the property award after crediting the husband for his post-separation payments on community obligations, and to recalculate child support based on the standard calculation after deducting the father's mandatory pension and business expense payments from his gross income, imputing income to the mother, and including the mother's interest income in her gross income.

Dated this 10 day of May, 2016.

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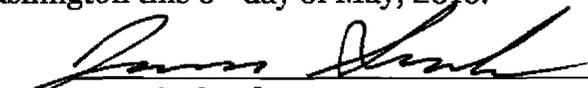
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The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

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DATED at Seattle, Washington this 6th day of May, 2016.


Jenna L. Sanders

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