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No. 49874-0-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Marriage of

RICHARD L. YOUNG
Respondent

and

DONNA D. YOUNG
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAMANIA COUNTY

REPLY BRIEF OF APPELLANT

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I. STATEMENT OF ISSUES IN REPLY

1. Did the court's decision leave both parties in financially sound economic circumstances, or just the husband?

2. Does Washington case law, given the facts here, require an award of permanent or long-term maintenance, an issue the wife in no way waived, particularly given the distribution of property?

3. Does Washington law recognize the contribution of a homemaker to a long-term marriage, even though this contribution is not financial?

4. Are the court's orders just and equitable when they leave the wife economically vulnerable, including because the husband's business entities may be unavailable for execution on the judgment and efforts to enforce the judgment will be costly?

5. Is remand required because the trial court failed to analyze the facts and law relevant to the maintenance award and property distributions and, consequently, entered orders that left one spouse with a secure economic future and the other without?

6. Is remand required because the court's orders rest in part on the erroneous valuations, as the record demonstrates?

7. Should the wife receive her fees on appeal because the husband has the ability to pay and she has the need for fees?

II. ARGUMENT IN REPLY

A. THOUGH AN EQUAL PARTNER IN THIS 42-YEAR MARRIAGE, THE WIFE WAS LEFT AT DISSOLUTION IN FINANCIAL JEOPARDY, UNLIKE THE HUSBAND.

Donna will address below the specific factual and legal miscues in Richard's brief. She begins, first, however, by recalling Richard's argument that Donna deserved little at dissolution because only he deserved credit "for the creation and maintenance of the wealth the parties have enjoyed." CP 230. He claimed her contribution, (in his view, mainly childrearing), ended long ago. CP 232. For this reason, he urged the court to accept the low values he assigned the properties and to award all but the least valuable properties to him, of which he proclaimed himself to be the "sole owner." CP 233. And that is pretty much what the trial court did.

Now Richard tries to backpedal from that argument – an argument the court embraced when it talked about the consequences of Donna being a homemaker (RP 492) – by claiming Donna took the court's comments out of context. Br. Respondent, at 6. Actually, she did not. Richard argues the court simply meant there was less to distribute because Donna performed the domestic labor, rather than contributing to the marriage by wage-earning. Id. This argument requires mind-reading; it is completely speculative. Donna did not ask the court to distribute anything other than

the wealth Richard concedes exists – the wealth the evidence proved. But she did ask the court to distribute that wealth consistent with Washington law, including the view that "marriage is a shared enterprise, a joint undertaking ... in many ways it is akin to a partnership." *Washburn v. Washburn,* 101 Wn.2d 168, 181, 677 P.2d 152, 160 (1984).

In *Washburn,* our Supreme Court decreed that contributions of the different spouses are entitled to recognition – whether they be supporting a spouse through educational training or supporting the family through domestic labor. By contrast, in Richard's view of "traditional marriage," only he deserves any credit for the wealth the community accumulated, a view it appears the court embraced – not only when it spoke of "consequences" but also in the way it distributed the property, leaving Richard with the income-earning property (Timbers) and the wealth-producing property (Padden & Cedarlake), not to mention the 26-acre marital residence, while leaving Donna with a small condo, a small judgment, and short-term maintenance. In so doing, the court condemned Donna to spend the rest of her days in financial jeopardy, while Richard can go on with his business as always (which is precisely what he is doing). In so doing, the court failed of its duty under Washington law to distribute the property and award maintenance fairly, as elaborated upon below.

B. MAINTENANCE.

Donna and Richard agreed on Donna's need for maintenance. CP 2, 14-15. But Donna understood well that she needed permanent maintenance, given her age (63), her commitment over the 42 years of the marriage to homemaking and her concomitant lack of earning potential. CP 14-15. She also understood Washington law viewed the trial court's goal when faced with such circumstances is to leave "the parties in roughly equal financial positions for the rest of their lives." *In re Marriage of Rockwell,* 141 Wn. App. 235, 243, 170 P.3d 572, 579 (2007). Richard also cited *Rockwell,* then argued its principles did not really apply because Donna's childrearing contribution ended "long, long ago" and she had "contributed precisely nothing to the value of the estate" since separation, CP 232-233, an argument all the more remarkable given Richard's efforts to drain value from the assets in preparation for trial and his repeated arguments about the "flagging economic situation" of his real estate business in the larger Vancouver area. See, e.g., CP 232-233; See Br. Appellant, at 9-13. Despite his complaints about stress, he vigorously opposed appointment of a receiver to manage the "complicated" properties so that both might bear the risks and rewards. CP 231-240. Instead and despite his doom and gloom predictions, he wanted all the valuable properties and, he argued, he deserved them because he created all that

wealth. CP 232 (court should consider fact husband created all the wealth).

Donna was agreeable to Richard receiving most of the properties, so long as she received the same measure of economic security. Her request for permanent maintenance was part of an overall financial plan that included awarding Richard the properties and business he was in a position to continue making profitable with his development and management expertise. CP 21-22. Donna proposed sale of the valuable marital residence and the award to her of the modest condo, her car, and the income-generating rental property, Timbers. CP 23. Under her plan, the property was distributed 50/50. Id.[1]

At the close of trial in July (before Donna's motion to reopen for evidence on Padden), Donna made some adjustments in her proposal based on testimony and the parties' stipulation. CP 31-60. She retained her request for permanent maintenance, but proposed a gradual reduction to coincide with payments from Richard against the equalizing lien and possible termination (through modification) on his retirement. CP 41-43. This proposal also contemplated Donna receiving Timbers, the income-

[1] Donna wanted the house to be sold because the equity was decreasing each month Richard failed to make the mortgage payments (by the time of trial he had not made payments for 11 months); he had no incentive to sell it because he and his companion were living in it for free. CP 15-16; 5RP 16.

generating property, and proceeds from the sale of the marital residence. CP 10, 35-38, 41-50 (noting the parties agreed to sell the marital residence, and other agreements). See, also, 5RP 231.[2] Donna knew she needed ongoing income to survive and she knew not to rely on Richard. She was right and the court was wrong not to heed her.

1) Donna preserved her challenge to the maintenance award.

Richard attempts to blame Donna for the court's maintenance award, but the record does not support him. Br. Respondent, at 22, 23. He claims the award falls "well within the confines of Donna's request," stating that she asked for $5000 per month, he asked for $3500, and court awarded $4500, and that she proposed the payments decrease by $1000 per month when the first two payments were made on the judgment and that it would be modifiable to $0 once he pays off the judgment. Br. Respondent at 23.

For one thing, Richard misrepresents the facts, including by ignoring the context. For another thing, the maintenance simply terminates after 40 months; no modification needed (i.e., whether or not Richard's income diminishes). And it terminates regardless of whether he has paid the judgments. CP 131. For yet another thing, Donna did not propose this: she asked for permanent maintenance, CP 15, 41, and only

[2] Richard proposed selling the Pronghorn lot and Timbers and paying her with proceeds but Donna did not want to rely on him to sell it. CP 35.

said it should be modifiable to $0 "once Husband has paid all money judgments owed to the wife *and* Husband has retired." CP 41 (emphasis added); *see, also In re Marriage of Short,* 125 Wn.2d 865, 876, 890 P.2d 12, 17 (1995) (maintenance modifiable absent agreement). The court did everything Donna asked the court not to do – it time-limited the maintenance, it radically limited Richard's incentive to pay the judgments (earning only a gradual reduction if he does), and it did not order the sale of any of the properties as a means to force Richard to satisfy the judgment. See RP 498. Donna did not waive anything.

Richard also defends the court's time-limited maintenance order as being based on the Richard's testimony that he planned to cut back on his work life. See Br. Respondent, at 23-24. But Richard had no plan to retire. He mused about his age, he noted his work could be stressful, and said he was "debating about how much further [he] want[s] to carry Cedarlake Company on." 5RP 288. Instead of retiring, he "was talking to Onyx about just consulting with them and providing information on that." 5RP 288.[3]

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[3] "Talking to Onyx" does not quite capture Richard's relationship to the company. Onyx Contracting Inc. is owned by Wendy Higgins, Richard's intimate companion, and was licensed effective 4/15/16 and received its bond the day before Cedarlake's license was suspended. Richard describes it as a "100% woman-owned business." 5RP 216-217. Onyx has the same address as Cedarlake (9120 NE Vancouver Mall Loop, #220), which is also the same address as CC Land Development Company, owner of Padden Parkway. This office is in the building known as Timbers at Van Mall, which is owned by Cedarlake. *See* https://www.crexi.com/properties/13085/washington-the-timbers-at-

Richard also testified that if he could sell all the properties he would put that cash into some apartments and passive investment. 5RP 288. This is the only testimony the response brief cites about Richard "cutting back." Br. Respondent, at 12, 30, 32. Richard also cites the court's comments at 5RP 310-11, which were in the context of denying Donna's motion (after the close of evidence in the first trial proceeding) to order Richard to inform her about what is happening with the Padden property (potential buyers, offers, further development of individual lots, etc.), 5RP 310. In ruling on her motion, the court noted Richard is "going to have to decide whether to continue to be a developer and start down that road," 5RP 310, which is not a finding about his future plans or earning potential so much as stating the obvious about anyone over sixty.

Richard also cites the court's comments during its final ruling, noting that he is involved "with a high risk, high reward career," and that the court "can't imagine the stress." 5RP 493. Again, the court does not make any findings here about a plan to retire, as represented in the

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vancouver-mall. A web search for "Cedar Lake LLC" takes you directly to Onyx Contracting. *See* http://cedarlake.com (last visited December 20, 2017). *See* ER 201(b)(2), (d), and (f) (authorizing the court to take judicial notice of adjudicative facts). *See, also, CLEAN v. State,* 130 Wn.2d 782, 809 928 P.2d 1054 (1996) ("Facts which a court may judicially notice are those "facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy and verifiable certainty" (internal citation omitted)). It is in respect of Ms. Higgins's financial entanglement with Richard that she is mentioned, not for any "fault" as complained of by Richard. Br. Respondent, at 2.

response brief, and certainly did not mention this in its ruling on maintenance, but in respect of the property distribution.

In any case, whatever Richard said, his actions contradict him. A plan to retire would likely include an actual plan to sell properties that require management and development, or properties one likely could not afford on a fixed income (like the large marital residence). Yet Richard resisted selling anything. He even resisted letting Donna have the Timbers. He indicated he planned to "consult" with his new intimate companion's woman-owned business, which, coincidentally, is the same kind of business Richard operates. In fact he testified that the reason he was debating whether to carry on Cedarlake is because he was taking on a role in this new business. 5RP 288.

The fact of the matter is, there was no evidence of Richard's imminent retirement, meaning there was no evidence that his income would not continue for some time and be at the same level that brought prosperity to this family. And that evidence was objective: financial statement, tax returns. That is, until Richard started planning for trial, he was earning a reliable three-figure income annually plus sitting on top of valuable properties.

In any case, the court did not undertake the requisite analysis of all the evidence, an analysis that forces the court to consider how this all pans

out for the parties. After 43 years of marriage, this is the crucial inquiry: how can the court construct its financial orders to place the parties in financial parity? Certainly, while the court might consider eventual retirements, the court must also consider the facts on the ground, which the court here flatly did not do: ignored Richard's income, ignored his new business plans (consulting with Onyx), ignored his long history of successful real estate management and development and his present ability to continue that pursuit. Basically, the court never stopped to reflect on how its orders left these parties five years hence. That is crucial here because one of those pictures is rosy and one of them is bleak.

2) Donna has few options for getting Richard to pay the judgment, and all of them cost something.

One factor contributing to Donna's financial insecurity is that she has to depend on Richard to pay the judgments ordered. He had a history, pretrial, that gave her little confidence in this arrangement, and – because it was objective and demonstrable -- it should have affected the court the same way. Post-separation, Richard energetically further encumbered the properties, for example, with the $2,695,000 loan on Padden. He moved some of that money around, including into Cedarlake, but then argued Cedarlake had no value. He stopped paying the mortgage on the marital residence. He did not even make his maintenance payments on time, despite that Donna had no other means of support. CP 33, 109; Ex. 62; CP

128-130 (judgment entered on unpaid obligations). Donna did not have any trouble concluding she did not want her share of the marital estate left in his hands, which is why she proposed a receiver or that the court distribute some property to her directly (e.g., Timbers). Instead, the court gave Richard pretty much everything and gave Donna a piece of paper.

Richard argues that piece of paper is sufficient because Donna can enforce the judgment through the contempt process. Br. Respondent, at 20-21. Yet he also argues the court ordered time-limited maintenance to save the parties from having to return to court to modify, in the event Richard's "retirement" actually reduces his income stream. Donna should not have to spend the little she has to get Richard to comply with court orders.

To argue that contempt provides a remedy to Donna ignores the court's duty to do the right thing in the first place and ignores the reality here. Court proceedings are expensive. Richard has proved his skill in moving his financial interests around. In the two years before trial he managed to devalue the parties' net worth by more than half (from over $8 million to a little over $3 million). See Br. Appellant, at 6, 8. He now plays a role in the "woman-owned" business started by his intimate companion, a construction business very similar to Cedarlake, which he

helped her start right around the time the Cedarlake license was suspended. 5RP 216-217.

Richard also contends that Donna has a legal right to file a lien, noting that she initially proposed this but never followed through. Br. Respondent at 22. In fact, Richard opposed the lien when Donna proposed it, and while the court said it would consider it if the parties could agree on some language, she never got such an agreement from Richard. 12/01/16 RP 15, 21.

In any event, this is a much more complicated subject than Richard admits, potentially making it also costly for Donna to recover on her judgments. For example, the marital residence is owned by the Richard Young Revocable Trust, which could complicate recovery.[4] *See* RCW 6.32.250 (spendthrift trust protection). The other real estate is owned by business entities, though even Richard has trouble keeping track of what business owns what property.[5] And in the case of the Timbers, CC Land is only a part owner. 5RP 24, 52-53. Donna would not be able to

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[4] This trust appears to have been created in October 2014. See Excise Tax Affidavit. Richard petitioned for dissolution in July 2014. CP 1-3.

[5] In his trial brief, Richard said that Cedarlake owned Timbers. CP 235. In his testimony, Richard said that CC Land owned Timbers. 5RP 24, 52-53.

encumber the other owners' interest. RCW 4.56.190; *Bank of Am., N.A. v. Owens,* 173 Wn.2d 40, 49, 266 P.3d 211, 215 (2011).[6]

Moreover, any judgment lien of Donna's would have to take its place in priority, competing, for example, with the lenders Richard utilized during the post-separation period. *In re Tr.'s Sale of Real Prop. of Whitmire,* 134 Wn. App. 440, 449, 140 P.3d 618, 622 (2006) ("Priority among creditors is determined in order of time—first in time being first in right") (internal citation omitted).

One thing Richard proved at trial (or through his career and his pretrial conduct) is his capacity to move money around, to calculate, and to strategize about all things financial. There is no complex math required to map the path to paying Donna nothing – he pays maintenance for 40 months and then pays nothing (which is what he has paid so far, according to the superior court judgment summary). Donna seeks to enforce and discovers the marital residence is in a spendthrift trust or someone else's name, the development properties are now held in the name of a woman-owned business, etc. Richard is a canny businessman, skills he wielded

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[6] Granted Donna might have recourse through the Uniform Fraudulent Transfer Act, Chapter 19.40 RCW, but, again, she must be able to afford the litigation. *See Thompson v. Hanson,* 167 Wn.2d 414, 424, 219 P.3d 659, 664 (2009), *as amended* (Mar. 26, 2010), *republished as modified at* 168 Wn.2d 738, 239 P.3d 537 (2009) ("once a transfer has been found to be fraudulent, remedy is available against transferees").

for over forty years to build wealth. Because of the court's financial orders, he can pretty much keep all that wealth.[7]

3) Donna deserves lifetime maintenance under Washington law and the facts in this case.

Not only does Richard argue Donna deserves little from their 42-year joint venture, he claims her request for lifetime maintenance is "overreaching." Br. Respondent, at 24. He argues she is "well and able-bodied," though acknowledging "she may need some training" to find a job. Br. Respondent, at 24, 27. Richard is consistent in his application of a double standard. He claims he cannot be saddled with a maintenance payment because he is might retire, but Donna should now go get a job. Id. Donna was 63 years old at trial. She had spent her entire life working in support of her family, childrearing, homemaking, pitching in occasionally at the office or in "minor retail" cash-generating work (20 years ago). 5RP 520. She did all the domestic labor so Richard could build and operate the business. Washington law recognizes this contribution even if Richard does not. *In re Marriage of Larson and Calhoun*, 178 Wn. App. 133, 145, 313 P.3d 1228 (2013) (wife's intangible contributions served equally to benefit the marital community. And Washington law recognizes the reality that Donna, at her age, is in no

[7] Richard is approximately one year late in paying the first installment of the judgment, $145,208 due in January 2017. CP 131. See Skamania County $14-3-00036-2 ("Judgment Summary").

position to find work that can generate a decent income. See Br. Appellant, at 22-24.

Richard tries to distinguish the case law cited in the opening brief contending the cases do not support an award of lifetime maintenance in Donna's case because the facts are different. Br. Respondent, at 25. The dispositive facts are not different, and the governing principle is the same here as in those cases: equalizing the financial positions of the spouses. *See In re Marriage of Bulicek,* 59 Wn App 630, 633-35 800 P.2d 394 (1990) (equalizing income based on relative earning powers); *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863(1989), review denied, 114 Wn.2d 1002 (1990) (long term maintenance order balanced out disproportionate community property award, leaving both parties with approximately equal disposable incomes); *In re Marriage of Nicholson*, 17 Wn. App. 110, 116-117, 561P.2d 1116 (1977) (long term maintenance where wife unskilled at 49; husband steadily employed with good salary all his adult years); *In re Marriage of Morrow,* 53 Wn. App. 579, 587-588, 770 P.2d 197 (1989) (long term maintenance award where wife sacrificed earning potential to be a homemaker and husband capable of paying maintenance without sacrificing his own needs); *Stacy, v. Stacy,* 68 Wn.2d 573, 576, 414 P.2d 791 (1966) (court's focus was on the relative earning potential of the parties and its effect on their economic futures).

In these and many other cases, courts face the once common scenario presented here: one spouse engaged in financially remunerative work and the other spouse engaged in the domestic labor. Especially in long-term marriages, this arrangement places the second of these parties at a profound disadvantage upon dissolution. *See, also,* former RCW 28B.04.020 (displaced homemakers).

Moreover, Donna does not argue the court must award lifetime maintenance. Indeed, her proposal acknowledged the mechanism available should Richard's income diminish – modification. There was every reason to think Richard's economic health would remain vigorous (aside from his self-serving predictions), but the modification statute permits the court to revisit the issue if circumstances change. She also proposed she receive the Timbers, so she would have a source of income independent of Richard. In other words, the point is providing Donna with some kind of economic security, by whatever means, and this is one of the points the trial court failed adequately to consider. *See Rockwell,* 141 Wn. App. at 249 (roughly equal for rest of their lives). In other words, it is not lifetime maintenance *per se* that Donna claims must happen, but, rather, that the court must, by law, provide for a needy spouse.

4) The court's orders disproportionately favor Richard.

Richard contends that the maintenance award was "well within the court's discretion," disputing that Donna cannot provide for herself and disputing he has an ongoing career and monthly income of at least $14,000- $17,000. Br. Respondent at 29. He complains that he does not know how Donna derived that income figure, but then admits he gave it to her. Br. Respondent, at 29 (acknowledging that he reported his gross income as $17,000 on a loan application but claiming he has no idea where that figure came from). The Timbers remains an ongoing enterprise. He is working for Onyx Contracting, probably not for free. His claims that he was "looking to cut back," Br. Respondent, at 12, contradict his other claims about the dire straits of his business enterprises (i.e., how can he quit working when his retirement properties are tanking?). See, also, Br. Appellant, at 11, 20. Richard resisted every effort to take control of his properties from him for the simple reason that he knows their true value.

5) The record does not include evidence the court engaged in the requisite maintenance analysis.

Richard contends there is no reason to reverse for entry of additional findings noting that RCW 26.09.090 does not require the trial court to make specific findings on each of the listed factors, just to "consider" them. Br. Respondent, at 30. But as Donna pointed out in the

opening brief, the court did not even "consider" the parties' income potential and future economic circumstances let alone seek to equalize those circumstances. Br. Appellant, at 24-25. Nor, as Richard concedes, did it address time for education and retraining for Donna, Br. Respondent, at 31, arguing the court did not need to specifically address that factor, which is at odds with his argument that Donna should go get a job. See Br. Respondent, at 30. Certainly, there is no evidence Donna could generate the income she needs, and that is a fact the court had to consider.

He further asserts that the court made a standard of living finding by the passing reference to the fact that "both parties now will have their own house and so forth." CP 116, 5RP 497. The Bend condo and the Carty Road estate are not exactly equivalents, so the court's reference here merely underscores the court's failure to understand the implications of its orders. Maybe each party has a roof over his and her head, but the rest of the story simply cannot be dismissed by a reference to "so forth." The court simply did not grapple with the relevant facts or with the relevant law. Richard wants to turn the court's "acknowledgement" that there is law here into the court's actual consideration of the law. A nod is not an analysis. We know this both because our cases teach us what a proper analysis looks like and because the result reached here is wrong.

C. PROPERTY DISTRIBUTION

Some of these same financial issues naturally implicate the property distribution, which Donna will try to address without being repetitive. For example, an assessment of the parties' earning potential is a necessary component to "the long-standing rule that the economic condition in which a dissolution decree leaves the parties is a paramount concern in determining issues of property division and maintenance." *Washburn*, 101 Wn. 2d at 181. Richard testified he would like to retire and live off "passive investments." 5RP 288; Br. Respondent, at 11-12. As mentioned above, the evidence indicated he was not so much retiring as undergoing a makeover of his business entity. 5RP 216-217. In any case, it was a fact that he had income, including from passive investments. Br. Appellant, at 11, 20. It was also a fact that Donna had no income. Our case law requires these facts be addressed and the trial court's myopic approach here is not sufficient.

As to Donna's valuation challenges, Richard claims Donna should have gotten her own valuations if she did not like his. Br. Respondent, at 3. As he knows, initially both parties took the position they did not need valuations because they expected to conclude successfully their settlement negotiations. 2RP 10. By the time that failed, Richard was in the midst of altering the property values by means of the Precision loan (encumbering

some property, paying off debts on other property or funneling into other property). See Br. Appellant, at 7-8. Donna's efforts to track his financial machinations were hindered by Richard's own failures to comply with court-ordered monthly accountings. CP 8. Richard did not even respond to Donna's repeated efforts to schedule a site visit of Padden and meet with his valuation expert and bookkeeper. CP 214, 216-217. In any event, whether Donna obtained her own valuations is irrelevant to the issue she raises on appeal; she is not challenging the stipulated valuations, just the reduction of those values for capital gains and health care act taxes and other speculative selling costs to which she did not stipulate.

1) Cedarlake

Richard does not even address Donna's argument and the undisputed evidence that debt on the books at time of valuation was later paid off, thereby increasing the value of Cedarlake. See Br. Appellant, at 11-12. Instead, Richard simply argues that there was evidence to support the court's finding that it had no value, relying mostly on his "word" that it was "in the red." See Br. Respondent, at 12-13. While he also points to the fact that the bonding companies withdrew bonds from Cedarlake as a result of the lawsuit, so it could not do business without a bond, Br. Respondent, at 12-13, he testified the license was simply suspended, not

revoked, and that he could renew by paying the fee. 5RP 207-08. In other words, Cedarlake's value was completely within Richard's control.

Richard further complains that Donna is "doubling counting" by pointing out that Cedarlake's projected income stream also increases its value. Br. Respondent, at 13. This double-dipping argument has been repudiated, since a business can have both a value and produce income to the owner. *See, e.g., In re Marriage of Valente*, 179 Wn. App. 817, 830, 320 P.3d 115, 121 (2014). Here, the evidence was that Cedarlake had a value of at least $114,000, a fact the court is not free simply to ignore. *See Wold v. Wold,* 7 Wn. App, 872, 503 P.2d 118 (1972) (value is a material and ultimate fact crucial to evaluating overall distribution).

Finally, Richard is so determined to zero out Cedarlake's value he wants this Court to ignore his own testimony about the counterclaim against the company. Br. Respondent, at 13 n.4 (characterizing Donna's argument on this issue both as "speculation" and a "red herring"). In fact, Richard was speculating when he testified as follows:

> [T]his valuation on April 1, 2015 did not include the counterclaim against Cedarlake Company. The counterclaim is seeking over $300,000.00 in damages and attorney fees. Husband testified that, if the counterclaim is successful, it will spell the doom of Cedarlake Company.
>
> Crediting $63,000 toward the value based on an unsettled lawsuit must then be balanced by deducting the value of the counterclaim. Even deducting 50% of the

> value of the counterclaim now leaves Cedarlake with a net value of zero.

CP 237 (closing argument).[8] Against all reason, the court bought this argument. There was no evidence of any value to the counterclaim or any exposure. Br. Appellant, at 11. The court on one hand recognized Cedarlake's insurance would cover any counterclaim, yet still opined that the "best you can hope is to get out of this with a zero." 5RP 293-294. Actually, the best Richard could hope is that his thriving business would show up as valueless on the spreadsheet, a wish the court granted.

2) Carty Road & Bend Condo

Richard contends that his testimony supports a value of $149,000 for the Carty Road residence given the debts, mortgage interest, and sales costs. Br. Respondent, at 14-15. But this assumes it would be sold. In fact, the house was not listed at time of trial and had not been listed since December 2015. RP 225.[9] And as Donna testified, Richard had no intention or motivation to sell it as he and his companion were living there. 5RP 16-17. Even the court expected Richard to live in the house. CP 116, 5RP 497 ("both parties now will have their own house and so forth."). Moreover, no costs of sale were deducted from the Bend Condo,

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[8] This figure of "over $300,000" for the counterclaim is not even supported by the record. At trial, Richard testified that they were "hearing numbers estimating around $225,000" for the counterclaim. 5RP 34.

[9] In his pro se pleading this year, Richard lists his address as Carty Road. See Letter of 8/17/17 (in appendix); see, also, Appendix (current tax assessment).

awarded to Donna, though Richard got the benefit of these speculative reductions across the board. Richard claims this is because there was no indication Donna would sell the condo. Again, Richard's double standard is at work: he and his new companion were living in Carty Road and Richard opposed Donna's request that the property be sold and the proceeds shared. Why should he get the benefit of a reduction in value for a sale that he opposed?

Finally, Richard contends that Donna did not preserve this alleged error because she did not ask the court to consider these additional costs in its valuation. Br. Respondent, at 17. Donna's challenge is to the court's failure to distribute the property in a manner that is just and equitable. She opposed deductions Richard sought and rightly so. The discrepant treatment of the Bend Condo simply underscores the inequity in the result here.

3) The Timbers

The response brief does not address Donna's argument that capital gains taxes and health care act taxes are speculative. Br. Respondent, at 17 (simply states "it was well within the range of the evidence for the trial court to calculate capital gains and Obamacare taxes"). Apparently Richard agrees.

D. DONNA SHOULD BE AWARDED HER ATTORNEY FEES.

Richard claims the court should deny the attorney fees request because he is paying maintenance to Donna every month. That does not mean she has the ability to pay her fees, as Richard well knows, especially if she must incur the costs he contemplates necessary to enforce the judgments entered against him. In any case, financial declarations filed pursuant to RAP 18.1(c) will support Donna's request.

III. CONCLUSION

For the reasons stated above and in Appellant's Opening Brief, Donna Young asks the trial court's orders be vacated and the matter remanded for the court to perform the requisite analysis it did not do in the first place and to award maintenance and distribute the property so that both parties enjoy in equal shares the fruits of their labor – financial security. She also asks the court award attorney fees.

Respectfully submitted this 22nd day of December 2017.

/s Patricia Novotny, WSBA #13604
/s Nancy Zaragoza, WSBA #23281

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3418 NE 65th Street, Suite A
Seattle, WA 98115
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Email: patricia@novotnyappeals.com
Attorneys for Appellant

FILED
COURT OF APPEALS
DIVISION II

2017 AUG 18 AM 9:09

STATE OF WASHINGTON

BY _____
DEPUTY

August 17, 2017

Court Clerk
Washington State Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4427

RE: Extension of time to submit Respondent's Opening Brief
Court of Appeals No.: 49874-0-II
Skamania County No.: 14-3-00036-2
Marriage of Richard L. Young, Respondent vs Donna D. Young, Appellant

Court Clerk,

I, Richard L. Young am writing the court to request an extension of time to file a response to the appellant's brief. I am without council and have been seeking representation since receiving an email from my former divorce attorney on 8/8/17 (see attached). Until this date, I had been provided no information of an appeal from the appellant or her attorneys.

Since this date, I have been working to find an attorney who would handle this case. So far I've received calls back telling me the attorney(s) are on vacation, they're not taking on new cases at this time and several have been conflicting out due to the fact the Appellant had reviewed the case with them and they felt it would be a conflict at this time. I have a couple attorneys who return from vacation next week who have stated if an extension of time to submit a brief is granted, they will consider the case.

Given the fact the Appellant was allowed a 30 day extension to file their brief and the fact I have been without knowledge and council to deal with this, I'm requesting the court to grant me a 60 day extension of time to obtain legal counsel and submit my response brief.

Respectfully,

Richard L. Young
2307 NW Carty Road
Ridgefield, WA 98642
(360) 624-6350

Attachments -

Washington State Department of Labor & Industries

ONYX CONTRACTING INC

Owner or tradesperson

Principals
HIGGINS, WENDY LEE, PRESIDENT

Doing business as
ONYX CONTRACTING INC

9120 NE VANCOUVER MALL LOOP
#220
VANCOUVER, WA 98662
360-694-0177
CLARK County

WA UBI No.
603 552 180

Business type
Corporation

License

Verify the contractor's active registration / license / certification (depending on trade) and any past violations.

Construction Contractor

Active.
Meets current requirements.

License specialties
GENERAL

License no.
ONYXCCI848J2

Effective — expiration
04/22/2016— 04/22/2018

Bond

Western Surety Co

$12,000.00

Bond account no.
62740872

Received by L&I
04/22/2016

Effective date
04/15/2016

Expiration date
Until Canceled

Insurance

Houston Specialty Ins Co

$2,000,000.00

Policy no.
TEN19239

Received by L&I
04/13/2017

Effective date
04/14/2017

Expiration date
04/14/2018

Insurance history

Savings
No savings accounts during the previous 6 year period.

Lawsuits against the bond or savings
No lawsuits against the bond or savings accounts during the previous 6 year period.

L&I Tax debts
No L&I tax debts are recorded for this contractor license during the previous 6 year period, but some debts may be recorded by other agencies.

License Violations
No license violations during the previous 6 year period.

Workers' comp

Do you know if the business has employees? If so, verify the business is up-to-date on workers' comp premiums.

L&I Account ID
627,148-00

Call L&I account representative for account status.

Doing business as
ONYX CONTRACTING INC

Estimated workers reported
Incomplete premium report received.

L&I account contact
Collections Dialer Unit, 800-301-1826 - Email: dialercollections@Lni.wa.gov

Public Works Strikes and Debarments

Verify the contractor is eligible to perform work on public works projects.

Contractor Strikes
No strikes have been issued against this contractor.

Contractors not allowed to bid
No debarments have been issued against this contractor.

Workplace safety and health

No inspections during the previous 6 year period.

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Washington State Department of Labor & Industries

CEDARLAKE COMPANY INC

Owner or tradesperson

Principals
YOUNG, RICHARD LANE, PRESIDENT

SENDALL, KATHY, SECRETARY
(End: 06/30/2000)

9120 NE VANCOUVER MALL LP #220
VANCOUVER, WA 98662
360-694-8000
CLARK County

Doing business as
CEDARLAKE COMPANY INC

WA UBI No.
601 801 476

Business type
Corporation

License

Verify the contractor's active registration / license / certification (depending on trade) and any past violations.

Construction Contractor

Expired.
License holder did not renew.

License specialties
GENERAL

Suspend date
04/23/2016

License no.
CEDARCI011KS

Effective — expiration
05/10/1999— 06/01/2017

Bond
No current bond account. See the bond history.

Bond history

Insurance
No current insurance account. See the insurance history.

Insurance history

Savings
No savings accounts during the previous 6 year period.

Lawsuits against the bond or savings

Cause no.
17-2-05280-2

Open

Complaint filed by
NUTTER CORP

Complaint against bond(s) or savings
100117200

Complaint date
07/28/2017

Complaint amount
$122,449.79

Cause no.
16-2-07200-9

Unsatisfied

Complaint filed by
PACWEST DRYWALL & PAINTING

Complaint against bond(s) or savings
100117200,46WB045802

Complaint date
05/10/2016

Complaint amount
$18,413.00

Cause no.
15-2-00578-6

Open

Complaint filed by
MUTUAL LLC

Complaint against bond(s) or savings
46WB045802

Complaint date
05/19/2015

Complaint amount
$0.00

Cause no.
15-2-00578-6

Open

Complaint filed by
MUTUAL LLC

Complaint against bond(s) or savings
100117200

Complaint date
05/27/2015

Complaint amount
$0.00

L&I Tax debts
No L&I tax debts are recorded for this contractor license during the previous 6 year period, but some debts may be recorded by other agencies.

License Violations
No license violations during the previous 6 year period.

Workers' comp

Do you know if the business has employees? If so, verify the business is up-to-date on workers' comp premiums.

L&I Account ID
936,548-00

Account is closed.

Doing business as
CEDARLAKE COMPANY INC

Estimated workers reported
N/A

L&I account contact
T0 / KARLA BOWMAN (360)902-5535 - Email: BOWK235@lni.wa.gov

Public Works Strikes and Debarments

Verify the contractor is eligible to perform work on public works projects.

Contractor Strikes
No strikes have been issued against this contractor.

Contractors not allowed to bid
No debarments have been issued against this contractor.

Workplace safety and health

Check for any past safety and health violations found on jobsites this business was responsible for.

Inspection results date
03/07/2014

Violations

Inspection no.
316968221

Location
1605 NE 99th Street
Vancouver, WA 98665

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Department of Revenue Washington State

772895 - $10.00 - Scott W. Swind - Autumn Sailer - 09/19/2017

REAL ESTATE EXCISE TAX AFFIDAVIT

CHAPTER 82.45 RCW – CHAPTER 458-61A WAC

PLEASE TYPE OR PRINT

This form is your receipt when stamped by cashier.

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

☐ Check box if partial sale, indicate % sold. List percentage of ownership acquired next to each name.

1 SELLER GRANTOR

Name Richard L Young and Donna D Young, Co-Trustees of the Young Family Revocable Trust, dtd 12/19/00

Mailing Address 2307 NW Carty Road

City/State/Zip Ridgefield, WA 98642

Phone No. (including area code)

2 BUYER GRANTEE

Name Richard L. Young, Trustee of the Richard L. Young Revocable Trust dated 10/1/14

Mailing Address 2307 NW Carty Road

City/State/Zip Ridgefield, WA 98642

Phone No. (including area code)

3 Send all property tax correspondence to: ☑ Same as Buyer/Grantee

Name

Mailing Address

City/State/Zip

Phone No. (including area code)

List all real and personal property tax parcel account numbers – check box if personal property		List assessed value(s)
216675000	☐	$823,901.00
	☐	$616,932.00 (taxable)
	☐	
	☐	

4 Street address of property: 2307 NW Carty Road, Ridgefield, WA 98642

This property is located in Clark County

☐ Check box if any of the listed parcels are being segregated from another parcel, are part of a boundary line adjustment or parcels being merged.

Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit)

Abbreviated legal description: #4 #42 Sec 33 T4N R1EWM; #6 Sec 28 T4N R1EWM (26.58A)

See Exhibit A attached hereto for complete legal description.

5 Select Land Use Code(s):

11 - Household, single family units

enter any additional codes: 83 - Agriculture

(See back of last page for instructions)

	YES	NO
Was the seller receiving a property tax exemption or deferral under chapters 84.36, 84.37, or 84.38 RCW (nonprofit organization, senior citizen, or disabled person, homeowner with limited income)?	☑	☐

6

	YES	NO
Is this property designated as forest land per chapter 84.33 RCW?	☐	☑
Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34 RCW?	☑	☐
Is this property receiving special valuation as historical property per chapter 84.26 RCW?	☐	☑

If any answers are yes, complete as instructed below.

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE)

NEW OWNER(S): To continue the current designation as forest land or classification as current use (open space, farm and agriculture, or timber) land, **you must sign on (3) below.** The county assessor must then determine if the land transferred continues to qualify and will indicate by signing below. If the land no longer qualifies or you do not wish to continue the designation or classification, it will be removed and the compensating or additional taxes will be due and payable by the seller or transferor at the time of sale. (RCW 84.33.140 or RCW 84.34.108). Prior to signing (3) below, you may contact your local county assessor for more information.

This land ☑ does ☐ does not qualify for continuance.

Julie Ellison 9/19/17

DEPUTY ASSESSOR DATE

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY)

NEW OWNER(S): To continue special valuation as historic property, **sign (3) below.** If the new owner(s) does not wish to continue, all additional tax calculated pursuant to chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.

(3) OWNER(S) SIGNATURE

PRINT NAME

Richard L. Young, Trustee

7 List all personal property (tangible and intangible) included in selling price.

If claiming an exemption, list WAC number and reason for exemption:

WAC No. (Section/Subsection) 458-61A-203(2)

Reason for exemption

Dissolution of marriage - transfer made pursuant to court decree filed 12/15/16, No. 14-3-00036-2.

Type of Document Statutory Quit Claim Deed

Date of Document August 2, 2017

Gross Selling Price $	0.00
*Personal Property (deduct) $	
Exemption Claimed (deduct) $	
Taxable Selling Price $	0.00
Excise Tax : State $	0.00
0.0050 Local $	0.00
*Delinquent Interest: State $	
Local $	
*Delinquent Penalty $	
Subtotal $	0.00
*State Technology Fee $	5.00
*Affidavit Processing Fee $	
Total Due $	10.00

A MINIMUM OF $10.00 IS DUE IN FEE(S) AND/OR TAX
*SEE INSTRUCTIONS

8 **I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

Signature of **Grantor or Grantor's Agent**

Name (print) Richard L. Young/Donna D. Young, Co-Trustee

Date & city of signing: 6/2/17 Vancouver, WA

Signature of **Grantee or Grantee's Agent**

Name (print) Richad L. Young, Trustee

Date & city of signing: 6/2/17 Vancouver, WA

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars ($5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).

REV 84 0001a (09/14/16) THIS SPACE - TREASURER'S USE ONLY COUNTY TREASURER

EXHIBIT "A" No.: A-69597

PARCEL I

A parcel of property in the Northeast quarter of the Northwest quarter of Section 33, and the Southeast quarter of the Southwest quarter of Section 28, Township 4 North, Range 1 East of the Willamette Meridian in Clark County, Washington, described as follows:

COMMENCING at the Northeast corner of the Northwest quarter of said Section 33;

THENCE South 01°19'43" West along the East line of said Northwest quarter 474.11 feet to the centerline of N.W. Carty Road;

THENCE South 38°04'01" West 378.01 feet;

THENCE South 01°19'43" West 557.46 feet to the South line of the Northeast quarter of the Northwest quarter of said Section 33;

THENCE North 88°55'51" West along said South line 220.00 to the TRUE POINT OF BEGINNING.

THENCE North 01°09'53" West 1149.29 feet to said centerline of N.W. Carty Road.

THENCE North 58°12'47" West along said centerline 82.83 feet to Northerly extension of the Easterly line of that tract conveyed to the Evangelical Methodist Church by deed recorded under Auditor's File No. 264259, records of Clark County.

THENCE South 31°47'13" West along said Northerly extension and along said Easterly line 132.00 feet to the Southeast corner of said Church tract.

THENCE North 58°12'47" West along the Southerly line of said Church tract 119.00 feet to the Southwest corner thereof;

THENCE North 31°47'13" East along the Westerly line (and a Northerly extension of) said Church tract 132.00 to said centerline of N.W. Carty Road;

THENCE North 58°12'47" West along said centerline 10.85 feet to an 11,000.00 foot radius curve to the right.

-Continued-

THENCE around said 11,000.00 foot radius curve to the right 145.40 feet to a Northeasterly line of Parcel 3 of that tract conveyed to Kenneth Maarhuis, et ux, by real estate contract recorded under Auditor's File No. 7802210130, Clark County records; THENCE along said Northeasterly line and around said 11,000.00 feet radius curve to the right 27.97 feet;

THENCE North 57°18'36" West along said Northeasterly line 481.87 feet to the West line of said Parcel 3; thence South 01°31'07" West along said West line 268.00 feet to the North line of the Northeast quarter of the Northwest quarter of said Section 33; thence North 89°01'28" West along the North line of the Northeast quarter of the Northwest quarter of said Section 33 a distance of 66.00 feet to the Northwest corner thereof; thence South 01°27'57" West along the West line of the Northeast quarter of the Northwest quarter of said Section 33 a distance of 1331.37 feet to the Southwest corner thereof; thence South 88°55'51" East along the South line of the Northeast quarter of the Northwest quarter of said Section 33 a distance of 863.63 feet to the TRUE POINT OF BEGINNING.

PARCEL II

A parcel of property in the Northeast quarter of the Northwest quarter of Section 33, Township 4 North, Range 1 East of the Willamette Meridian in Clark County, Washington, described as follows:

COMMENCING at the Northeast corner of the Northwest quarter of said Section 33; thence South 01°19'43" West along the East line of said Northwest quarter 474.11 feet to the centerline of N.W. Carty Road and a point hereinafter referred to as point "A"; and the TRUE POINT OF BEGINNING; thence South 38°04'01" West 378.01 feet; thence South 01°19'43" West 557.46 feet to the South line of the Northeast quarter of the Northwest quarter of said Section 33; thence North 88°55'51" West along said South line 220.00 feet; thence North 01°09'53" West 1149.29 feet to said centerline of N.W. Carty Road; thence South 58°12'47" East along said centerline 486.89 feet to a 875.00 foot radius curve to the left; thence along said centerline and around said 875.00 foot radius curve to the left 86.28 feet to the TRUE POINT OF BEGINNING.

EXCEPTING from the above Parcels I and II that tract conveyed to Thomas P. McCarthy and Sherry L. McCarthy by deed recorded February 21, 1997 as Auditor's File No. 9702210126.

ZARAGOZA NOVOTNY PLLC

December 22, 2017 - 12:58 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	49874-0
Appellate Court Case Title:	In re the Marriage of: Richard L. Young, Respondent v. Donna D. Young, Appellant
Superior Court Case Number:	14-3-00036-2

The following documents have been uploaded:

- 498740_Briefs_20171222125746D2893040_2928.pdf
  This File Contains:
  Briefs - Appellants Reply
  The Original File Name was Young BIR FINAL.pdf

A copy of the uploaded files will be sent to:

- paralegal@appeal-law.com
- shelby@appeal-law.com

Comments:

Sender Name: Patricia Novotny - Email: patricia@novotnyappeals.com
Address:
3418 NE 65TH ST STE A
SEATTLE, WA, 98115-7397
Phone: 206-525-0711

Note: The Filing Id is 20171222125746D2893040