

FILED  
Court of Appeals  
Division II  
State of Washington  
11/13/2017 3:31 PM  
No. 50213-5-II

**Court of Appeals, Div. II,  
of the State of Washington**

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In re Marriage of Wirkkala,

Eric Marvin Wirkkala,

Respondent,

v.

Lori Denise Wirkkala,

Appellant.

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**Brief of Appellant**

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## **1. Introduction**

Lori and Eric Wirkkala<sup>1</sup> founded Wirkkala Contracting, Inc. together and built it into a successful business. At the outset of their divorce, the parties requested a neutral bookkeeping expert to help sort out their books to make sure they could work together effectively during the divorce and be ready to have a formal valuation of the business. The appointed bookkeeper helped Eric access the company finances, but did not work with Lori or bookkeeping staff to sort out the books. The case stalled for over three years, with the parties continuing to run the business as they had before.

When Eric suddenly claimed that Lori was not cooperating and was withholding information, despite Lori's best efforts to give Eric access to everything, the trial court entered a temporary order ejecting Lori from the business. The judge then mysteriously recused himself from the case.

The parties proceeded to trial with a new judge. Lori pressed to have a formal business valuation, but no longer had access to current financial information to form the basis for an opinion. The trial proceeded with incomplete evidence of the value of the business. The trial court awarded the business to

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<sup>1</sup> To avoid confusion, this brief will refer to the parties by their first names. No disrespect is intended.

Eric, with compensating payment to Lori of 60 percent of the appraised value of the business assets. It is unclear how the trial court reached this decision.

The actions of the original judge and his appointed expert—both of whom had conflicts of interest that caused them to unfairly favor Eric—deprived Lori of her right to due process of law in this divorce, with the result that the business was not properly valued and Lori not equitably compensated. This Court should reverse and remand for a new trial on the value of the business, with opportunity for the parties to obtain a formal valuation for the trial court's benefit.

## **2. Assignments of Error**

### **Assignments of Error**

1. The trial court abused its discretion in entering the temporary order that ousted Lori Wirkkala from any involvement in Wirkkala Contracting, Inc.
2. The trial court failed to make an adequate record of the factors and methods it considered in arriving at a value for the business.
3. There was no evidence to support the trial court's finding that 17 percent (\$64,000) of Lori's PERS account was community property.

### **Issues Pertaining to Assignments of Error**

1. Lori testified at trial that she earned PERS benefits for 17 years prior to marriage and only 13 months during the marriage. This calculates to about 6

percent, not 17. Eric provided no evidence to support his 17 percent figure. Should this Court reverse the finding because it was unsupported by substantial evidence in the record? (assignment of error 3)

2. Temporary orders are authorized for parenting plans, child support, maintenance, or specified restraining orders. There is no statutory authority for a temporary order disposing of a party's property or terminating their employment. The trial court's temporary order divested Lori of the value of her shares and prohibited her from performing her job, prejudicing her ability to present a competent valuation at trial. Should this Court remand for corrective action, such as a new trial on valuation? (assignment of error 1)
3. Valuation of a closely held corporation requires findings and conclusions adequate for appellate review of the factors and methods considered by the trial court. The trial court's decree and findings and conclusions fail to set forth the factors, methods, or reasoning used to arrive at the valuation. No formal valuation was ever performed. Should this Court remand for reconsideration of the valuation? (assignment of error 2)

### **3. Statement of the Case**

#### **3.1 Lori and Eric Wirkkala married and together built Wirkkala Contracting, Inc., into a successful family business.**

Lori and Eric Wirkkala met in 1993. They became romantically involved, and in 1994, Eric moved into Lori's house in Astoria, Oregon. 3 RP 38.<sup>2</sup> At the time, Eric was working for

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<sup>2</sup> The Verbatim Report of Proceedings in this case is extensive. Transcripts were prepared by four different court reporters. Volume 1

Naselle Rock and Asphalt as a paving manager. 2 RP 190. Lori was the County Clerk for Clatsop County, Oregon. 3 RP 33; 6 RP 209-10.

Lori had been a mechanic in the U.S. Army and a heavy equipment operator in the National Guard. 2 RP 189. In 1994 or '95, the couple purchased some equipment from Naselle Rock and Ritchie Brothers auction to start a business they called Asphalt Seal Coating Service. 3 RP 34, 38. Both Eric and Lori kept their day jobs and operated the business whenever they could get time. 3 RP 36.

Lori obtained her general contractor's license in Oregon in 1995. 2 RP 189-90. That same year, she incorporated Wirkkala Contracting, Inc. ("WCI"). 3 RP 38.

Eric was approached by Les Swensen, owner of Swensen Construction, with an opportunity to buy Swensen's equipment and land. 2 RP 190-91; 3 RP 126-27. At first, Eric hesitated to make such a large purchase, but Lori convinced him that they should do it. 2 RP 190-91; 3 RP 126-27. In September 1996, the

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contains four hearings held before Judge Goelz in 2010-14 before the case was transferred to Judge McCauley. Volumes 2-8 contain the trial in this case, held June 23 and 24, 2015, and February 2-4, 2016. The eight volumes will be cited in standard format (for example, 2 RP 190, referring to page 190 of volume 2). Eight hearings were combined into a single, unnumbered volume. Three other hearings were transcribed separately. Each of these unnumbered transcripts will be cited by date and page number (for example, RP, June 4, 2015, at 28-29).

couple got a \$100,000 loan for the down payment, using property Eric had received as a gift from his mother as collateral. 3 RP 44; 5 RP 161-62; 6 RP 214. Swensen carried the balance of the purchase price on contract. 3 RP 44; 5 RP 161-62. Eric quit his job at Naselle Rock and devoted himself full-time to WCI. 3 RP 42. Lori continued as county clerk and spent her nights and weekends running the books for WCI. 3 RP 41-42, 130.

Eric and Lori married on May 25, 1998. 3 RP 40. In 1999, Lori stopped working for the county and devoted herself full-time to WCI. 6 RP 210. The same division of labor continued throughout the marriage, with Eric doing most of the field work and Lori handling the books. 3 RP 134.

The couple had a joint checking account into which they deposited a minimal monthly salary from the business. 2 RP 68; 3 RP 149. Many of their personal expenses were paid through business credit cards. 2 RP 73-75, 185-86. Personal and business expenses had been commingled since the very beginning. 2 RP 75, 186. Eric had equal access to all company records and assistance from the bookkeeper. 2 RP 68-69, 88-89, 180-81.

### **3.2 Dissolution proceedings began in 2010, then stalled for over three years under the watch of Judge Pro Tem Goelz and his appointed bookkeeping expert, Niki Goodin.**

Eric petitioned for legal separation in August 2010. CP 5. Lori responded with a counter-petition for dissolution. CP 14.

At the beginning of the first hearing for temporary orders, Judge Pro Tem Douglas Goelz disclosed that the day before the hearing he had a conversation with Eric on behalf of the Seaview Sewer District (for which Judge Goelz was the attorney) regarding an emergency that needed a contractor. 1 RP 4. Based on the disclosure, Lori's counsel did not ask Judge Goelz to recuse himself. 1 RP 4-5. However, after having time to consider the implications of the ex parte contact, Lori had serious reservations and had her new counsel request that the judge recuse himself. CP 25. It later came out that Eric had actually done some work for Seaview Sewer District. 3 RP 197-98.

After the hearing, Judge Goelz entered a temporary order that included provisions intended to preserve the status quo, such as restraining the parties from transferring or disposing of any property except in the ordinary course of business or for the necessities of life and requiring the parties to cooperate and agree in the operation of the business. CP 41-42. The order appointed Niki Goodin to be "the Court's expert to come into the business to help the parties straighten out the business bookkeeping and to report to the Court about the status and issues of the business." CP 42.

The purpose of appointing Niki Goodin was to assist Eric and Lori and the company bookkeeper to shift to a compensation structure that would pay Eric and Lori a reasonable rate for the

work they were doing and to separate out personal and business expenses, so the company could run smoothly despite the divorce. 1 RP 42-43; 2 RP 73, 77, 78.

In the initial meeting with Goodin, Lori explained the help that she needed in sorting out the books. 2 RP 178. Eric expressed a desire to be more involved with the books and be able to review the information without going through Lori or the bookkeeper. 2 RP 111-12. They had two or three other meetings. 2 RP 113. Goodin spent most of that time trying to help Eric connect his computer to the company's QuickBooks data. 2 RP 112, 178.

At their last meeting, Lori expressed frustration that she had too much work to do to take the time for meetings that were not providing the expected benefit. 2 RP 113. Though she didn't express it at the time, Lori believed that Goodin was more concerned with helping Eric than acting as a neutral expert to help the business. *See* RP, June 4, 2015, at 16-17. Goodin admitted under oath that her only contacts outside the office visits were with Eric and his attorney. 1 RP 105. After the last meeting, Goodin reported to Eric's attorney that Lori was not providing information that Goodin felt she needed. CP 46. Goodin did not pursue things any further and the parties did not call for her services. 2 RP 116.

Goodin never accomplished the task for which she was appointed. *See* 1 RP 74-75. It came out at various times that she was also the accountant for both the Seaview Sewer District (for which Judge Goelz was the attorney) and for Judge Goelz personally. 1 RP 42, 72. In 2014, after Eric took control of the company, he hired Goodin to help him manage payroll and taxes. 2 RP 119.

After the temporary order, the case went dormant for over three years. The business continued as it had before, with Eric mostly doing the field work and Lori mostly running the books.

### **3.3 Judge Goelz ejected Lori from the business and then mysteriously recused himself from the case.**

Suddenly, in March 2014, Eric, without counsel, moved for the complete removal of Lori from every aspect of the couple's previous life together. CP 47. Eric asked the trial court to give him full custody of their minor child; to remove Lori from control of the business; and to evict Lori from the marital home. CP 47. Eric argued that Lori was denying him and Goodin access to business records. CP 48. Eric objected to Lori paying personal expenses out of the business. CP 49; 3 RP 140-41. Lori responded that nothing had changed from the time of the temporary order; the business was still running smoothly despite the flare-ups between Eric and Lori. CP 85; 1 RP 51.

At the end of the hearing, Judge Goelz scheduled an interview with the minor child the next day at 11 a.m. 1 RP 66. He indicated he would make his decision after the interview. 1 RP 66. Before the scheduled interview, Judge Goelz was seen in the hallway speaking with Eric and the guardian ad litem. CP 302. Judge Goelz revised another judge's protective order that restrained Eric from being near the minor child. CP 301-02. That afternoon, Judge Goelz issued a memorandum decision that gave Eric full custody of the minor child; restrained Lori "from acting in any manner for Wirkkala Construction;" and gave Eric "sole authority to control and run all aspects of Wirkkala Construction." CP 80-83.

Lori moved for reconsideration of the decision. CP 112. She explained that no business information was ever denied to Eric; he simply doesn't understand the financial side of the business. CP 93. Eric repeated his allegations that Lori was withholding company information. CP 116. Lori testified that she attempted in good faith to provide all information she had. CP 120, 123-24. She testified that both parties had a long-standing practice of paying personal expenses through the business. CP 122.

Judge Goelz denied Lori's motion and entered an order pursuant to the memorandum opinion. CP 182-85. The order granted Eric complete control over all aspects of the business.

CP 183. It restrained Lori from any involvement in the business and from any access to business information. CP 183-84.

Judge Goelz then recused himself from the case without explanation. CP 186.<sup>3</sup>

### **3.4 Judge McCauley took the case through trial and final orders.**

The case was reassigned to Judge Mark McCauley, a visiting judge from Grays Harbor County. *See* RP, Mar. 2, 2015. The judge ordered a quick trial date, observing that the case should never have gone on for so many years. RP, Mar. 2, 2015, at 12-13. The judge released Goodin from her duties as court-appointed expert. RP, June 4, 2015, at 18. The judge could not understand what Judge Goelz had done with the case, commenting, “This is the most ridiculous divorce file I’ve ever seen.” RP, June 4, 2015, at 28-29. However, rather than look back, Judge McCauley’s focus was to get the case finished. RP, June 4, 2015, at 28-29.

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<sup>3</sup> Between the takeover order and Judge Goelz’s mysterious recusal, a status hearing was held to take testimony from Goodin regarding her work in sorting out the business bookkeeping. *See* 1 RP 67. Goodin testified, generally, that she was having difficulty obtaining the information she felt she needed to perform her duties. *See, e.g.*, 1 RP 75. But she also testified to a morphed vision of her duties that included forensic accounting of where every dollar was spent. *See* 1 RP 93-94, 108. The court admonished Lori to provide all information in her possession. 1 RP 115.

Phase one of the trial was held over two days in June 2015. It focused primarily on parenting issues, using the remaining time to begin testimony of financial and business issues. *See, generally*, VRP Vols. 2-4. On the first day of trial, the parties presented the court with an agreement on neutral appraisers for the real property and the business equipment. 2 RP 5-6. The parties intended to also hire a business valuation expert if they could reach agreement on who the expert would be. *Id.* The court signed an agreed order to that effect. CP 281-82. The parties never did reach agreement on a business valuation expert. *See* CP 305-06.

Between the two phases of trial, Lori pushed for a business valuation. RP, Aug. 10, 2015, at 51; RP, Sept. 8, 2015, at 3. As the final trial approached, the court voiced doubt that a proper valuation could be completed in time. RP, Sept. 21, 2015, at 77-78. The court stated that if there was no formal valuation, he would have to order the business liquidated and simply divide the proceeds. RP, Sept. 21, 2015, at 78-79, 84.

The court had also stated at one point that the parties could each testify to the value of the company, as owners. RP, Sept. 8, 2015, at 15. However, at trial Lori emphasized that due to the restrictions in Judge Goelz's temporary order, she had been locked out from any current business information and

therefore could not form an opinion on value. *See, e.g.*, CP 304 (Lori's trial memo).

Phase two of trial was held in February 2016. *See, generally*, RP Vols. 5-8. The court issued a memorandum decision, in which it awarded WCI and its equipment and associated real estate to Eric, with compensation to Lori of 60 percent of the assets' value, in consideration of the ongoing goodwill of the company in Eric's hands. CP 329. The decision was not memorialized in written orders until March 2017. CP 624-42. The final Decree left a few, designated issues for determination at a hearing to be set on June 9. CP 631.

### **3.5 Judge McCauley conditionally accepted Eric's accounting of the community property status of Lori's PERS retirement account.**

One of those issues was the current amount and community property portion of Lori's PERS retirement account. CP 631. Eric's trial testimony regarding the PERS account focused on the amount of contributions that accrued during the marriage. 5 RP 113. During trial, Eric proposed that the entire account be treated as Lori's separate property. 5 RP 113; CP 299 (Eric's trial brief). Lori testified that 17 years of PERS contributions accumulated before the marriage and only 13 months during the marriage. 5 RP 176; 6 RP 236. Lori proposed

that about 1/18 of the current value in the account would be community property. 8 RP 45.

In closing arguments, Eric changed course and asked for 17 percent of the total to be community property. 8 RP 53-54. It is unclear where Eric's 17 percent figure came from. The final decree adopted Eric's proposed figures, but left Lori the option of arguing for different figures at the June 9 hearing. CP 631.

In advance of the June 9 hearing, Lori presented a declaration from accountant, Paul Pederson, setting forth the present value of the community property portion, based on 13 months of benefits accruing during the marriage. CP 848-53. Pederson found that the figures in the Decree overcompensated Eric by \$20,600. CP 850, 853.

At the hearing, Eric argued that his 17 percent figure had been accepted by the court based on the committed intimate relationship, though he was still unable to explain how he arrived at that number. RP, June 9, 2017, at 236. The court, not having immediate access to the trial transcript to refresh his memory, ruled that the figure would remain unchanged, subject to review of the record. RP, June 9, 2017, at 239-40. If the record did not support the committed intimate relationship argument, the court would instead accept Pederson's analysis. RP, June 9, 2017, at 241.

## **4. Argument**

### **4.1 The trial court's finding that 17 percent of Lori's PERS account was community property was not supported by any evidence in the record.**

In the final decree, the trial court found that Lori's PERS account had a total value of \$384,000, of which \$64,000 was community property earned during the marriage and the balance was Lori's separate property. CP 631. The trial court attributed the non-business community property half to each party, meaning Eric was credited with \$32,000 of Lori's PERS retirement account.

Findings of fact must be overturned if they are not supported by substantial evidence in the record. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012). Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted. *Id.*

There is no evidence to support the trial court's finding. Eric was never able to articulate the basis for his 17 percent figure. The parties agreed to an estimated total value in the account of \$384,000. 8 RP 44, 53. Eric proposed that 17 percent of that total, \$64,000, was community property, because, "That's what I heard her say, seventeen percent of the marriage. I don't know, that's all we had." 8 RP 54. Lori never testified or argued that 17 percent of the contributions had accrued during the

marriage. Rather, she had testified that she accrued benefits for **17 years before the marriage** and only 13 months during the marriage. 5 RP 176; 6 RP 236. This calculates to about **six percent** accruing during the marriage, not 17. *See* 8 RP 45.

There was no other evidence regarding how much of the PERS account had accrued during the marriage. There is no evidence in the record to support Eric's 17 percent figure.

Nevertheless, Eric persisted in arguing for its adoption in the final decree. In closing arguments, Eric raised the theory of a committed intimate relationship extending the period over which the benefits would have been community property. 8 RP 55. The trial court ruled that because the parties had not previously sought to establish a period of committed intimate relationship, the community property portion should be "based on the testimony regarding **when they were married** and ... when she left Oregon government ... employment." 8 RP 59 (emphasis added). In other words, the court would not consider any period of committed intimate relationship; it would only consider those benefits accruing **during the marriage** as being community property.

At a March 10, 2017, hearing on final orders, Eric recognized the court's ruling, but argued that his 17 percent figure was the "best estimate" of the amount earned during marriage. RP, Mar. 10, 2017, at 5. At the final hearing on June 9,

Eric returned to the committed intimate relationship argument. RP, June 9, 2017, at 236. Lori presented an analysis from accountant, Paul Pederson, that found the community property portion was only \$22,789, based on 13 months of accrual during the marriage. CP 850, 853. Because memories were dim, and the case had already been appealed, the trial court ruled that the 17 percent figure in the decree would remain unchanged, subject to review of the record. RP, June 9, 2017, at 239-40. If the record did not support the committed intimate relationship argument, the court would instead accept Pederson's analysis. RP, June 9, 2017, at 241.

As shown above, the record does not support the committed intimate relationship argument. The trial court rejected it and ruled that the community property portion of the PERS account should be based on the amount accruing **during the marriage**. There is no evidence supporting Eric's 17 percent figure. Rather, the evidence supports Pederson's analysis. The trial court stated that if this was shown to be the case, the trial court would adopt Pederson's analysis. This Court should reverse the written finding and remand to the trial court to enter appropriate findings and award Lori an additional \$20,600 to correct the error.

## **4.2 The trial court abused its discretion in entering the temporary order ejecting Lori from all involvement in the business.**

The trial court's temporary order ejecting Lori from all involvement in the business fundamentally changed the course of this litigation. The order was beyond the authority of the trial court. It was entered under suspicious circumstances that suggest Judge Goelz was biased. Because of the order, Lori was prevented from presenting a competent business valuation at trial.

### **4.2.1 The temporary order was not authorized by statute.**

Chapter 26.09 RCW authorizes the trial court in a dissolution action to issue certain types of temporary orders. The trial court can enter a temporary parenting plan under RCW 26.09.194. The trial court can order temporary child support or maintenance under RCW 26.09.060. Any of these orders can include restraining orders to keep a party away from the other party, a child, or a particular place. RCW 26.09.060(2). They can include an order restraining a party from "transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life." RCW 26.09.060(2)(a). They can include a domestic violence or antiharassment protection order. RCW 26.09.060(3).

However, there is no statute authorizing the trial court to enter a temporary order disposing of property or terminating a party's employment. Yet this is precisely what the trial court's ejection order did here. The order granted Eric complete control over all aspects of the business: "[Eric] shall have all management, control, sole decisionmaking power, sole authority, and sole possession of any and all aspects of the business..." CP 183. The order terminated Lori's employment: "[Lori] is restrained from action in any manner for, or on behalf of, Wirkkala Construction." CP 183. It prevented Lori from accessing any business information: "[Lori] shall have no contact or access to any Wirkkala Construction bank accounts and records. ... [Eric] is authorized to remove [Lori] from all bank accounts, credit lines and other business accounts for Wirkkala Construction, and to restrict [Lori's] access to the same." CP 184-85.

The order handed over the entire business to Eric. Lori's 55 percent majority share of the business became worthless because she was barred from participation—even to vote her shares—and denied all access to financial information—even information to which every shareholder is ordinarily entitled under RCW 23B.16.010 and .020. In effect, the trial court's temporary order already disposed of Lori's share of the company, without a trial, without a valuation, and without any

compensation to Lori for the taking of her property. There is no statute authorizing the trial court to make such a temporary disposition of property.

#### **4.2.2 The temporary order was tainted by Judge Goelz's bias.**

The circumstances surrounding the ejection order are highly suspicious. The day before the first hearing in this case, Judge Pro Tem Douglas Goelz he had a conversation with Eric on behalf of Goelz' client, the Seaview Sewer District. 1 RP 4. Eric has done work for Seaview Sewer District. 3 RP 197-98.

At the hearing on Eric's motion to eject Lori, Judge Goelz notified the parties of a restraining order that had been entered against Eric by another judge at the request of Brian Davidson, Lori's son from a previous marriage. 1 RP 48-49. Judge Goelz commented, "this is outrageous ... We can't have an Order ... that keeps Mr. Wirkkala from running [his] very substantial business." 1 RP 48.

The next morning, the Judge Goelz was seen in the hallway speaking with Eric and the guardian ad litem. CP 302. Judge Goelz revised the other judge's protective order to remove restrictions on contacting the couple's minor child. CP 301-02. That afternoon, after secretly laying the groundwork, Judge

Goelz issued a memorandum decision that gave Eric full custody of the minor child and ejected Lori from the business. CP 80-83. Judge Goelz's mysterious recusal confirms the truth of his bias, conflicts, and ex parte contacts. CP 186. He should not have been permitted to preside over this case or to issue the ejection order.

The ejection order was purported to be based on allegations that Lori had failed to cooperate in running the business and had failed to provide information to the court's expert, Niki Goodin. However, Eric's self-serving claims that Lori was withholding information were false. 2 RP 88.

Supporting testimony from Goodin was also suspect. Goodin, like Judge Goelz, had conflicts of interest that should have disqualified her as a neutral expert. Goodin was Judge Goelz's personal accountant as well as accountant for the Seaview Sewer District. 1 RP 42, 72. From the beginning of her assignment, she showed more concern with helping Eric than acting as a neutral expert to help the business. *See* RP, June 4, 2015, at 16-17. Her only contacts, other than a few office visits, were with Eric and his attorney. 1 RP 105. Goodin's letter alleging that Lori was not being helpful was addressed to Eric's attorney, but not Lori's. *See* CP 46. As if to confirm her bias, after she was released from her appointment, Goodin went to work for Eric. 2 RP 119.

These conflicts of interest, ex parte contacts, and outright bias in favor of Eric go a long way to explain Judge Goelz' unauthorized overreach in issuing the ejection order. Even if there is some authority to support the order, it is tainted by Judge Goelz's bias. This Court should order corrective action.

**4.2.3 The temporary order prejudiced Lori's ability to present a competent business valuation at trial.**

After Eric took over the company, Lori was entirely excluded from all current information about the business. 2 RP 183. It was impossible for her to form an opinion as to the value of the company or to provide sufficient, current information to a valuation expert. She pressed to have a neutral expert, paid by the company, who would have full access to the information she could not get herself. Eric refused to cooperate, and the trial court would not order a valuation. As a result, Lori did not have a meaningful opportunity to present her case on the value of the business. She was deprived of her rights of due process. This Court should reverse and remand for a new trial on the value of the business, with an opportunity for the parties to present new evidence, including a formal valuation of the business.

### **4.3 The trial court failed to make an adequate record of the factors it considered in valuing the business.**

“Valuation of the shares of a closely held corporation presents a difficult problem, calling for the careful weighing of relevant facts and the ultimate exercise of reasoned judgment.” *In re Marriage of Berg*, 47 Wn. App. 754, 756-57, 737 P.2d 680 (1987). It is an attempt to determine the fair market value of an asset which by definition does not have a fair market value. *Suther v. Suther*, 28 Wn.App. 838, 843, 627 P.2d 110 (1981). “There are probably few assets whose valuation imposes as difficult, intricate and sophisticated a task as interests in close corporations. They cannot be realistically evaluated by a simplistic approach which is based solely on book value, which fails to deal with the realities of the good will concept, which does not consider investment value of a business in terms of actual profit.” *Berg*, 47 Wn. App. at 758.

Because of the ejection order, the trial court was left with incomplete evidence of the value of the business. The trial court was only presented with evidence of the value of the assets. The evidence failed to deal with goodwill or the actual income or profit of the company.

Because of the careful analysis that is required in valuing a closely held corporation such as Wirkkala Contracting, Inc., the trial court is required to set forth on the record which factors

and methods were used in reaching the finding of value. *Berg*, 47 Wn. App. at 757. “Because of the complexities involved in valuing a closely held corporation, an appellate court must be able to determine the method by which the trial court determined valuation and the weight that the trial court gave to the factors relevant to valuation.” *Id.*

In *Berg*, the appellate court held that the trial court had failed to make an adequate record where its analysis failed to account for anything more than book value, which was per se insufficient. *Berg*, 47 Wn. App. at 757. The trial court’s findings and conclusions did not indicate what factors or methods were considered, and the court’s memorandum opinion was “not significantly more enlightening.” *Id.* The court remanded the case for a redetermination of the value of the corporation. *Id.* at 758. The court specifically authorized the trial court to take additional evidence on the value of the business. *Id.*

That is the correct course for this Court to follow in this case. The trial court’s findings and conclusions do not provide any insight as to what factors or methods the trial court considered, other than the book value of the assets and liabilities. *See* CP 638-42. The trial court found, “The spouses own personal property separately, as community property and within the community business, all of which is divided per the terms of the Decree of Dissolution entered herein.” CP 640.

The Decree is not any more helpful. It awards Lori 60 percent interest in the value of the business, “as listed in Exhibit B.” CP 626. Exhibit B lists the value of the business as the combined total of the appraised values of WCI real property, equipment, tools, and assets, less WCI debts. CP 635. This is nothing more than book value, without any analysis of the factors or methods used in determining whether the value is correct or even reasonable.

Again, the memorandum opinion is also not helpful. In it, the trial court opined, “I find there is some value to the ongoing business (in excess of hard assets) that the parties have built over the years. It is equitable under all the facts and circumstances to require Mr. Wirkkala to pay 60 percent of the value of the business assets to Ms. Wirkkala.” CP 329. Although the trial court recognizes that there is some value in the business above its book value, there is no explanation of the analysis the trial court used in determining that an award to Lori of 60 percent of the book value would appropriately account for that additional goodwill.

The record in this case is insufficient to allow this Court to determine whether the trial court abused its discretion in its determination of the value of the business. This Court should follow the example of *Berg* and remand for a redetermination of

the value of the business, with opportunity for the parties to present new evidence of value.

## **5. Conclusion**

This dissolution was a procedural mess, resulting in the deprivation of Lori Wirkkala's rights of due process. Judge Goelz, who should have been disqualified from hearing the case, engaged in ex parte contacts and unreasonably entered an unauthorized temporary order that ejected Lori from the business, taking her property without compensation and prejudicing her ability to present a competent valuation of the business at trial. The trial court failed to make an adequate record for this Court to determine whether the trial court abused its discretion in determining the value of the business. This Court should reverse and remand for a redetermination of the value of the business, with opportunity for the parties to present new evidence of value.

Additionally, the trial court's finding that \$64,000 of Lori's PERS account was community property is not supported by any evidence in the record. The only competent evidence is the analysis of Paul Pederson, which showed the community property portions was only \$22,789. This Court should reverse the erroneous finding and remand to the trial court for entry of

corrected findings and an additional compensating payment from Eric of \$20,600.

Respectfully submitted this 13<sup>th</sup> day of November, 2017.

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## Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on November 13, 2017, I caused the foregoing document to be filed with the Court and served on Counsel listed below by way of the Washington State Appellate Courts' Portal.

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DATED this 13<sup>th</sup> day of November, 2017.

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**November 13, 2017 - 3:31 PM**

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**Appellate Court Case Number:** 50213-5  
**Appellate Court Case Title:** In re the Marriage of: Eric M. Wirkkala, Respondent v. Lori D. Wirkkala, Appellant  
**Superior Court Case Number:** 10-3-00080-7

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