

FILED
COURT OF APPEALS
DIVISION II
2018 APR 26 PM 2:40
STATE OF WASHINGTON
BY AP
DEPUTY

NO. 51441-9-II

Court of Appeals, Division II
of The State of Washington

In re Marriage of
Robert Wood, Appellant
and
Angelina Wood, Respondent.

Response Brief of Appellant

Forrest Law Office
Kathleen A. Forrest
Attorney for Appellant
WSBA No. 37607

1303 Rainier Street
Steilacoom, WA 98388
(253)588-1011

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I. INTRODUCTION

Had the court issued clear and consistent trial rulings, based on the facts and the correct legal standards, and afforded Robert due process at three presentation hearings, an appeal would not have been necessary. There was no dispute about the values or identity of community assets, or how the parties would divide those assets. Having already paid 24 months of spousal maintenance, Robert proposed a disproportionate division of the community assets, awarding, Wife (“Angelina”) 43%¹ of the assets, most of which were liquid assets, to minimize the need for additional maintenance. Robert does not deny that the court had the discretion to order that maintenance continue beyond trial; however, continuing it for 4 years, and increasing it by \$1200 was not anticipated nor was it justified under RCW 26.09.090.

Not only did the court award Angelina a disproportionate share of the community assets, it awarded a *total of 6 years of spousal maintenance* in this 16 year marriage. The Brief of Cross-Appellant (“Response”) concedes that the court continued the maintenance awarded in the Temporary Order entered on September 15, 2015, of \$2750, but it conveniently omits the fact

¹ Wife neglects to account for the fact that she received her share of the JANUS account during the pendency of the case, Wife received from \$12,000 (\$1500 + \$5000 + \$3500 + \$2000) from the JANUS account. (RP 93).

that the \$2750 *included Angelina's share of the military retirement.* (\$1200 from the military retirement + 1550) under that Order. Where the court believed (and intended) that it continue the status quo set by the previous order, it mistakenly ordered an additional \$1200, overlooking the fact that the Temporary Order included the military retirement in the maintenance award.

Robert sought a dissolution of his 16 year marriage, only to find himself, paying 72% percent of his net income in maintenance (2750), child support (1071.10), and post-secondary support (\$700), all the while, receiving a disproportionate share of the community assets, and paying a greater share of the community debts, to include one that Angelina was already court-ordered to pay.

The Response also concedes that the trial court failed to make the federally mandated deductions when calculating Robert's child support obligation and diverts this Court's attention by filing a retaliatory cross-appeal. Angelina asks the court to increase Robert's child support by imputing him at an income that he earned for only 1.5 years of his working life for a job which he was unqualified. The Response omits the fact that Robert worked for a company in Northern California, a job for which was unqualified and one obtained through a former colleague in the Navy. It also omits that Robert relocated to Washington because

Angelina refused to relocate the family to California. Robert relocated to Washington to have a relationship with his children and while here, was unable to find employment earning a similar wage because he was unqualified, but he did find employment as a bus driver.

The Response states that the trial court's reliance on Angelina's testimony alone, justifies the award of post-secondary support of the arbitrary number of \$700. (or is it \$770?) It remains unclear how the court determined the amount of post-secondary support as nothing was provided to the court demonstrating the cost of school tuition, minus any contribution from financial aid or scholarships obtained by Alison. In spite of the lack of evidence, court made different rulings on this issue, three times, because the court, itself, was confused because of the lack of information.

The greatest travesty of this case was the court's refusal to allow Robert the opportunity to clarify the trial court's contradictory rulings even though he filed motions timely and appeared at all of those hearings. The court's personal dislike, or apparent frustration with the case, or Robert, interfered with its ability to adequately address many clear legal errors, or at a minimum clarify them for the parties.

Admittedly, the assets in this case are modest, compared to other wealthy parties that have sought a remedy with this Court; however, this should not make the issues in his case any less worthwhile.² We are a system of laws, and court rulings should not be based on a judge's personal preferences, positive or negative. While it is acknowledged that showing the legal error of abuse of discretion is a very high burden, the mistakes by the court have had a significant impact on Robert's ability to meet his financial needs.³ Robert has shown that the trial court's failure to apply the legal standards, its disregard of statute, and inability to remember material facts and its own rulings, warrants the court to reverse and remand the court's property division, maintenance award, and child support.

II. REPLY ARGUMENT

A. Awarding Angelina 72% of Robert's income is an abuse of the discretion.

Courts have a duty to consider the totality of financial circumstances of the parties, especially the paying spouse.

Marriage of Clark, 13 Wn.App. 805, 810, 538 P.2d 145 (1975).

(court must consider all circumstances in a marriage, with a focus

² The *multiple calculation errors* and the court's failure to apply the facts (or remember them), and its continued refusal in allowing Robert to address these errors are have had a significant impact, outside of the legal cost of this appeal.

³ Based on the parties' incomes, every judgment, tax deduction, support obligation, is relevant to Robert's financial circumstances.

on the future needs of the parties) Abuse of discretion is present when a ruling is manifestly unreasonable, or “outside the range of acceptable choices given the facts and the applicable legal standards.” Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). Any award of spousal maintenance is discretionary, but its discretion is limited in that it must be “just.” Marriage of Wright, 179 Wn. App. 257, 269, 319 P.3d 45 (2013).

It is inconceivable for a court to knowingly order 72% of one’s income in the form of support. When accounting for the basic child support, post-secondary support, awarding maintenance of \$2750 is not only unjust, it is grossly inequitable.

The parties in this case earn modest incomes, with Angelina and Robert earning hourly wages of \$16.68 and \$19.03, respectively. Having already paid spousal maintenance for over two years, Robert proposed a disproportionate division of assets to eliminate the need for spousal maintenance, or to minimize its amount and duration. In this mid-length marriage of 16 years, the court awarded a total of 6 years of maintenance to a party that earned only \$3.00 less per hour, in addition to the disproportionate award of assets.

1. The court did not consider the disproportionately higher award to Wife and the debts awarded to Husband as required by statute.

Under RCW 26.09.090, an award of a disproportionate division of assets *must be considered* by a court in determining the maintenance award. In a case factually similar to this one, the court in Marriage of Rink, 1 Wn.App. 549, 571 P.2d 210 (1977), affirmed the property and maintenance award, where the parties, each in their mid-forties and married for 24 years, awarded husband, a truck driver, a disproportionately smaller share of the assets and ordered him to pay only one year of maintenance (in addition to child support) to a wife that had not worked in 15-16 years. The court's basis for this was to allow the spouse earning less income to have resources from which to live and/or prepare for retirement and allow the obligor spouse to earn income to "catch up" to the spouse with the greater share of assets.

Here, while the percentages of the division of assets were not significant, increasing spousal maintenance, and ordering it for an additional 4 years was excessive, and left Robert, a 47 year old, without the opportunity to "catch-up" and earn income or establish any savings/retirement. Robert was also ordered to pay on the deficiency on the Cadillac, and ordered to pay on a credit card used by Angelina after separation. (Chase card) A court's division of

assets is not measured in terms of mathematical preciseness; it must be based on fairness. Clark, 13 Wn.App. 805, 810. The primary concern are the parties' respective economic positions following the dissolution" Marriage of Marzetta, 129 Wn.App. 607 619, 120 P.3d 75 (2005) *citing* In re Marriage of Washburn, 101 Wn.2d 168, 181, 677 P.2d 152 (1984). Here, the division of the assets was grossly disproportionate and inequitable especially when the award of maintenance *and* liabilities were taken into consideration.

2. The trial court failed to consider her receipt of the military retirement when awarding maintenance. RCW 26.09.090.

It is not disputed in the record that when awarding the \$2750, the court failed to account for, or divide the military retirement. This asset was divided at the presentation hearing on May 12, 2017 for the first time. (CP 123). Angelina's receipt of military retirement (and subsequent reduction of Robert's retirement as a result of this division), should have been considered. No evidence was presented that receiving \$2750 per month (an amount that included Angelina's share of retirement, approximately \$1231 per month), was insufficient to meet her financial needs; especially, when Angelina was now employed earning \$16.68 per hour and with no community debts at presentation of orders.⁴

⁴ Angelina sold the marital residence and the Cadillac loan deficiency, and essentially the Chase card was awarded to Robert.

3. The court failed to consider Angelina's willful failure to take any steps to obtain education or work for over two years⁵.

In addition to the court overlooking the division of military retirement, it failed to realize that Angelina's superior financial resources and ability to work full-time at a wage slightly less than Robert's wage, obviated any need for maintenance. When there is a disproportionate share of assets in favor of a party, and that party is able to work full-time, a court may deny maintenance. In re Marriage of Luckey, 73.Wn.App. 201, 209-10, 868 P.2d 189 (Div. 3 1994). Angelina earned \$16.68 per hour, as testified by her at trial. Still, Angelina failed to state any reason for waiting 2 years to find work, or her failure to obtain some education or training so that she could start a career. No evidence was presented to suggest that Angelina was required to attend school or para-educator during the 2 years.

The Response indicates that "financial need" was not a prerequisite to a maintenance award and that it was used as a tool to equalize the parties' standard of living. Marriage of Wright, 179 Wn.App. 257, 269, 319 P.3d 45 (2013). (Response; page 15). The case on which Angelina relies involved parties with over 17 million dollar in assets, where it was appropriate for that court to focus on equalizing the parties and disregarding the financial need of the

⁵ The parties separated in July 2014 and Angelina started to work in September 2016.

requesting spouse. Our case involves assets of less than \$250,000, with Robert, the obligor, having concerns about meeting his basic support obligations and monthly needs. While the parties were able to maintain one household because of Robert's career as a naval officer, Angelina's expectation for this to continue when the parties are divorced and after his retirement is unrealistic and just not feasible.

Admittedly, the parties maintained a standard of living during the marriage where they were able to purchase a home, acquire some liquid assets, and live debt free. They were able to live like this *because* Robert was abroad, on a ship, or at his duty station, having most of not all of his living expenses subsidized by the military, while he sent all of his income to his family. The parties rarely took vacations because they lacked the disposable funds, they purchased a residence in Oak Harbor, Washington, a predominately military community, with very reasonable housing costs, and none of the children attended private school. Robert and Angelina chose to live a frugal and modest lifestyle and as of the date of separation, had no debt and some modest retirement accounts.

Angelina acquired credit cards, because she *chose* to wait over two years to find employment⁶ and because she had the unrealistic expectation that she could remove him from the children's lives, and continue to live off of her husband after a divorce. Contrary to the court's ruling that Angelina worked for the first time in September 2017, she had worked various jobs since the parties married. Having only a high school diploma is not an excuse to sit on one's hands, and live off of support and credit cards. Had Angelina obtained employment even on a part-time basis, this would have improved her ability to meet the needs in her household. Had Angelina started an educational program or technical school, she would have increased her earning capacity, to mitigate the need for maintenance. Angelina had no incentive to find work or obtain an education, however.

The reality of this case and in many cases with a similar fact-pattern, is that a spouse seeking maintenance remains unemployed to gain a strategic advantage at trial in order to request the maximum amount of maintenance. In some cases, a spouse will attend school or training to become employed after separation while receiving temporary maintenance. Angelina could not tell the court where she planned on attending school or which career track

⁶ Angelina was also involved in a relationship and incurred debt with her paramour after the separation; this is the debt on the Chase credit card.

she was pursuing at trial, and clearly made no efforts for over two years to register for school or research her plans. Angelina's education plans were not legitimate and a ruse to get more maintenance, and she prevailed.

Angelina was 42 at the time of trial, and there was no evidence to suggest that she was disabled, poor health, or incapable of making a living. Angelina provided no reason for her complacency in working or finding another career to become self-sufficient, for two years after the separation, or at trial.

B. Child Support: The court explicitly found that Robert was not voluntarily under-employed for child support purposes, and excluded the VA income.

The court did not find that Robert was voluntarily under-employed or working as a bus driver to reduce his support obligations. (1 RP 49-50).

Court: With respect to income for child support and other purposes, the court is going to use the parties' actual full-time income, plus father's retirement income. I want to say that I can appreciate Angelina's frustration with the court using the lower amount for Robert; however ***there is no evidence presented at trial that he's voluntarily underemployed for purposes of not paying an appropriate amount of support.*** He works full-time. (1 RP 49-50)

Robert is a retired naval officer earning over \$100,000 toward the end of his military career in 2011. Robert worked for a federal contractor, as a systems engineer, for *a year and a half* in Northern California. (RP 121, 144)⁷ He left that job as a systems engineer because he was unqualified, *and* because he wanted to move closer to his children, in Washington. (RP 120) There was no evidence that Robert had the option to return to his former job or that this kind of job was available in Washington. At the time of trial, Robert had not worked at the previous job for 4 years. (RP 121)

The court in Schumacher imputed income to a party that was working less than full-time, finding that the party was “capable and qualified” to work a full-time schedule. (Father in that case worked only 103 days one year, averaging 8.9 days per month in one year). Marriage of Schumacher, 100 Wn.App. 208, 215, 997 P.2d 399 (2000). The Response fails note in any detail, how the evidence showed that Robert was voluntarily underemployed. This was not a case where Robert had an established post-retirement second career, earning six figures. Robert was offered this out of state position because of connections with former colleagues. (RP 120) Robert has a bachelor degree in management, not in engineering.

⁷ Robert worked as a systems engineer project manager from November 2011 to July 2013 in Northern California (RP 121, RP 146)

(RP 126) His testimony about his lack of qualifications for that job as a systems engineer was not refuted.

In general, the transition for service members to the civilian workforce is a difficult one and even military officers are not able to match the income they had earned in the service. Robert has not been able to establish a second career in Washington for which he is qualified and earn income close to what he earned while serving in the Navy. This is a common predicament for both enlisted service members and officers and this factor considered by a court, when a former service members is a party in a case.

Angelina's reliance on Dewberry is also unjustified. In that case, the father had a long-established career as music executive, and *voluntarily* left it to become a UPS driver and longshoreman, *one year* before trial. Dewberry v. George, 115 Wn.App. 351, 367 62 P.3d 525 (2003). Similar to Schumacher, the father worked less than full-time, only two shifts per week, leading up to the trial.

Here, Robert had no choice to leave his military career after 20 years. He landed his first job in 2012 through military contacts, not because of his qualifications, earning six-figures, only to learn that he was not qualified to do the job. (RP 121) Rob left the job in

July 2013, to recover from a surgery, then moved home to Washington, after being away from his family for over 5 years. (RP 146)

Robert diligently searched for employment and a second career, something even retired military officers struggle with, that would pay him a similar income. (RP 146-147) Robert found a job working as bus driver in late 2014 working full-time, because there were no opportunities earning six-figures, for which he was qualified in Washington.

No court would require a party to travel out of state or country, be away from his family, to earn income. Admittedly, Robert was unemployed for 5 months when he moved into his house in January 2014, but he did find a job, as a bus driver so that he could support his family. There was no evidence to suggest that Robert actively sought lower paying jobs. Robert does not have a history of “engineering jobs” or “high-paying military jobs.”⁸ As stated earlier, service members, are paid substantially more during their careers because of the benefits received by them. (additional income for deployments, dependents, and hazard pay). The court reiterated that it could not find that Robert was underemployed as

⁸ Angelina’s statement about Robert’s work history reflects the extent of her lack of knowledge of the “life” of a military career and the difficulty of the transition after retirement.

he was working full-time, contrary to the parties in Schumacher and Dewberry who worked even less than part-time.

Finally, it should be noted that Angelina refused to relocate with Robert his last duty station, to New Mexico, further alienating him from his children. (RP 139-140) In spite of efforts to maintain his relationship with them, it had become painstakingly difficult due to the distance, and Angelina's obstructive efforts, so Robert moved to Washington and moved in with his family in January 2014. (RP 147)

The trial court did not articulate any expectation for Robert to relocate out of state to obtain a similar job with federal contractors in California, at the cost of sacrificing his relationship with his children. Similarly, many retired service members will travel abroad to work for federal contractors, to earn tax-free income at a high rate of pay. Still, courts do not have the expectation that if a party has worked in these contract jobs during the marriage and chooses to return home, is imputed at that high rate of pay for purposes of calculating support. It is simply unreasonable and far-reaching for any court to require a parent to reside out of state and be away

from his family, and to earn income or for that parent to continue in a job for which he is unqualified.⁹

Based on Robert's work history, education, health, age, and the fact that he is working full-time, the trial court correctly found that he was not voluntary underemployed.

1. Angelina does not deny that the court failed to deduct mandatory taxes to derive his net income

The issue of the mandatory taxes was raised at the second presentation hearing on September 15, 2017. Angelina's counsel corrected this mistake, and this was stated on the record to the trial court.

At the third presentation hearing on September 29, 2017, Angelina's counsel did not make this correction and refused to make it when Robert's counsel addressed this (even writing it on the child support order; this was crossed out and the court signed the final orders.) (CP 142, CP 59-73) When Robert's counsel attempted raise this issue with the court, it reiterated that there were no more issues and that it would sign the order.

Not only was the court's refusal to allow Robert's counsel to voice his objection on the record a violation of due process, it

⁹ Neither party suggested this, but it is implied in the Response that Robert continue with his former job so that he can pay Angelina more support.

knowingly entered support orders that were contrary to statute. While the amount required to be deducted will have a minimal impact; it is still a violation of our statute, not to mention, very relevant in determining the parties' share of extra-curricular, educational, and post-secondary expenses. The court should reverse and remand to a different judge and order that the mandatory taxes are included in the Robert's income column.

C. Wife's income should be imputed at full-time

The Response omits the fact that Angelina was imputed at \$12.11, not \$16.65 per hour. (Response page 36) Angelina represented to the court that she worked 35 hours per week, or 7 hours per day. (CP 123) This calculates to gross income of \$2,525.25 per month.

Again, this confusion was brought on by the trial court's inability to apply the facts (and evidence) to the law. There was no testimony or evidence indicating that working 6.5 hours per week was full-time, or that Angelina worked only 189 school days, other than representations made by her counsel. This is not evidence. There was no evidence that she *would not be working* during the summer months, during summer school, or working seasonal jobs. Para-educators also work during the summer months, and it is assumed that Angelina would work during this time considering her

ability to work. Just the same, Robert works as a school bus driver choosing to work 12 months out of the year, because this is full-time work. The same standard should apply to Angelina.

Angelina is not a teacher only working during the school year. She is a para-educator, or a teacher's aide, with the ability to work for 12 months, even during the summer, either as a substitute, or during the summer session. Angelina simply chooses to indicate that she does not to work to minimize her support obligation.

If the court intended to adjust for the income based on year-round employment, it should have been noted in the findings, ruling, or child support order. It did not do this in its ruling nor was stated in the findings. While difference of incomes are not significant, the court's reluctance to require that Angelina work a truly full-time schedule (40 hours per week 12 months during the year) is troubling and, again, places the financial burden on Robert in terms of child support.

1. The evidence shows that Robert does not have the ability to pay for the activities for the children.

Clearly, after payment of support, (maintenance, child support, post-secondary, the division of the military pension, community liabilities and attorney fees), Robert does not have the

disposable income to pay additional amounts related to the children's activities. The issue here purely mathematical; Robert has \$1678 on which live; clearly he lacks funds to pay for Angelina's unfettered requests for him to pay for "activities" for the children.

The trial court ordered that *agreed upon activities* would be shared based on their proportionate share, and Robert had no objection to this. (CP 124) The Response does not address or refute the fact that the court ordered this. This provision was left out of the support order and Robert's counsel was prohibited by the court to raise this issue, to include it.

D. Post-Secondary Support

1. The court failed to consider the relevant factors under RCW 26.19.090.

The court's inconsistent rulings, its admission that it was unable to make a ruling based on lack of information, coupled with its arbitrary award of post-secondary support of \$770, then, \$700, are reasons that this Court should remand and require the court to make a ruling based on the actual cost of Alison's college costs.

Robert does not deny that he *would like* to help all three children attend college, if the resources were available. Wanting to assist and have the ability to assist are two different things,

however. For Alison, her college costs were covered from September 2016 to September 2017 under Robert's GI Bill.¹⁰ Robert assigned Alison this benefit, in spite of the fact that no order was entered requesting post-secondary support. Washington Practice Volume 19 provides as follows:

Unless there is a court order providing for payment for a post-secondary education, a parent generally has no duty to provide a child with post-secondary education. RCWA Chapter 26.19. RCW 26.19.090

The law is clear that child support terminates when the child has graduated from high school or has turned 18. Here, Robert acted within the bounds of the law in terminating child support for Alison as Angelina failed to take any action with the court to seek post-secondary support. The burden was on Angelina to seek support and she did not meet this burden, so the court retroactively ordered post-secondary support. This is a legal error.

Additionally, after acknowledging Robert's assignment of the GI Bill benefits, it also ordered post-secondary support for the summer months in 2016 (June, July and August) in the amount of \$700 per month, at trial. This is a wrongful retroactive order of support.

¹⁰ Still, the court entered a judgment for against Robert in the Decree and child support order even though Alison received tuition costs plus a monthly stipend of \$1500. This issue will be addressed in the subsequent section.

Robert has been alienated from his children, so he has no knowledge, nor could he refute, that Alison was enrolled in college or whether she was enrolled full-time and in good standing. He could not testify to the cost of tuition and/or Alison's financial aid/scholarship, as the court was not provided with this information. *This was not even testified to at trial.* Still, this does not relieve Angelina of the burden to produce this information, as she is the parent seeking post-secondary support on behalf of Alison.

It was also Angelina's duty to disclose to the court any financial aid/scholarships awarded to Alison in the FAFSA application so that a court can determine the actual cost and each parent's share. Every student with a financial need submits a FAFSA application and every court will inquire about this application when ruling on post-secondary support. It was clear at trial, that Alison had a need for financial aid for her education. The trial court also ordered that scholarships and aid be disclosed, but nothing was provided.¹¹ Alison resided with her mother during her senior year, who is voluntarily underemployed, and it is likely that she would have received significant financial aid, through a loan or pell grant, to attend school through this application; the court's failure to account for this information was serious legal error.

¹¹ The court acknowledged the issue of not having this information as well as educational costs and it ordered that the matter go before the family law docket.

Having broad discretion to determine post-secondary support is *not* a license for a court to make a decision, disregard the factors under RCW 26.19.090, or evidence, (or lack of it), before it. For Alison's second year and beyond, the court failed to consider the factors under RCW 26.19.090. As long as the court considers all of the relevant factors, there is no abuse of discretion. In re Marriage of Kelly, 85 Wash.App. 785, 792-93, 934 P.2d 1218 (1997). The court did not consider those factors and this was a clear abuse of discretion here. This issue should be remanded to determine whether post-secondary support should be ordered, and if it is ordered, each parent's share, after consideration of those factors.

2. The trial court erred in ordering an arbitrary number of \$700 per month for post-secondary support as if Alison was living at home.

The "post-secondary" support awarded to Angelina was ordered as if Alison was dependent (or disabled) upon her mother, and not enrolled in school. This is not the type of post-secondary support intended by the parties in providing for a college education. Robert's support, should go toward Alison's education, not Angelina's monthly expenses as Alison, alleges that she resides and attends school in Colorado. It is unknown if the \$700 is going toward Alison's education costs or if it is supplementing Angelina's

income. If Alison returns home, during the summer, then the monthly amount should be determined by a child support worksheet to include all of the children. However, during the 9 months in which Alison is enrolled in school, information on the actual cost of college must be considered to determine each party's share.

A support worksheet would also be necessary if Alison intends to live at home, or if the court intended to award post-secondary support for Alison during the summer months. Adjusting support for minor children in families where there is a post-secondary support obligation, the number of children used to determine the appropriate amount of support, *must include* the child receiving post-secondary support. In re Marriage of Daubert, 124 Wn.App. 483, 99 P.3d 401 (2004). (italics added)

Assuming arguendo the trial court intended to use the temporary order of support as a guide to order \$700 per month, this amount was calculated when Angelina was unemployed and imputed at minimum wage and not receiving her share of military retirement. If a court awards support during the summer months when Alison is at home, then it must be recalculated using the parties' new and correct incomes and including the two minor children, Megan and Johnny.

E. **Life Insurance.**

An insurance policy to secure a maintenance obligation may be ordered, the court did not order it in the ruling, nor did the trial court provide Robert with the opportunity to voice his objection at any of the three presentation hearings.¹² This language was unilaterally added by Angelina's counsel.

Again, in looking at Robert's net income of \$1678.64, after support obligations, finding even \$100.00 to pay for a monthly insurance policy is exorbitant expense. Disallowing a party from arguing this issues before timely motions filed by Robert, is a gross error and another incident where his due process rights were violated. A party should not be permitted to submit proposed orders to a court containing additional language not in a final oral ruling, only to have the objecting party barred from making argument to the court. Our legal system is based on due process and a record, and a court has the full discretion to make rulings based on hearing argument by both sides, *on the record*.

Here, Angelina's counsel added this language to the final orders without a court making a ruling on it, or a motion to request

¹² This issue was raised in in Robert's motion, but it was not addressed by the court.

it. More important, Robert has no financial ability to pay for an insurance policy.

F. The court failed to follow its own orders---Angelina should have been ordered to pay on the loan deficiency on the Cadillac SRX

The Temporary Order entered with the court on September 15, 2015 required Angelina to pay on the car note for the Cadillac SRX. RCW 26.09.060(10)(c). (temporary orders terminate when the final decree is entered) Robert indicated that he made the payments on that car note because Angelina refused to pay it; he did deduct this amount, from spousal maintenance for some of months during the pendency of the case. (CP 38) When provided the opportunity to pay on it, Angelina refused to pay on the note, resulting in the vehicle having a loan deficiency. (CP 15, 16, 170)

It is not relevant whether the car note is solely in Robert's name; he was not the sole owner, it was a community asset purchased during the marriage for Angelina's use. (CP 111) Angelina was required to pay on this note each month, until trial; thus she is responsible for the car note, up until trial. A court has the discretion to order unpaid amounts after trial; but past amounts owed must be assigned to the party responsible under the court order. The court retroactively ordered Robert to pay on the care note in awarding him the loan deficiency, and this factor should

have impacted the division of assets and/or the award of spousal maintenance.

G. Judgments/Chase Credit Card

1. The judgment in the Decree should be removed.

Angelina believes that the temporary order applies to funds owed to her, *but not* on obligations she is required to pay. The Response incorrectly states that child support of \$1573.15 was ordered by the Commissioner, until trial. (Response page 26) Child support was terminated for Alison when she graduated from high school, pursuant to statute. RCW 26.19.001, RCW 26.09.170 (3) No court order is required to terminate support for Alison, this is presumed. RCW 26.09.170(3)

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child... RCW 26.09. 170(3)

The support order did not continue to obligate Robert to pay child support to Alison as no motion to request post-secondary support was filed. When the court ordered post-secondary support, in its haphazard manner, the entry of post-secondary support from June 2016 to June 2017 was a retroactive order of support. Still, Robert paid, after trial, the amounts owing for June 2016, July

2016, and August 2016¹³ in addition to the GI Bill stipend during the 9 months of school.

The “outstanding obligations” listed (Response page 28) incorrectly lists amounts owed to Angelina. The amounts from May 2017 – September 2017, are inaccurate firstly, because she includes \$770 per month for Alison. In May 2017 and September 2017, it was not disputed that Alison was receiving the GI Bill stipend of approximately \$1500 per month; still support for those months was ordered for those months. The court modified the temporary order of support, and excluded any amounts received from September 2016 to May 2017 because she received this; yet a judgment was entered for those months at \$770 each month. Alison also continued to receive 3 more months of the GI Bill (she was assigned a full 12 months), thus September 2017 through November 2017 were covered as well.

Thus the “\$4275” figure of amount owing in terms of spousal and child support is inaccurate because Alison’s portion of support was not deducted¹⁴. From May 2017 to September 2017, Alison received a total of \$3000 through the GI Bill and \$3850.00 through

¹³ At the presentation hearing on September 15, 2017, Robert provided proof to the court of his payment of attorney fees, and back support for June 2016, July 2016, August 2016, and June 2017, , as well as for, July 2017 and August 2017. (CP 223-233, CP 38)

¹⁴ Under the Temporary Order this amount is \$770.

the Temporary Order of Support (through the judgment).¹⁵ (total she received \$6,850 for Alison only, in terms of the GI Bill and the judgment). Additionally, Robert paid \$700 for June 2017, July 2017, and August 2017 for each month. (CP 223-233, CP 38) Total paid from June 2017 to August 2017 was \$2100.

The extra-curricular activities, and out of pocket health expenses are not included in the calculation of the judgment because Robert *already paid those expenses that were validated by him.* (CP 37)¹⁶

Robert Wood: Respondent [Angelina] provides information related to charges for extracurricular activities, and other expenses related to the children. I have asked Respondent for documentation related to these expenses, yet she [Angelina] refused to provide this. She is required to provide this information. Still, I continue to pay my share. (CP 36-40)

Robert paid Angelina less than what was ordered for July because she refused to pay on her cell phone bill (a bill titled in her name). (CP 36-40) She was ordered to pay this expense, her own renter's insurance and a life insurance policy she refused to cancel. Most if not all of the parties' debts and expenses are in Robert's name so Angelina had no incentive to pay on those bills, she had historically paid and was ordered to pay. Angelina also used two

¹⁵ Angelina sought \$770 per month for 5 months (May 2017 to September); this total is \$3,850.

¹⁶ Still, Robert paid those expenses, in good faith, without receiving proof.

credit cards, Discover and Chase card, in Robert's name, but Robert is required to pay on both.¹⁷ The court's refusal to address Angelina's refusal to pay her obligations and its failure to recognize Robert's efforts in paying those expenses (and provide him a credit), speaks volumes about the court's continued bias against Robert.

The error here is not harmless, it is the entry of the judgment without accounting for the funds already paid for Alison. Angelina's intent to deceive the court and enter in incorrect calculation of monies owed was a willful and blatant act, and this must be addressed. Further, the fact that the court continued to stifle, Robert's attempt to voice his objection about the inaccuracies is reason to reverse the judgment and remand *to a different judge*, to determine if a judgment should be entered.

2. The judgment of \$2100, an amount that was unilaterally modified by Angelina's counsel to \$2400 was entered in error.

The Response devotes one sentence regarding the judgment of \$2100 in the child support order. While Robert admits that he deducting \$700 per month for those months (June 2016 to August 2016); he also provided proof of payment of this amount,

¹⁷ Additionally, the court ordered that Robert pay on the Cadillac even though Angelina was required to pay this debt under a temporary order.

after the fact. (CP 223-233, CP 38) Angelina's counsel also admitted on the record that she received the proof. (CP 144)

Still, she proposed a judgment of \$2100 then modified it to \$2400; this must also be addressed, perhaps through the Washington State Bar Association. The Response does not refute that she modified the order, over Robert's counsel's objection; this was not harmless error. Again, Robert was not permitted to voice his objection on this issue in court. The judgment in its entirety should be removed as it has already been paid.

3. Chase Credit Card

All of the marital debts are in Robert's name.

Given that Angelina did not dispute that she incurred the debt on the Chase Credit Card, and that her paramour or a third party (than Robert) was making monthly payments. It was not disputed because it is a fact. (RP 115 – 116)

Robert' counsel: Are you aware of any credit card debts?

Robert Wood: There are. There's I believe a Chase card and a Discover card

Robert's counsel: And can you tell me about the circumstances of those debts being incurred.

Robert Wood: I don't have access to either one of those cards. I believe they're either in my name or held jointly by Angelina and myself. But all of the charges on those cards are made by Angelina or her friend. (RP 115-116)

This issue was also raised on the day of the ruling and a motion was filed with the court to be addressed at the first presentation hearing. The court, in the same biased and disorganized fashion, refused to address the assignment of that debt indicating that it was not part of the record. It did address every issue raised by Angelina that was not addressed at trial. (SBP, military retirement, life insurance). Not only was there testimony specifically about this debt, it was also listed on a list of debts submitted by Robert Wood. The Discover Card debt that the court assigned was not presented to the trial court; it relied on Angelina's testimony, alone.¹⁸ The court should reverse and remand this issue *to a different judge* and assign the Chase card debt to Angelina.

H. Attorney Fees

1. The court should reverse the \$10,000 award to Angelina and award Robert fees for his appeal.

The Response, again, fails to show how Robert is "clearly in a better position" to pay \$10,000 in attorney fees. Not only is Angelina in a far superior financial position, but she is also debt free, (after having sold the house, and shifting all of the debt obligations on Robert).¹⁹

¹⁸ The Discover card debt is assigned to Angelina but she has refused to pay on it; it is in Robert's name so he will be required to pay on it.

¹⁹ Robert is also required to pay on the Chase Card and Cadillac SRX.

The “abusive litigation” stems from Angelina’s continued use of the court to knowingly enter inaccurate judgments, her failure to prepare for presentation hearings, her willful act in proposing support worksheets that are not in accord with the court’s rulings or statute, and her willful failure to acknowledge proof payment received from Robert. While it is acknowledged that the trial court’s lack of organization, apparent bias, and inability to recall rulings (or the facts and law of the case), bears some responsibility for Robert having to file this appeal, Angelina bears responsibility here in following the rulings of the court and having candor toward the tribunal.²⁰

Most if not all of the issues in this appeal, involve the miscalculation of numbers (maintenance, past support due, reconciling the disproportionate division of assets with a 6 year maintenance obligation). Had Robert the ability to file a motion for reconsideration to address the court’s ruling, and apparent discrepancies, Robert would have avoided the legal cost of filing this appeal.

Robert has no liquid assets from which to pay his legal costs, compared to the \$65,000 received by Angelina after the sale of the marital home. Robert paid Angelina \$10,000 shortly after

²⁰ Angelina’s counsel knew that federal taxes were taken out of Robert’s military retirement and monthly income, it was agreed to on the record, but she refused deduct the taxes at the third presentation hearing.

trial after four installments, depleting his retirement account, allowing her to fund this appeal. Moreover, Angelina's income, after her receipt of maintenance, child support, the judgment awards, and her receipt of the proceeds from the marital residence, puts Angelina in a financially superior position than Robert.

The Court of Appeals should be mindful of the fact that parties of all economic classes should access to this court. The fact that the disputed amounts here do not involve millions of dollars, does not make the issues of this case any less important. Every dollar counts for the parties in this case and there was not room for the court to adopt a "standard of living" analysis in determining support and division for property. Paying \$1500 (for four additional years) more than what was required under a Temporary Order for two years, paying an arbitrary amount for post-secondary support, paying on two judgments, even when payments were already made, requiring payment toward a life insurance policy, and paying on most if not all of the community debts, are issues that deeply impact Robert's ability to survive financially now and in the future.

Attorney fees for his appeal should be awarded to Robert.

III. CONCLUSION

Robert appeals multiple rulings of the court because there were just too many legal, factual and mathematical errors to overlook. The Response alludes to the fact that the issues of this appeal being “minor,” or without merit, because the value of the assets and incomes of the parties justifies the court’s flippant response to Robert’s attempt to address these errors. Robert’s appeal stems not from the actual rulings of the court. The issues of this appeal stem from the court’s failure to follow the law, apply the actual facts to the law, and the court’s denial of due process with regard to fixing these errors.

It was understandable to have a court continue the presentation hearing because a docket was full, or the judge was not prepared to make a ruling because she was to leave early for the weekend. But, when the parties reached the third presentation hearing, the court completely cut off Robert’s ability to raise his objections new proposed orders submitted to the court that did not reflect the court’s ruling. Then, to state to him to file an appeal if he was unhappy, was unethical and unbecoming conduct of a judicial officer.

Robert respectfully requests that the court reverse court’s ruling on the issues raised in his appeal, and remand to a different judge, with the time and willingness to correct these errors. Robert

also asks for fees for the cost of this appeal based on his need and Angelina's intransigence.

Submitted by:

Kathleen Ann Forrest 4-26-18
Attorney for Father/Appellant
Kathleen A. Forrest
Forrest Law Office
PO Box 88702
Steilacoom, WA 98388

Kathleen A. Forrest, being first duly sworn oath, deposes and says: that on the date given below, I served a copy of **Appellant Response Brief** and this is Proof of Service on the following persons:

Opposing Counsel

Attorney for Mother/Appellee (x) US Mail
Amy Perlman
Connelly, Tacon, & Meserve
201 5th Ave., Suite 301
Olympia, WA 98501

Valerie A. Villacin (x) US Mail
1619 8th Ave. North (x) Email
Seattle, WA 98109

Catherine W. Smith (x) US Mail
1619 8th Ave. North (x) Email
Seattle, WA 98109

THE UNDERSIGNED declares under penalty of perjury of the State of Washington that this Appellant Response Brief and Declaration of Service was served on counsels for ANGELINA WOOD listed above by deposit in the US Mail, Postage prepaid and addressed on April 26, 2018.

Kathleen A. Forrest 4-26-18

Kathleen A. Forrest
Attorney for Appellant