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Division II
State of Washington
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Court of Appeals No. 52160-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

BRENDA A. WILSON

Appellant

v.

GARY W. WILSON

Respondent

APPELLANT'S REPLY BRIEF

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1. REPLY TO RESPONDENT'S BRIEF

- A. The trial court failed to comply with RCW 26.09.017 in establishing the wife's monthly net income for child support
(Reply to Respondent's Brief 25-27)

The Respondent's brief is tethered to the Wife's testimony in March 2017, and ignores the subsequent trial testimony and developments that did not conclude until the court's final oral decision on April 8, 2018, and written findings and order dated June 12, 2018. Indeed, RCW 26.09.017 requires consideration of *current* income in determining child support, which explains Judge Clark's initial ruling at the oral decision on April 8, 2018, that the parties should utilize information from 2017 federal tax filings in determining support. Respondent's brief proposes use of 2015 and 2016 tax information, in contravention of RCW 26.09.017. Had the trial concluded on or about March 2017, then Appellant's argument would be valid, however the trial and testimony did not conclude until April 2018.

This Court should remand for the trial court to calculate child support based on the Wife's *current* monthly net income, based on pay information in 2018, and tax returns from 2017 (filed in 2018).

- B. The trial court properly exercised its discretion in ruling that no transfer payment to either party was required.
(Reply to Respondent's Cross-Appeal Issue no. 1)

The Respondent's brief acknowledges that the trial court made specific findings of fact, to wit: "the children spend a significant amount of time with the parent who owes support. The non-standard amount still gives the other parent's household enough money for the children's basic needs". The Respondent cites *Choate v. Choate*, 143 Wn. App.235 (2008) in support of his contention that the trial court's findings were "cursory at best" and did not rise to the level required in *McCausland v. McCausland*, 159 Wn. 2d 607 (2007). In *Choate*, the trial court did not make specific findings, and only attached a worksheet in support of the associated deviation.

In this case, the parties provided ample testimony over a year of trial about the children's expenses and the impacts on the respective households, culminating the trial court's decision and findings. This court should affirm the trial court's finding that no transfer payment between the parties should be ordered.

C. The trial court abused its discretion by accepting the imputed income and expense figures provided by Couch, and by accepting the self-generated figures provided by the Respondent to Couch
(Reply to Respondent's Brief 32-37)

The Judgment to the Husband by the trial court was not ordered based on findings of "gross fiscal improvidence", or the "squandering of marital assets" by the Wife. The judgment was based on the Couch report which exceeded the scope of the court assignment to account for actual rents received and expenses incurred by the parties. Couch's report also inaccurately stated reliance upon an "agreed appraisal" which is not part of the court record. Furthermore, Couch relied on and incorporated uncorroborated information and data provided by the Respondent himself for the period of March 2017-November 2017, which was further incorporated into the ultimate judgment issued by the trial court.

This Court should remand for the court to receive accurate information about actual rents and expenses of the parties, in conformance with the court's directives in establishing judgment between the parties.

- D. The trial court properly followed and enforced the terms of the prenuptial agreement.
(Reply to Respondent's Cross-Appeal Issues No. 2 and 3)

The trial court made no findings as to the rationale behind the division of the community estate in this case. The Respondent's brief speculates that the "overall division" and disproportionate award to Wife of the community estate is to the detriment of the Respondent's separate estate in violation of the prenuptial agreement, but there is no evidence in the record of this theory. The court retains the equitable right to award disproportionate amounts of the community property in a divorce, and absent specific findings that the award was based on the separate property vis a vis the prenuptial agreement, said award should not be disturbed and the discretion of the trial court upheld.

It is the Appellant's contention that the account in question was not found at trial to be separate property subject to the protection of the prenuptial agreement. It was deemed a community account subject to division by the court due to commingling by the parties during the marriage. Accordingly, the arguments presented by the Respondent on this topic are misplaced.

DATED this 6th day of May, 2019.

Broer & Passannante, P.S.

A handwritten signature in black ink, appearing to be 'Grant C. Broer', written over a horizontal line.

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Of Attorneys for Appellant/Petitioner

BROER & PASSANNANTE, P.S.

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