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

In re Marriage of Nehring,

Curtis Glavin Nehring,

Respondent,

v.

Deborah Katherine Nehring,

Appellant.

Brief of Respondent

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1. Introduction

The parties' divorce was decided in binding arbitration. Nevertheless, Deborah Nehring has asked this Court to dig into the merits of the arbitrator's ruling. Even if this Court can find authority to do so, the arbitrator's findings of fact were all supported by substantial evidence. The findings supported the arbitrator's conclusions. The division of property and provision for spousal maintenance were reasonable, fair, and just, well within the arbitrator's broad discretion. There is no reason for this Court to reverse.

To the contrary, there is every reason for this Court to affirm. The Court cannot even consider the merits of Debbie's appeal because it is outside the scope of review of an arbitration decision. Additionally, Debbie fails to assign error or clearly argue against any specific findings of fact. She failed to provide an adequate record to review the findings. And the "lack of finality" that she bemoans is the direct result of her own request to be awarded assets at a future date. Because of all of these flaws, there is no reasonable chance of reversal.

This Court should affirm the arbitrator's decision.

2. Statement of the Case

2.1 Background facts about Curt and Debbie.

Curt and Debbie Nearing¹ were married in 1971. CP 353. They legally separated on January 15, 2016, when Curt filed for divorce. CP 11, 353.

Curt is a Columbia River Bar Pilot. CP 130. “The Columbia River Bar Pilots were established in 1846 to ensure the safety of ships, crews and cargoes crossing the treacherous Columbia River Bar, which is recognized as one of the most dangerous and challenging navigated stretches of water in the world.” CP 130. Pilots are airlifted by helicopter from shore to ships engaged in foreign trade coming into or out of the mouth of the Columbia river. CP 130. “Once aboard, the pilot assumes navigational conduct of the vessel using his or her experience and local knowledge to safely navigate the restricted channels of the Columbia River, and over the bar to and from sea.” CP 130.

Curt earns regular monthly distributions from the Columbia River Bar Pilots (“CRBP”), which vary in amount, plus additional quarterly sums, for an average monthly income found by the arbitrator to be \$40,000 per month. CP 356. In connection

¹ The parties share the same last name. At trial, each indicated a preference to be referred to by their first names. CP 285 (“Debbie”), CP 945 (“Capt. Nehring” or “Curt”). This brief will follow that preference. No disrespect is intended.

with Curt's employment, he has various ownership interests and retirement benefits, including a "CRBP Accounts Receivable Payment" at retirement, shares in Stopwater, LLC, shares in Saddle Mountain, Inc., and benefits from CRBP's "Safety Net" program, all of which will be explained in further detail below. CP 360-61. At the time of entry of the Decree, Curt was 69 years old. *See* CP 11, 377. He intends to keep working as long as he can, but his career could be suddenly cut short by the dangers of his profession. *See, e.g.*, CP 968.

Debbie worked for a substantial duration of the marriage as an owner of flower shops in southern California. CP 357. After a few years operating a single shop, Debbie expanded to four locations. CP 1020. The business was plagued with problems and eventually reduced back to one location. *See, e.g.*, CP 1021. Debbie closed the business in 2017. CP 1040.

Debbie also worked for a number of years for the San Diego Diocese. CP 357. Starting in 2005, this was her primary employment, in which she worked up to 60 hours per week. CP 1033. She earned a salary of around \$33,000 per year. CP 356. She was laid off from that employment in 2016. CP 357. At the time of entry of the Decree, Debbie was 65 years old. *See* CP 11, 377.

2.2 Curt and Debbie agreed to use an arbitrator for the divorce.

After Curt filed the petition, Debbie sought and was granted temporary spousal maintenance. CP 212-17, 258-60. The parties then entered into a stipulation to have “all matters ... determined by binding arbitration before Charles Gazzola, an experienced family law attorney.” CP 261.

The trial court ordered the parties to submit the case “to binding arbitration before Charles Gazzola ... conducted according to the procedures set forth in RCW 7.04A.010 *et seq.*,” except as otherwise agreed by the parties in writing. CP 264. “The parties shall arrange for a certified court transcriber to report all hearings and the trial before the arbitrator.” CP 266. After trial, the trial court would “sign and enter the arbitrator’s determination as if it were the original order of the Superior Court.” CP 266. The trial court ordered, “Each party shall have the right to appeal the arbitrator’s determination thusly entered on the same basis as if the judge had rendered the determination after an evidentiary trial.” CP 266.

2.3 At trial, Curt asked for a clean break, valuing and dividing all assets at present value, but Debbie asked for future payments equal to half the value of Curt’s interests at the time he receives a cash payout.

Curt’s arbitration memorandum summarized the differences between the parties’ positions going into the trial:

“The primary driver of the parties’ dispute is [Debbie’s] desire to remain entangled financially so that she can enjoy an interest in [Curt’s] post-separation and post-divorce earnings and efforts with the CRBP, while [Curt] wishes to value everything, divide it, and minimize the potential for future conflict and litigation.” CP 268-69.

Debbie asked the arbitrator to award her a compensatory payment out of Curt’s social security in order to even out their respective benefits. CP 292, 1119. She asked for half of the value of Curt’s Saddle Mountain shares, valued and payable at the time Curt receives a cash payout. CP 298-99, 1129, 1144-45. She asked for half of the value of Curt’s payments under the CRBP Safety Net program, valued and payable at the time Curt receives them. CP 298, 1152-53. She asked for half of the value of Curt’s Stopwater, LLC interest, valued and payable at the time Curt receives a cash payout. CP 299, 1153-54. She asked for spousal maintenance for as long as Curt continued to work as a Bar Pilot, with the obligation cut in half if Curt reduced to half-time work. CP 1128.

Curt expressed concerns with dividing his interests at a future date, due in part to not wanting to become entangled in future disputes over who gets what. CP 888-89, 901-02. He feared that future inquiries from Debbie regarding Curt’s business interests would become a burden on his fellow Bar

Pilots.² CP 903. Debbie never expressed any concern over future entanglements or litigation that might result from her requests.

2.4 The arbitrator divided Curt's interests in accordance with Debbie's requests for future payouts.

The arbitrator awarded Curt the Chinook home in which he had been living, with a value of \$270,000 and zero equity. CP 358. He awarded Debbie the Escondido, California home in which she had been living, with a value of \$590,000 and equity of \$295,932. CP 358. Curt and Debbie were to sell their interests in two timeshares and split the proceeds equally. CP 358.

Curt and Debbie each received their own social security benefits. CP 359. Debbie would be entitled to receive \$961 per month on her own account (or \$1,060 per month if she waited one year). CP 359, 696-97. Two years after the divorce, she could receive benefits equal to half the value of Curt's benefit. CP 694, 697, 1118. Curt would be entitled to receive \$3,178 per month (or \$3,612 per month if he waited until age 70). CP 359, 696 (referencing Ex. 73, Curt's social security statement). Debbie also received her pension of \$753.39 from the San Diego Diocese. CP 359.

² And, indeed, these fears became reality after the arbitrator's ruling, resulting in a restraining order prohibiting Debbie from contacting the Bar Pilots. CP 385 (order), 1296-1312 (motion and supporting documents).

The parties had accumulated over \$100,000 in credit card debt. CP 357. Curt received about 92 percent of this debt, “in light of his greater ability to pay.” CP 357.

The parties were also indebted to the IRS in excess of \$370,000. CP 357. The arbitrator found that he could not alter the joint and several nature of the obligation and therefore did not attempt to allocate the IRS debt. CP 357. But the arbitrator provided that the parties court return to court to modify the decree if IRS collection efforts significantly impacted the court’s allocation of property or award of spousal maintenance. CP 357, 386-87.

The arbitrator awarded spousal maintenance to Debbie in the amount of \$13,500 per month. CP 361, 383. The obligation is partially secured by life insurance. CP 383-85. Curt’s obligation is linked to his employment: if his work schedule is formally reduced below full time, his obligation would be reduced by a commensurate percentage; when he retires, his obligation would end. CP 361, 383. Debbie had agreed to this linkage during her trial testimony. CP 1128 (“As long as he is working full-time with the Bar Pilots. If he’s working half-time, then clearly it would be half.”).

All told, the Decree awarded 55 percent of the marital estate to Debbie and 45 percent to Curt. CP 363, 391-96. The arbitrator found that this was a just and equitable distribution.

CP 363. The arbitrator also ordered a judgment in favor of Debbie in the amount of \$18,790 for past-due spousal support. CP 379.

In dividing Curt's CRBP-related interests and benefits, the arbitrator granted Debbie's requests to receive future payouts rather than present value or a lump sum:

2.4.1 CRBP Accounts Receivable Payment

When Curt departs CRBP, the company will pay him a proportionate share of the accounts receivable at the time he departs employment. CP 360. CRBP is paid by the owners of ships on which the Bar Pilots provide services. CP 516-17, 522. The pilots' incomes are based on the accounts receivable that are paid, as those payments come in. CP 522-23. The amount of accounts receivable varies from month to month. *See* CP 524-25.

When a new pilot joins CRBP, they "buy-in" to the accounts receivable on the books at that time. CP 534-35. When a pilot leaves, they are paid a share of the accounts receivable that are on the books at that time that would be collected after the pilot leaves. CP 535. Essentially, the payment is compensation for work that the pilot performed but for which CRBP has not yet been paid when the pilot leaves. CP 767. The amount of the payment depends on the amount of accounts

receivable and the number of pilots at the time a pilot departs. CP 535-36, 767-69.

Debbie originally asked for half of the value of the CRBP Accounts Receivable Payment, valued and payable at the time Curt receives a cash payout, but then changed her mind and said it could be awarded to Curt. CP 1140-42. The arbitrator valued Curt's CRBP Accounts Receivable Payment at \$30,460 and awarded it to Debbie, payable when Curt receives it. CP 1321. The arbitrator acknowledged that the payment could be more or less than \$30,460 at that time. CP 360, 388. The decree provided that if the difference is substantial, either party may bring the matter before the court for resolution. CP 388.

2.4.2 Stopwater, LLC

Stopwater, LLC is an entity that owns the real estate that CRBP uses for its operations. CP 605. Stopwater's owners include active and retired Bar Pilots and boat operators. CP 609-10. Curt owned four shares in Stopwater, a 3.96 percent interest at the time. CP 610. The shares are valued based on the assets and equity of the company, divided by the number of shares. CP 615. At the time of trial, the shares were valued at \$12,833.81 per share. CP 621-22.

Stopwater has strict limitations on transfer of its shares. CP 613-14, 1207-08. When a prohibited transfer is initiated,

Stopwater has the opportunity and obligation to buy back the shares. CP 614. A pilot can keep their shares after retirement but must sell at death. CP 632.

Debbie asked for half of the value of Curt's Stopwater, LLC interest, valued and payable at the time Curt receives a cash payout. CP 299, 1153-54. The arbitrator awarded the full value of Curt's Stopwater, LLC shares to Debbie, payable at the time Curt receives payment. CP 1321. The arbitrator intended Curt to hold the shares in trust for Debbie. CP 1321. But Stopwater treated the award as an impermissible transfer to a non-spouse, triggering Stopwater's right to buy back the shares immediately. CP 360, 387. The arbitrator ordered Curt to cooperate with the buy-back and to immediately transfer the proceeds to Debbie. CP 360, 387.

2.4.3 Saddle Mountain, Inc.

Saddle Mountain, Inc. is an entity that owns or leases the transportation assets—boats and helicopter—used by the Bar Pilots to get to and from the vessels they serve. CP 540. Each full-time active pilot owns 14 shares in Saddle Mountain. CP 543, 552. Saddle Mountain makes monthly distributions to shareholders, totaling about \$20,000 per year. CP 552.

When a pilot departs, they can elect to sell back all of their shares at once, or two shares per year for seven years. CP

543, 551-52. Over the seven-year sellback, the pilot continues to receive distributions for the shares they still own. CP 553. This is intended to approximate the interest that could be earned on a lump sum. CP 553, 588. The value of the shares is based on a set formula. CP 544-45. The value of Curt's shares as of February 15, 2017 was \$410,000. CP 548-49.

Debbie asked for half of the value of Curt's Saddle Mountain shares, valued and payable at the time Curt receives a cash payout. CP 298-99, 1129, 1144-45. The arbitrator valued Curt's Saddle Mountain shares at \$410,000 and awarded them to Curt. CP 360, 1321.

2.4.4 CRBP Safety Net Program

CRBP provides the pilots with a defined benefit, deferred compensation program called the "Safety Net." CP 536-37. The Safety Net pays a defined benefit of \$2,000 for every year of service, paid annually for 20 years to the retired pilot or the pilot's estate. CP 537-38. The amount is adjusted each year based on the local consumer price index. CP 539.

Debbie asked for half of the value of Curt's payments under the CRBP Safety Net program, valued and payable at the time Curt receives them. CP 298, 1152-53. That is exactly what the arbitrator awarded her. CP 360, 387-88.

2.5 After the arbitrator's ruling, Debbie continued to litigate issues that had already been decided.

The arbitrator issued a memorandum ruling on September 5, 2017. CP 1314. There were three subsequent hearings totaling nearly 10 hours of argument and rulings regarding the form of the final orders, on October 14, November 14, and December 12. CP 412; Decl. of Quach in support of Motion to Dismiss, ¶ 4. The multiple hearings were necessitated by Debbie's refusal to cooperate with the arbitrator's directions and her attempts to relitigate issues that had already been decided, even though the arbitrator had specifically directed her not to do so. *See* CP 1370. Debbie submitted 100 pages of argument for consideration in these hearings. CP 412.

During these hearings, Debbie was still trying to litigate issues relating to the Stopwater shares (CP 1377 (Issue 12)), Safety Net (CP 1414-15 (Item 8)³), spousal support (CP 1377

³ This document is a memorandum written by Debbie's attorney, with commentary inserted by Curt's attorney and submitted to the arbitrator. In Item 8, Debbie asks that her share of the Safety Net benefit be calculated and that amount imposed as a spousal support obligation, contrary to her original position.

(Issue 14), CP 1415 (Item 9),⁴ CP 1424⁵), the IRS debt (CP 1377-78 (Issue 15), CP 1425-26⁶), personal property (CP 1378 (Issue 16)), and spousal support arrearages (CP 1378 (Issues 17, 18, and 19)). At times she even contradicted her own prior positions. *E.g.*, CP 1412 (Item 3).⁷

At this same time, Debbie was contacting members of the Bar Pilots and attempting to damage Curt's reputation. *See* CP 1297-99. Curt moved for a protective order prohibiting Debbie from contacting the Bar Pilots. CP 1296-1312. The arbitrator granted the protective order and incorporated it into the final orders. CP 385. When Debbie's contacts triggered the buy-back

⁴ In Item 9, Debbie asks the arbitrator to change the manner in which spousal support would be reduced in the event Curt's work schedule is reduced. Curt noted that the arbitrator had already made a specific ruling that support would reduce pro rata to any work level reduction. CP 1415 at lines 13, 19.

⁵ At CP 1424, Debbie again asks the arbitrator to change the formula for calculating reductions in spousal support and specifically asks the arbitrator to order \$10,000 per month maintenance if Curt reduces to half-time work, rather than the 50 percent reduction originally ordered by the arbitrator.

⁶ At CP 1425-26, Debbie asks the arbitrator to order that Curt's life insurance would secure payment of the IRS debt. Curt noted that the arbitrator did not order any security for the IRS debt.

⁷ At CP 1412, Debbie is asking for language related to the IRS debt to be removed. Curt noted, "This was language that [Debbie] requested to be added during the hearing on 11/14. I have deleted it, but note that we are now coming full circle." CP 1412 at lines 14-15.

of the Stopwater shares, Debbie refused to accept the proceeds. CP 425.

Still not satisfied with the final orders, Debbie brought a motion for reconsideration in the trial court, asking the judge to second-guess the arbitrator's decisions. CP 402-10. In this motion for reconsideration she argued, for the first time, that the decree did not provide her with finality because of the uncertain nature of the future interests and spousal maintenance she received. CP 408. She neglected to inform the trial court that she herself had originally requested future payment of her share of Curt's CRBP-related interests and benefits and that she had agreed in her testimony at trial that maintenance should be tied to Curt's employment as a Bar Pilot.

Debbie's post-ruling behavior was consistent with the way she handled the whole case. As Curt summarized in his response to the motion for reconsideration, "[Debbie] over-litigated this case. In spite of the estate's [relatively small] size, [Debbie] demanded excessive discovery, requiring [Curt] to provide fourteen separate, extensive discovery productions of thousands of pages. She demanded [Curt] produce documents that were equally accessible to her. Paralegal Meisner, who has worked as a paralegal in family law for 30 years, testified that the discovery demanded was in excess of any case on which she had worked, including those in which the estate was valued in the

tens of millions; she dedicated well over 110 hours to discovery alone.” CP 416. Debbie had promised Curt that she would ruin him financially. CP 416, note 1. She created conflict at every turn. CP 416, note 1.

The trial court denied the motion for reconsideration. CP 455. This appeal followed. CP 456.

3. Summary of Argument

Debbie’s arguments on appeal are without merit. Appellate review of an arbitration award is limited to legal error appearing on the face of the award. Debbie assigns error based on a lack of substantial evidence. This kind of factual challenge is not reviewable in an arbitration decision. The parties’ stipulation allowing appeal cannot create jurisdiction where none exists. This Court should dismiss the appeal.

There is no authority to support Debbie’s suggestion that an arbitration decision can be reversed simply because some unidentified hearings were not recorded. The Rules of Appellate Procedure require Debbie to provide an adequate record for review of the issues she raises for review. The proper remedy for Debbie’s failure to provide an adequate record of the arbitration proceedings is to disregard any issues for which the record is inadequate.

Debbie argues that the trial court's findings and decree are not supported by substantial evidence, but she fails to assign error to any specific findings and failed to provide a complete record of the evidence relevant to her arguments. As a consequence of Debbie's failure to carry her burden, this Court should affirm the findings and decree.

As can be seen from Curt's Statement of the Case, every substantive claim of error that Debbie has raised was actually the result of Debbie's own requests going into the trial. The invited error doctrine requires that her arguments be rejected and the trial court decision affirmed.

The findings that Debbie appears to question are all supported by substantial evidence in the record. The findings support the arbitrator's conclusions. The arbitrator did not abuse his discretion in awarding Debbie precisely the kinds of future interests she herself requested. This Court should affirm.

Because Debbie's appeal is so devoid of merit that there is no reasonable chance of reversal, this Court should order Debbie to pay Curt's appellate attorney's fees as a sanction for her frivolous appeal.

4. Argument

4.1 Review of an arbitration award is limited to legal errors appearing on the face of the award. Debbie's claims of factual error are not reviewable.

4.1.1 This Court's ordinary standard of review of property division and spousal support is for abuse of discretion, with findings of fact reviewed for substantial evidence.

Ordinarily, this Court would review determinations regarding property division or spousal support for abuse of discretion. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005) (property division); *In re Marriage of Valente*, 179 Wn. App. 817, 822, 320 P.3d 115 (2014). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn. 2d 39, 46-47, 940 P.2d 1362 (1997).

“A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Littlefield*, 133 Wn. 2d at 47.

The trial court's findings of fact are accepted as verities so long as they are supported by substantial evidence. *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 finding. *Id.* "So long as substantial evidence supports the finding, it does not matter that other evidence may contradict it. This is because credibility determinations are left to the trier of fact and are not subject to review." *In re Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002).

4.1.2 However, because this case arises from private arbitration, this Court's review is much more limited. Because Debbie raises issues outside that limited scope, the appeal must be dismissed.

Appellate review of an arbitration award is limited to legal error appearing on the face of the award. *Broom v. Morgan Stanley DW Inc.*, 169 Wn.2d 231, 237, 236 P.3d 182 (2010). This standard is very narrow: the reviewing court may examine the face of the award for obvious legal error but should not re-examine the evidence or re-determine the merits of the case. *Id.* at 239. The appellate court may only determine whether the trial court properly confirmed, vacated, modified, or corrected the award. *Barnett v. Hicks*, 119 Wn.2d 151, 157, 829 P.2d 1087 (1992).

Parties in arbitration cannot stipulate around the statutory limits on appellate review of an arbitration decision. *Barnett*, 119 Wn. 2d at 161 (“Litigants cannot stipulate to jurisdiction nor can they create their own boundaries of review.”). Where an appellant seeks review outside of the statutory limits, the appellate court should dismiss the appeal for lack of jurisdiction. *Id.* at 155.

In *Barnett*, the parties had agreed “that this matter would be tried by an arbitrator, with full appeal rights as if the matter had been tried in Superior Court.” *Barnett*, 119 Wn.2d at 158. Although the parties later attempted to re-characterize the proceeding as one before a referee under a different statute, the appellate court held that the record unequivocally proved that it was an arbitration. *Id.* at 158-59.

The specific language of the stipulation read, “Any superior court order entered on a motion to confirm an order or award shall be subject to review by the appellate courts under applicable rules, and review, if granted, shall extend to the arbitration proceedings just as if the arbitration proceedings had occurred in superior court.” *Barnett*, 119 Wn.2d at 160. Our Supreme Court held that the parties’ agreement could not alter the limited scope of appellate review provided by the arbitration statutes. *Id.* at 163. Because the parties did not seek review within the limited scope, the court dismissed the appeal. *Id.*

The result should be the same here. Although the parties entered into their stipulation in good faith, they were powerless to create a right to appellate review beyond that provided by statute. Debbie's assignments of error do not relate to legal error on the face of the arbitrator's decision. Nor do they relate to any of the other statutory grounds for appellate review of an arbitration award. Because Debbie seeks review outside the limited statutory scope, her appeal must be dismissed.

4.2 The proper remedy for Debbie's alleged procedural errors is to dismiss the appeal or affirm the trial court decision, not reverse it.

There is no authority to support Debbie's suggestion that an arbitration decision can be reversed simply because some unidentified hearings were not recorded. Civil Rule 80 arguably requires all superior court proceedings to be recorded in some manner. CR 80. The stipulation of the parties in this case expressly required that the arbitration proceedings be recorded, placing the obligation equally on both parties. CP 266. However, neither the Civil Rules nor the parties' stipulation provides any consequence or remedy for the lack of a recording.

Rule of Appellate Procedure Title 9 places the obligation to produce an adequate record on the appellant. *See* RAP 9.2(a)-(c). The report of an oral proceeding may take the form of a Verbatim Report of Proceedings, a Narrative Report of

Proceedings, or an Agreed Report of Proceedings. RAP 9.1(b).
When there is no court reporter and no electronic recording of the proceeding, a Narrative or Agreed Report is an appropriate substitute for a Verbatim Report. RAP 9.3 (narrative report); RAP 9.4 (agreed report).

The remedy for an incomplete appellate record is provided in RAP 9.10: “If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party ... direct the supplementation or correction of, the report of proceedings. The appellate court or trial court may impose sanctions as provided in rule 18.9(a) as a condition to correcting or supplementing the record on review.” The court will not “ordinarily” decide a case on the basis of an incomplete record, but these remedies are still available. RAP 9.10.

“A trial court’s judgment is presumed to be correct and should be sustained absent an affirmative showing of error.” *State v. Wade*, 138 Wn.2d 460, 464, 979 P.2d 850 (1999). An appellate court may decline to address a claimed error when the record is insufficient. *Id.* at 465.

There is no authority or support for Debbie’s request to vacate the arbitration award on the basis of the parties’ failure to record some unspecified hearings. Quite to the contrary, the court rules place the burden on Debbie to provide an alternative

record or risk having her issues disregarded. This Court should disregard any issues for which Debbie has not provided an adequate record.

4.3 Debbie cannot carry her burden of demonstrating a lack of substantial evidence to support the arbitrator’s findings.

Debbie argues that the trial court’s findings and decree are not supported by substantial evidence, but she fails to assign error to any specific findings and failed to provide a complete record of the evidence relevant to her arguments.

4.3.1 Debbie fails to assign error to any specific findings of fact.

The Rules of Appellate Procedure require, “A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number.” RAP 10.3(g). A general assignment of error to all of the trial court’s findings is insufficient under this rule. *Olivo v. Rasmussen*, 48 Wn. App. 318, 319 n.1, 738 P.2d 333 (1987). If the relevant issues are argued in the body of the brief and citations are supplied so that the court is not greatly inconvenienced and the respondent is not prejudiced, the appellate court may exercise its discretion to consider the merits of the issue. *State v. Olson*, 126 Wn.2d 315, 323, 893 P.2d 629 (1995). Otherwise, the findings become verities on appeal. *In re Marriage of Fiorito*,

112 Wn. App. 657, 665, 50 P.3d 298 (2002); *Olivo*, 48 Wn. App. at 319 n.1.

Debbie did not separately assign error to any specific finding of fact. Nowhere in her brief does she refer to any challenged finding by number. It is difficult to discern from her arguments what exactly she believes is not supported by evidence. Indeed, many of her arguments actually point to the evidence that supports the arbitrator's findings on the identified subjects.

4.3.1.1 Saddle Mountain, Inc.

For example, Debbie points to the Saddle Mountain shares as a prime example of something not supported by substantial evidence. Br. of App. at 10-11. She mentions the arbitrator's finding of value but does not clearly challenge it as not supported by evidence. She also argues that the arbitrator may have erroneously concluded that the shares could not have been awarded to the wife due to the buy-sell agreement, but the arbitrator never found that the shares could not be awarded to her. It is entirely unclear what Debbie is claiming as error. This Court should accept as verities all findings relating to Saddle Mountain.

4.3.1.2 Stopwater, LLC

The same problem continues in Debbie's arguments regarding Stopwater, LLC. Br. of App. at 11-14. It is unclear what findings she believes were not supported by evidence. It appears she believes there was no evidence to support the finding that the original award to the wife was a prohibited transfer. To the extent this is her argument, she is incorrect, as will be demonstrated below in Part 4.5.2. She makes many more arguments at least tangentially related to Stopwater, but none of these arguments challenge any of the arbitrator's findings. This Court should accept as verities all findings related to Stopwater.

4.3.1.3 CRBP Accounts Receivable Payment

In regards to the CRBP Accounts Receivable Payment, Debbie appears to argue that the finding of value is not supported by substantial evidence because it was based on testimony, not exhibits. Br. of App. at 14. First of all, this is factually incorrect, as will be shown below in Part 4.5.3. Second, "witness testimony is substantial evidence." *Wimberly v. Caravello*, 136 Wn. App. 327, 339, 149 P.3d 402 (2006). If Debbie is challenging any other factual finding, it is not clear from her argument. This Court should accept as verities all findings related to the Account Receivable Payment.

4.3.1.4 Social Security Income

Debbie appears to argue that there is no evidence of the amount of social security Curt is entitled to receive. Br. of App. at 14-16. She argues that the first mention of Curt's social security appears to be in the findings themselves. This is factually incorrect, as will be shown below in Part 4.5.4. This Court should accept as verities all findings related to the parties' social security benefits.

4.3.1.5 Non-True Up Income

Debbie does not appear to challenge any findings of fact related to the "Non-True Up Income," an issue relating to the trial court's temporary order of spousal maintenance. Br. of App. at 16. Rather, she questions the reasoning behind the arbitrator's conclusion that Curt should retain \$77,000 of income he earned after separation, which she wanted a share of but had not been awarded to her in the temporary order. This Court should accept as verities all findings related to the "Non-True Up Income."

4.3.1.6 Curt's Income

Debbie appears to challenge the arbitrator's findings related to Curt's income. Br. of App. at 16-17. However, in doing so, she first points to the supporting evidence and then mischaracterizes what the arbitrator actually found. The

arbitrator found, in 22.1.E, that Curt “earns regular monthly distributions that have averaged \$32,000 to \$34,500 per month, and additional sums (that used to be termed ‘true ups’ reflected on [Curt’s] 2016 K-1 admitted as Exhibit 17). The Court finds [Curt] earns \$40,000 a month, or \$480,000 per year.” CP 356. Rather than a “rigid, strict finding,” the arbitrator made a reasonable estimate of Curt’s monthly income from all sources, acknowledging that the amount fluctuates and would not always be fully available to satisfy a spousal support obligation in any given month. Again, this section is actually a challenge to the arbitrator’s conclusions, not his findings. This Court should accept as verities all findings related to Curt’s income.

4.3.1.7 IRS Debt

Lastly, Debbie takes issue with the arbitrator **not making** a finding relating to the IRS debt. Br. of App. at 17-18. Debbie does not challenge any existing finding. Rather, she complains that the arbitrator should have found that Curt was at fault for the IRS debt. Again, what she is really challenging is the arbitrator’s conclusions, not his findings. This Court should accept as verities all findings related to the IRS debt.

4.3.2 Debbie failed to provide a sufficient record to demonstrate a lack of substantial evidence.

“If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding.” RAP 9.2(b). Although some post-trial hearings were not recorded, all trial testimony **was** recorded. Decl. of Quach in support of Motion to Dismiss, at ¶¶ 3-4. Debbie could have ordered transcripts of all relevant trial testimony. She could have designated all relevant exhibits. She did not.

Conspicuously missing from the record are 1) the first hour or so of Curt’s trial testimony (*see* CP 679 (“Testimony of Captain Nehring and other proceedings were heard, but not transcribed.”); and 2) the entirety of Debbie’s cross-examination and any redirect, re-cross, or questioning by the arbitrator (*see* CP 1189 (putting off cross-examination to the next trial day, for which no transcript was provided). Also missing are the testimony of Erin Harryman and Leona Hauschild, the parties’ tax witnesses. *See* CP 353 (witness list). Among the exhibits that were not designated are Exhibits 72 and 73, the parties’ social security statements. *See* CP 695 (admitting the exhibits).

The record is insufficient to determine whether any potentially challenged findings are not supported by substantial

evidence. As noted in Part 4.2, this Court should disregard any issues for which Debbie has failed to provide an adequate record.

4.4 Under the invited error doctrine, Debbie has waived any error regarding the lack of finality in the arbitrator’s decision because it was the direct result of her own requests at trial.

Debbie argues that the distribution of property was an abuse of discretion because it does not provide her with finality, due to the various “contingencies and returns to court.” Br. of App. at 10. But as can be seen from Parts 2.3 and 2.4, above, all of these future contingencies are the direct result of Debbie’s own requests at trial.

Under the doctrine of invited error, a party cannot set up an error at trial and then complain of it on appeal. *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995). “This court will deem an error waived if the party asserting such error materially contributed thereto.” *Id.*

The unpublished case of *In re Marriage of Hamond*, No. 31320-4-III (Wash. Ct. App. Mar. 13, 2014)⁸, provides a persuasive illustration of the doctrine of invited error in a similar situation. In his declaration for trial, Hamond requested that a retirement account be divided equally. *Hamond*, No. 31320-4-III at *13-14. After the trial court did what he asked, he

⁸ *Hamond* is an unpublished case. It is not binding and is cited as persuasive authority under GR 14.1(a).

appealed and assigned as error the equal division of the retirement account. *Id.* at *4, 12-13. The appellate court refused to address the claimed error because Hamond invited it by asking that the account be divided equally. *Id.* at 13-14.

The result should be the same here. Despite Curt's desire to make a clean break and achieve finality, Debbie asked the arbitrator to award her half of the value of Curt's CRBP-related interests and benefits, valued and payable at the time Curt receives a cash payment. She also asked for Curt's spousal support obligation to be linked to his employment. The contingencies and future interests reflected in the findings and decree were all designed to give Debbie the kind of benefits she was asking for. She cannot now be heard to complain that it was an abuse of discretion. She has waived any argument that the decree does not provide finality. The lack of finality in the decree is the direct result of Debbie's own requests.

In addition, awarding retirement interests on an "as-received" basis is actually favored in Washington, "because it avoids difficult valuation problems and shares in the risks inherent in deferred income." *In re Marriage of Chavez*, 80 Wn. App. 432, 437, 909 P.2d 314 (1996). The "as-received" award of Curt's CRBP-related interests and benefits was a reasonable way to divide those interests. The arbitrator did not abuse his discretion. This Court should affirm.

4.5 The arbitrator's findings are all supported by substantial evidence in the record.

Even if Debbie's claims of error can somehow qualify for review by this Court, the findings that Debbie appears to be challenging are all supported by substantial evidence in the record. The findings support the arbitrator's conclusions. The arbitrator did not abuse his discretion in awarding Debbie precisely the kind of "as-received" interests she herself requested.

The trial court's findings of fact are accepted as verities so long as they are supported by substantial evidence. *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 finding. *Id.* "So long as substantial evidence supports the finding, it does not matter that other evidence may contradict it. This is because credibility determinations are left to the trier of fact and are not subject to review." *In re Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002).

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn. 2d 39, 46-47, 940 P.2d 1362 (1997). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices,

given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Id.* at 47.

In making a division of property, a trial court has broad discretion and its decision is rarely changed on appeal. *In re Marriage of Buchanan*, 150 Wn. App. 730, 735, 207 P.3d 478 (2009). A fair and equitable division does not require mathematical precision, but rather fairness. *In re Marriage of Zahm*, 138 Wn.2d 213, 219, 978 P.2d 498 (1999).

Similarly, whether to award spousal maintenance and the amount and duration of the award are matters of broad discretion—the only statutory limitation on the trial court’s discretion is that the award must be just. *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). “The trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property.” *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997).

Thus, in considering the arbitrator’s decision, the question is whether the arbitrator could have reasonably concluded that the property division and maintenance provisions were fair and just. The arbitrator’s decision was based on

substantial evidence, was reasonable, and was fair and just within the bounds of his broad discretion. This Court should affirm.

4.5.1 Saddle Mountain, Inc.

The arbitrator valued the Saddle Mountain shares at \$410,000. CP 360. The value of the shares is based on a set formula. CP 544-45; Ex. 15 (CP 1335-42). Mike Titone testified that the value of Curt's shares as of February 15, 2017, was \$410,000. CP 548-49. Debbie did not present any evidence of a different value. The arbitrator's finding of value is supported by substantial evidence.

Titone also testified regarding the monthly distributions to shareholders, including distributions that a shareholder would receive if they elected a seven-year sellback plan. CP 551-53. He testified that the distributions earned during a seven-year sellback are approximately equal to the interest that could be earned on a lump sum over those same seven years at a rate of 5 to 6 percent. CP 553, 588. Debbie did not offer any contradictory testimony.

Debbie is incorrect when she argues that the arbitrator overlooked these distributions. In fact, the arbitrator reasonably understood that there was no appreciable difference between the lump sum value of \$410,000 and the present value of a seven-

year sellback. If Curt elects the lump sum, he can invest the money and earn a similar return over the next seven years to what he would receive if he elected the seven-year sellback option. There is no functional difference. The arbitrator did not ignore, overlook, or miscalculate the true value of the Saddle Mountain shares.

There is no evidence that the arbitrator believed he could not award the Saddle Mountain shares to Debbie. Rather, the arbitrator awarded the shares to Curt in order to achieve a fair and just distribution of assets. Debbie had been awarded the Escondido home, with \$295,932 in equity. CP 358. The Chinook home awarded to Curt had zero equity. CP 358. Curt would need to receive a large asset to counterbalance the value of the Escondido home. The Saddle Mountain shares, at \$410,000, served that purpose. Curt's share was significantly reduced by the consumer debts assigned to him. CP 357. The assignment of other, smaller assets to Debbie brought the total distribution to approximately a 55/45 split in Debbie's favor. CP 391-96.

The arbitrator's findings were supported by substantial evidence. The arbitrator's conclusions were reasonable. The distribution of property was fair and just. This Court should affirm.

4.5.2 Stopwater, LLC

The arbitrator's finding that the award of the Stopwater shares to Debbie was a prohibited transfer under the governing agreement was supported by substantial evidence. Stopwater has strict limitations on transfer of its shares. CP 613-14, 1207-08. Transfer to an ex-spouse is not permitted as a matter of right. CP 1207-08 (Paragraph 7.2). No member may voluntarily or involuntarily make such a transfer without the prior written consent of a majority of the ownership interests of the other members. CP 1207 (Paragraph 7.1).

Captain Chris Farrell testified that when a transfer not authorized under Paragraph 7.2 is initiated, Stopwater has the opportunity to buy back the shares. CP 614. When asked what Stopwater would do if the court ordered half the value to Debbie, Capt. Farrell answered, "If Captain Nehring owns shares and wishes to sell them, we would pay Captain Nehring for the shares that he owns." CP 629-30. The arbitrator's finding that Stopwater would buy back the shares in response to the award to Debbie was supported by substantial evidence.

Additionally, by the time the final orders were entered, the arbitrator had been presented with evidence that Stopwater had, in fact, concluded that the award was a prohibited transfer and had elected to exercise its buy-back option. *See* CP 425

(within only a few weeks after entry of the orders, the shares had already been liquidated).

Debbie complains about the restraining order that was entered against her, but she did not assign error to the restraining order and did not provide an adequate record of the hearings in which the arbitrator made the decision. Debbie cannot demonstrate a lack of substantial evidence or an abuse of discretion. This Court should disregard this issue.

Debbie complains that the decree did not require Curt to sell the shares before his death. But this issue is moot because the shares have already been liquidated. *See* CP 425. Even if the shares were still in Curt's possession, Debbie herself invited the arbitrator to award her value for the shares at the time Curt receives payment. CP 299 ("Debbie requests she receive 50% of what Curtis receives for the eventual [sale] of these shares."). This Court should disregard this issue.

The arbitrator's findings were supported by substantial evidence. His decision reasonably dealt with Stopwater's decision to buy back the shares. The shares have been liquidated, so there is nothing more this Court can do regarding this portion of the decree. This Court should affirm.

4.5.3 CRBP Accounts Receivable Payment

The arbitrator's finding of the value of the CRBP Accounts Receivable Payment was supported by substantial evidence. When a new pilot joins CRBP, they "buy-in" to the accounts receivable on the books at that time. CP 534-35. When a pilot leaves, they are paid a share of the accounts receivable that are on the books at that time that would be collected after the pilot leaves. CP 535. Essentially, the payment is compensation for work that the pilot performed but for which CRBP has not yet been paid when the pilot leaves. CP 767.

The amount of the payment depends on the amount of accounts receivable and the number of pilots at the time a pilot departs. CP 535-36, 767-69. The value as of March 31, 2017 was provided in Ex. 107, which Debbie did not include in the record. *See* CP 767 ("the 107 exhibit ... was the calculation that we made at the end of March"), 771 (Ex. 107 is admitted). The value calculated in Ex. 107 was \$30,460. CP 899-90. Although the value at a future date cannot be calculated with exactness, CP 535-36, the Ex. 107 calculation "should be representative" of the value when Curt retires. CP 767-68. "It's not going to vary materially. Over time with inflation it might go up a little bit, but that is a good approximation." CP 768.

The arbitrator's finding that the value of the CRBP Accounts Receivable Payment was \$30,460 was supported by

substantial evidence. Contrary to Debbie’s argument, the value was supported by documentary evidence—namely, Exhibit 107, which Debbie did not see fit to provide to this Court. But even without the document, “witness testimony is substantial evidence.” *Wimberly v. Caravello*, 136 Wn. App. 327, 339, 149 P.3d 402 (2006). Mike Titone and Curt testified to the value. Their testimony is substantial evidence.

Debbie originally asked for half of the value of the CRBP Accounts Receivable Payment, valued and payable at the time Curt receives a cash payout, but then changed her mind and said it could be awarded to Curt. CP 1140-42. She cannot complain that the arbitrator awarded her an asset that she requested. Any error here was invited.

The award of this asset to Debbie was reasonable. As noted above, Debbie’s equity in the Escondido home had to be offset by awarding the Saddle Mountain shares to Curt. In order to achieve an equitable distribution, the arbitrator reasonably awarded the lion’s share of debt to Curt and the smaller CRBP-related interests to Debbie. *See* CP 391-96. There may have been other alternatives available, but the arbitrator’s decision was reasonable and within his broad discretion.

The arbitrator’s finding of value was supported by substantial evidence. The award of this asset to Debbie was reasonable. This Court should affirm.

4.5.4 Social Security Income

The arbitrator's findings related to social security income were supported by substantial evidence. Gary Leavitt testified to the amount of social security income Debbie and Curt could each receive. CP 694-97. The arbitrator admitted into evidence Exhibits 72 and 73, the parties' social security statements, which set forth the amounts. CP 695. The arbitrator's findings were supported by substantial evidence.

Debbie failed to include Exhibits 72 and 73 in the record on appeal. As noted in Parts 4.2 and 4.3.2, this Court should disregard this issue due to Debbie's failure to provide an adequate record.

The arbitrator appropriately considered the amounts of the parties' social security benefits in determining spousal maintenance and distribution of property. *See* CP 359 (giving Debbie her pension as income to account for the difference in anticipated social security income), CP 360 (giving Debbie half of Safety Net to account for differences in social security and in place of permanent maintenance), CP 363 (awarding Debbie a larger share of the marital estate). The arbitrator's consideration of social security was reasonable and within his broad discretion.

The arbitrator's findings were supported by substantial evidence. The arbitrator did not abuse his discretion. This Court should affirm.

4.5.5 Non-True Up Income

In the temporary order, the trial court reserved the question of whether Curt would be required to pay Debbie any portion of his Saddle Mountain or other non-true-up distributions as temporary spousal maintenance during the proceedings, in addition to the base amount of \$12,000 per month. CP 258-59 (“The Court defers application of [Curt’s] Saddle Mountain or other non true-up distributions and/or administrative fees as spousal maintenance for trial. During the pendency of this action, [Curt] shall receive these funds.”).

Debbie does not challenge the finding that Curt earned approximately \$77,000 in Saddle Mountain distributions during the time covered by the temporary order. She merely questions the reasoning behind the arbitrator's conclusion that the temporary spousal maintenance was just and equitable without requiring Curt to pay any portion of these distributions. She provides a “possible explanation” for the decision, undercutting any argument that the decision was patently unreasonable.

The amounts owed under the temporary order for true-up and non-true-up income were left unresolved in the arbitrator's

memorandum ruling. CP 1323. The issue was resolved in the post-trial hearings of which Debbie has failed to provide a record. Debbie cannot meet her burden of demonstrating a manifest abuse of discretion. This Court should affirm.

4.5.6 Curt's Income

The arbitrator's finding of Curt's average annual and monthly income was supported by substantial evidence. As Debbie acknowledges, Chris Farrell, Mike Titone, and Curt all testified about portions of Curt's income. Titone explained how the CRBP distributions and true-ups (excess distributions) are calculated. CP 522-26. Curt did as well. CP 978-81.

Titone testified that Curt's income in recent years was somewhere in the neighborhood of \$438,000, \$464,000, or \$479,501. CP 529-30. These numbers were supported by Exhibits 16 and 17, Curt's K-1s (which, once again, Debbie has failed to designate as part of the record). Titone also testified that Curt received Saddle Mountain distributions averaging \$20,000 per year. CP 552.

A finding of value is supported by substantial evidence if it is within the range of evidence presented. *In re Marriage of Soriano*, 31 Wn. App. 432, 435, 643 P.2d 450 (1982). The arbitrator's finding that Curt's income averaged about \$480,000

per year or \$40,000 per month was within the range of evidence. The arbitrator's finding was supported by substantial evidence.

The arbitrator reasonably considered Curt's income in determining spousal maintenance and in awarding Debbie a larger share of the marital estate. Due to the fluctuations in Curt's income, it was reasonable for the arbitrator to base his decisions on an average value. Surely Debbie is better off receiving a predictable amount of spousal maintenance each month rather than an amount re-calculated each month on the basis of Curt's fluctuating income. The arbitrator did not abuse his discretion. This Court should affirm.

4.5.7 IRS Debt

Debbie acknowledges that the arbitrator had no power to dictate to the IRS how to enforce the tax debt on Curt and Debbie. Br. of App. at 18. Her only complaint is that the arbitrator did not assign fault for the debt to Curt. She does not specify what affect such a finding would have. She does not argue that it was unreasonable for the arbitrator to treat Curt and Debbie as equally liable for the debt.

Even if Debbie was challenging a finding, she failed to provide a sufficient record. Both parties had tax experts who testified, but Debbie failed to provide their testimony as part of

the record. *See* CP 353 (listing the tax witnesses). This Court should disregard this issue.

The arbitrator's findings of fact were all supported by substantial evidence in the record. The distribution of property and award of spousal maintenance were reasonable and within the broad scope of his discretion in arriving at a fair and just result. The arbitrator did not abuse his discretion. This Court should affirm the findings and decree.

4.6 This Court should award Curt his attorney's fees on appeal as a sanction for Debbie's frivolous appeal.

Under RAP 18.9(a), "The appellate court ... may order a party or counsel ... who uses these rules for the purpose of delay [or] files a frivolous appeal ... to pay terms or compensatory damages to any other party who has been harmed." RAP 18.9(a). The primary inquiry under this rule is whether, when considering the record as a whole, the appeal is frivolous, *i.e.*, whether it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal. *Streater v. White*, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980).

"In determining whether an appeal is frivolous and was, therefore, brought for the purpose of delay, justifying the imposition of terms and compensatory damages, we are guided by the following considerations: (1) A civil appellant has a right

to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.” *Streater*, 26 Wn. App. at 434-35.

In *Streater*, the court found the appeal frivolous where “the assignments of error challenge findings of fact that are amply supported by substantial evidence as well as the conclusions of law which are clearly supported by the findings.” *Streater*, 26 Wn. App. at 435. The same is true here. Debbie’s appeal is primarily a factual one, challenging findings of fact that are amply supported by substantial evidence.

In addition, Debbie has pressed this appeal despite the numerous legal and procedural barriers to this Court’s review. Despite any agreement of the parties, review of an arbitration award is limited to legal errors appearing on the face of the decision. *Broom v. Morgan Stanley DW Inc.*, 169 Wn.2d 231, 237, 236 P.3d 182 (2010); *Barnett v. Hicks*, 119 Wn.2d 151, 157, 161, 829 P.2d 1087 (1992). Because Debbie’s appeal is outside of that limited scope, this Court has no jurisdiction and must

dismiss the appeal. *Barnett*, 119 Wn.2d at 163. This appeal has no reasonable possibility of reversal.

Even if this Court could reach the merits of Debbie's appeal, she failed to provide an adequate record for this Court's review. The trial court's decision is presumed correct and must be affirmed unless the appellant can demonstrate error. *State v. Wade*, 138 Wn.2d 460, 464, 979 P.2d 850 (1999). This Court should decline to address any errors for which Debbie failed to provide an adequate record. On those issues, there is no reasonable possibility of reversal.

Debbie also failed to assign error to any specific findings of fact. Her arguments do not clearly disclose what findings she believes are not supported by substantial evidence. Where her entire appeal is framed as a challenge to findings of fact, but the findings become verities because she fails to adequately draw attention to any specific errors, there is no reasonable possibility of reversal.

Debbie makes a general argument that the arbitrator abused his discretion because the findings and decree do not provide her with finality, but all of the future contingencies of which she complains are the direct result of Debbie's own requests at trial. Under the doctrine of invited error, this Court should disregard this claim of error. *See In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995). Where Debbie

invited the error of which she complains, there is no reasonable possibility of reversal.

Even if Debbie can somehow get past all of these barriers, she has failed to demonstrate that any of the arbitrator's findings were not supported by substantial evidence. She has failed to demonstrate that the arbitrator's decision was outside of his broad discretion. Where the arbitrator's decision was reasonable, fair, and just, there is no reasonable possibility of reversal.

This appeal is nothing more than a continuation of a pattern exhibited by Debbie in the arbitration and before the trial court, of over-litigating and seeking to punish Curt financially. Curt has been forced to incur significant attorney's fees in defending against this frivolous appeal. This Court should award Curt his appellate attorney's fees as a sanction under RAP 18.9.

5. Conclusion

This Court has no jurisdiction to entertain the merits of Debbie's appeal from an arbitration decision. This Court should dismiss the appeal.

If this Court determines that it has authority to proceed, it should nevertheless affirm the arbitrator's decision because Debbie failed to assign error or clearly argue against any specific

findings of fact, failed to provide an adequate record on which to review the findings, and invited every error of which she complains.

In the end, all of the arbitrator's findings were supported by substantial evidence in the record. The arbitrator's findings supported his conclusions. The arbitrator reasonably divided the property and provided for spousal maintenance within his broad discretion. There was no error. This Court should affirm.

Because Debbie's appeal was brought for improper purposes and had no reasonable chance of reversal, this Court should order her to pay Curt's appellate attorney's fees and costs as a sanction for bringing this frivolous appeal.

Respectfully submitted this 8th day of April, 2019.

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Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on April 8, 2019, 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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SIGNED at Lacey, Washington, this 8th day of April, 2019.

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