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No. 54382-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

PAUL B. BYERS,

Respondent,

v.

MIKAYLA R. BYERS,

Appellant.

Appeal from the Superior Court for Pierce County
The Honorable G. Helen Whitener

Brief of Respondent

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INTRODUCTION

This is an appeal arises out of the dissolution of the 16-year marriage of Paul Byers ("Dr. Byers") and Mikayla Byers ("Ms. Byers").

The trial court conducted a seven-day trial. It heard the testimony of eight witnesses, including lengthy, multi-day testimony from both parties, and admitted 469 trial exhibits. It issued detailed, fact-based Findings of Fact and Conclusions of Law regarding parenting, child support, maintenance, property characterization and division, and attorney fees. It awarded Ms. Byers a disproportionate share of $1.5 million in community assets and an equal share of the net assets. It also awarded her two years of maintenance, despite finding that she had made no credible effort to seek employment.

Ms. Byers appeals and argues that she should have received more assets and maintenance, as well as $200,000 in attorneys' fees. She does not assign error to any finding of fact or conclusion of law. Instead, she parses and re-argues the evidence below in the hope of achieving a different result. When, as here, a trial court complies with its statutory duties and its decisions are supported by substantial evidence, this Court will not retry the matter to achieve

a result that the appealing party prefers. The Court should affirm the trial court.

RESTATEMENT OF THE ISSUES

1. Did the trial court properly characterize the commercial building located at 9003 Canyon Road in Kent, Washington, when it found that the property was acquired by Dr. Byers before marriage, Ms. Byers does not challenge this finding of fact, and there is no acknowledged writing by Dr. Byers changing the character of the property to community property?

2. After a seven-day trial, did the trial court abuse its discretion in equally dividing the net assets, after awarding a disproportionate share of community assets to Ms. Byers, including a majority of the funds in the Ally Bank account, and requiring her to pay a small reimbursement to Dr. Byers of $6,000 for 2017 IRS funds?

3. Did the trial court abuse its discretion in awarding Ms. Byers two years maintenance, rather than the six years she requested, after considering the RCW 26.09.090 statutory factors and making the unchallenged finding that Ms. Byers had not made a credible effort to find full-time employment, and had already

received 22 months of maintenance during the pendency of the action?

4. Did the trial court abuse its discretion in denying Ms. Byers attorney fees, based on its unchallenged finding that she had been intransigent?

RESTATEMENT OF THE CASE

A. The Parties Have One Child and Were Married for 16 Years Before Separating.

The parties married in 2003. (CP 2413) At the time, Ms. Byers was a student completing two degrees, in fisheries and biology, at the University of Washington. (RP 155-156) Dr. Byers is 15 years older than Ms. Byers. (CP 2416) Since 1996, he has been a practicing chiropractor. (RP 53-54) They have one child, Hayley, age 13. (CP 3158)

B. Dr. Byers Acquired the Canyon Road Property Before Marriage to Ms. Byers.

In 1996, Dr. Byers started his chiropractic practice, Byers Chiropractic and Massage ("BCM") at its current location, 9003 Canyon Drive in Kent, Washington (the "Canyon Road property"). (RP 53-54) He rented space from the then-owner of the property, Dr. Huber. (RP 54)

On July 31, 2000, he executed a real estate contract with Dr. Huber to purchase the Canyon Road property for $150,000. (RP 54-56, Ex. 1) He paid $90,000 down, with the $60,0000 balance secured against the 9003 Canyon Road building. (RP 56, Ex. 1) He obtained the down payment through a home equity loan on his house, purchased in 1988. (RP 55) He paid Dr. Huber monthly installments payments of $590.86, which he made from collected rents. (RP 57, RP 751-752) He continued to make such payments after he married Ms. Byers in 2003. (RP 57) Ms. Byers was never obligated to pay the real estate contract. (RP 60) Community funds were not used to pay the installment payments. (RP 60) In April 2005, Dr. Byers paid the remaining balance of $20,000 on the real estate contract. (RP 58, Ex. 2) He put this amount on a low-interest American Express card, and paid off the card with rents collected. (RP 59)

In May 2005, Dr. Byers received a Statutory Warranty Deed, conveying the property to "Paul B. Byers, as his separate estate." (RP 60, Ex. 2) Ms. Byers has never been on title to the Canyon Road Building. (RP 60)

In 2017, Dr. Byers formed Living Well Properties LLC, as a real estate holding company, and conveyed the Canyon Road property to it. (RP 65, RP 378) He is the sole member and 100

percent owner of Living Well Properties LLC. (RP 65) Ms. Byers has never been a member of that LLC. (RP 65)

C. After Dr. Byers Filed for Dissolution of the Marriage, Temporary Orders Were Entered Ordering Him to Pay Ms. Byers Spousal Maintenance and Child Support.

The parties separated on January 3, 2018. CP 2413, FOF 4). Dr. Byers voluntarily paid $6,000 following separation, for a period of six months. (RP 809) On June 12, 2018, Dr. Byers filed a Petition for Divorce in Pierce County Superior Court. (CP 693) On July 24, 2018, the trial court ordered Dr. Byers to pay temporary monthly spousal maintenance of $4,500 to Ms. Byer, commencing as of July 1, 2018 (CP 831), and temporary child support of $1,064. (CP 2491)

D. After Trial, the Trial Court Awarded Ms. Byers the Larger Share of the Community Property and Two Years of Maintenance.

The parties appeared for a seven-day trial before Pierce County Superior Court Judge Helen G. Whitener, on October 15, 2019 through October 23, 2019. (CP 2412) The parties disputed parenting, child support, property characterization, property division, spousal maintenance, and attorney's fees. (CP 1265-79, 1240-64) The trial court heard testimony from eight witnesses. (CP 2412) There were 469 trial exhibits. (CP 2307-2359)

On December 16, 2019, the trial court entered its oral ruling. (CP 2412-2391; CP 2412, FOF 1) On January 28, 2020, it entered final orders, including the Findings of Fact and Conclusions of Law (CP 2412-2418, attached at Appendix A) and the Final Divorce Order (CP 2419-2425, attached at Appendix B).

1. The trial court characterized the Canyon Road building as Dr. Byers' separate property.

The trial court concluded that the Canyon Road property was Dr. Byers' separate property. (CP 2413, FOF 8) It found that the property "was acquired prior to the marriage" and that there was insufficient evidence of commingling or conversion. (CP 2413, FOF 8).

2. The trial court awarded Ms. Byers a disproportionate share of the community property.

The trial court identified $1,534,396 in community assets. (CP 2412, FOF 9). It awarded Ms. Byers approximately 55.5 percent and Dr. Byers 44.5 percent of community assets, as follows:

COMMUNITY ASSET	HUSBAND	WIFE
1. Paul B. Byers DC, Inc.	$385,000	$385,000
2. Centers for Health (Groupon business)	93,500	93,500
3. Ally Bank X2977	80,000	239,000
4. Vanguard Sep and Simple IRA (husband's name)	88,439	

5. All of the Charles Schwab accounts (14 accounts in wife's name)		36,348
6. Vanguard IRA (wife's name)		46,657
7. VW Jetta		3,440
8. Forest River travel trailer	6,200	6,200
9. 1970 travel trailer	2,000	
10. United Airline miles		18,088
11. Alaska Airline miles		59
12. IKEA furnishings purchased by wife with community funds with value of $2000	1,000	1,000
13. Community funds removed by wife on 6/14/90 of $30,000	15,000	15,000
14. Business funds diverted to wife's personal account of $1913	956.50	956.50
15. Interest - Ally Bank account from July 2018 to the date of trial of $4,102	2,051	2,051
16. 2017 IRS funds in the amount of $12,000	6,000	6,000
TOTAL COMMUNITY ASSETS	$680,146.50	853,299.50
	44.3 percent	55.6 percent[1]

[1] Ms. Byers states on appeal that the total community assets were divided $680,146.50 to Dr. Byers, and $829,206 to her. (App. Br. 4) While the trial court stated in its oral ruling that "$829,206 is being awarded to Ms. Byers" it also stated that "[a]nd I have not included the items that I've indicated were 50 percent allotted to Ms. Byers; she already had those." (CP 2377) The trial court found that Ms. Byers received $50,015 in community funds prior to the trial, $30,000 of which she withdrew without court permission to pay her attorney's fees. (CP 2414, FOF 9(13)) The trial court identified these funds as community assets. (CP 2414, FOF 9(12)-

(CP 2412, FOF 9; CP 2420-22).

The trial court found that the parties' most valuable asset, Byers Chiropractic & Massage (identified by the trial court as "Paul Byers DC, Inc.) was community property. (CP 2414, FOF 9(1)) It ordered Dr. Byers to pay Ms. Byers $385,000 cash for her half of the business within one year. (CP 2425, ¶ 20) It also ordered offsets against this payment by amounts owed by Ms. Byers to Dr. Byers, resulting in a net payment by Dr. Byers to Ms. Byers of $279,992. (CP 2425, ¶ 20)

On appeal, Ms. Byers challenges only two of these 15 awards of specific community assets: item no. 3, the $80,000 award of Ally Bank funds to Dr. Byers, and item no. 15, the reimbursement to Dr. Byers of half the $12,000 IRS funds. (CP 2414) The trial court found that the Ally Bank account held $319,914. (CP 2414) It awarded "all of the funds in the Ally Bank account" to Ms. Byers, "after payment of $80,000 to Dr. Byers." (CP 2422, ¶ 9(2)). It also ordered Ms. Byers to pay Dr. Byers $6,000 for 2018 taxes paid

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(15)) The court required that she reimburse Dr. Byers half of these funds, or $25,007.50, which is reflected in the property award. *Id.* The other half of these community funds, which she already received, should be included in her column.

during the marriage in 2017. (CP 2377, CP 2414, FOF 9(15), CP 2425, ¶ 20).

The trial court found that the community debt totaled $31,041. The trial court assigned $984 to Ms. Byers and the remainder to Dr. Byers. (CP 2377-78, CP 2415, CP 2423).

The trial court awarded Dr. Byers the Canyon Road property as his separate property, valued at $385,000. (CP 2413) It also assigned to Dr. Byers as his separate debt $143,651 in student loans incurred to obtain his chiropractic degree. (CP 2416, FOF 12; RP 167). In its oral ruling, the trial court stated that, after taking the total assets and reducing by the total debt, it awarded Dr. Byers $868,311.50, and Ms. Byers, $828,222.[2] (CP 2378)

Still unsatisfied, Ms. Byers moved for reconsideration (CP 2426-2429), arguing that the $80,000 award to Dr. Byers from the Ally account was a predistribution, and the award of 50 percent of the $12,000 tax refund to Dr. Byers was an error. (CP 2426-2429) The trial court denied the motion. (CP 2462)

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[2] While this is a near-equal division of net assets, the true allocation includes the $25,007.50 in community assets received or removed by Ms. Byers during the pendency of this action, bringing her final award to $853,229.50. *See supra*, note 1 at page 7.

3. The trial court imputed income to Ms. Byers because she was voluntarily underemployed.

The trial court concluded that Ms. Byers was voluntarily underemployed in determining child support. The court imputed income to her, and required Dr. Byers to pay $982.27 in support. (CP 3156, 3158. It found that, although Ms. Byers was young, healthy, college educated, and skilled in business administration, she had made no credible effort to obtain gainful full-time employment. (CP 3157) In its oral ruling, the trial court pointed to Ms. Byers' resume as evidence of her lack of credible efforts to find employment:

> The mother's efforts at seeking employment have been less than credible, as seen in Exhibit 50. Exhibit 50 was the admitted exhibit in regards to the mother's resume, and the objective was stated as "I'm a stay-at-home mom for the last 15 years. I'm recently divorced. And the work experience said, "Mom, July 2003 to October 2018, stay-at-home wife and mom, recently divorced." Education was listed as "bachelor's degree, Biology, Aquatic and Fisheries Sciences, June 2000 to June 2004 from the University of Washington in Seattle, Washington."

(CP 2375, Ex. 50) Ms. Byers did not list any volunteer or unpaid work experience, or provide an email or home address. (RP 779- 82, Ex. 50) Ms. Byers testified that whether she ever intended to be employed full-time "depends on her lifestyle." (RP 802-803)

4. Despite finding that that Ms. Byers had not made any credible efforts to find full-time employment, the trial court awarded her two years of additional maintenance.

At time of trial in October 2020, Ms. Byers had already received 22 months of pre-trial maintenance totaling $108,000.00.[3] (RP 809, CP 831, CP 2378) At trial, Ms. Byers requested $6,000 of spousal maintenance for six additional years. (RP 675, 1002) She therefore requested that she receive a total of almost eight years of maintenance, half the length of the parties' marriage. Dr. Byers requested that the court award Ms. Byers maintenance of $1,250 for two additional years. (RP 424, 956)

The trial court awarded Ms. Byers two years of maintenance, at $2,500 for the first year, and $1,500 for the second year. (CP 2416, FOF 13) The trial court evaluated the RCW 26.09.090 factors, and found that this amount was appropriate:

> The court made findings as to the respondent's income in regards to setting the spousal maintenance obligation finding that the respondent has two college degrees but has not worked in those fields. She's in good health. She is 39 years old. The businesses are successful [due] in part to her educational contribution. Her efforts of seeking employment have been less than credible including her resume with an objective of being a stay at home

[3] Ms. Byers received $6,000 voluntary maintenance from Dr. Byers for six months following separation. (RP 809) She received $4,500 for 16 months during the pendency of the action. (CP 831)

> mom for the last 15 years. The trial court finds that she is voluntarily underemployed for purposes of the child support obligation. The court finds that the parties have a 16-year marriage. The financial resources of the parties after the allocation is approximately equal. M.s Byers used her education exclusively during the marriage for the parties' business endeavors. At trial she exhibited skills including marketing, accounting, finance, and general business administration. She works part-time in her child's school. She had a middle-class standard of living during the marriage. The marital community never acquired a home. The house that was once live in was foreclosed and they lived in an unauthorized living space referred to as a shed. Ms. Byers has already received two years maintenance during the pendency of this case and has not made credible efforts to gain full-time employment of her own. Based upon all of these circumstances the court finds that an award of maintenance in the total amount of two years is appropriate with$2500 being paid for year on and $1500 being paid for year two.

(CP 2416, FOF 13)

E. The Trial Court Found That Ms. Byers Had Been Intransigent and Denied Her Request for Attorney Fees.

Ms. Byers requested attorneys' fees of over $200,000 at trial, an amount representing 13 percent of the parties' entire marital estate. (CP 1262) Dr. Byers did not request attorney fees, but asked that the trial court deny Ms. Byers' request. (CP 1278-79)

The trial court declined to award fees to Ms. Byers. It found that she and Dr. Byers had both been intransigent, and ruled that each party is responsible for its own fees:

> As to attorneys fees and costs the evidence shows that at various times during this litigation both of the parties have been intransigent resulting in unnecessary delays, misuse of community funds, and noncompliance with valid court orders. Based upon these findings each party is responsible for the payment of their own attorneys fees and costs.

(CP 2416, FOF 14)

ARGUMENT

A. Standard of Review

Trial court decisions in dissolution actions are "difficult at best" and "[a]ppellate courts should not encourage appeals by tinkering with them." *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 914 (1985). As the spouse challenging the trial court's decision, Ms. Byers bears the heavy burden of showing a manifest abuse of discretion as to the trial court's distribution of property, award of maintenance, and denial of attorney fees. *Id.; In re Marriage of Wright,* 179 Wn. App. 257, 261, 319 P.3d 45 (2013), *rev. denied* 180 Wn.2d 1016 (2104) (property distribution and maintenance); *In re Marriage of Knight,* 75 Wn. App. 721, 729, 800 P.2d 71, *review denied*, 126 Wn.2d 1007 (1995) (attorney fees). Under this standard of review, a trial court's decision will be affirmed unless no reasonable judge would have reached the same

conclusion. *Landry,* 103 Wn.2d at 809-810. Ms. Byers does not satisfy this burden.

Characterization of property is a mixed question of law and fact. *In re Marriage of Schwarz*, 192 Wn. App. 180, 191-192, 368 P.3d 173 (2016). Issues of fact include, for example, the time at which property was acquired and the method of acquisition. *Id.* at 192. This Court reviews the trial court's factual findings for substantial evidence. *Id.* The ultimate characterization of property as community or separate is a question of law, which it reviews de novo. *Id.*

B. Ms. Byers Did Not Challenge the Trial Court's Findings of Fact, and Those Findings Are Verities on Appeal.

Ms. Byer makes five assignments of error. But, contrary to RAP 10.3(g), she does not assign error to any of the trial court's findings of fact or conclusions of law, and she does not challenge any finding by number. She also did not comply with RAP 10.4(c), which requires a party to include the material portions of any challenged finding in its brief, or to attach such portions to its brief. Instead, she reasserts her arguments below in the "Assignment of Errors" section of her opening Brief of Appellant. (App. Br. 1)

The nature of her challenges is unclear. It is difficult to discern whether Ms. Byers argues that substantial evidence does not

support some findings, that trial court simply failed to recognize her evidence as more persuasive as Dr. Byers' evidence, or that she simply disagrees with the conclusions of law. The Court should accept Judge Whitener's findings as verities on appeal, and review as to whether the unchallenged findings justify the trial court's conclusions of law. *See Robel v. Roundup Corp.*, 148 Wn.2d 35, 47, 59 P.3d 611 (2002).

C. The Trial Court's Characterization of the Canyon Road Property as the Dr. Byers' Separate Property is Supported by Sufficient Facts and the Law.

Although all property is before the court for distribution, characterization of the property as community or separate is a necessary step to take before making a distribution. *In re Marriage of Brewer*, 137 Wn.2d 756, 770, 976 P.2d 102 (1999). Therefore, Dr. Byers addresses Ms. Byers' assignment of error no. 3 first, before addressing the property division issue.

The trial found that "the [Canyon Road] property was purchased prior to marriage." (CP 2413) Ms. Byers does not challenge this finding, and it is a verity on appeal. Indeed, she concedes that Dr. Byers executed the real estate contract in 2000, three years prior to the parties' marriage. (App. Br. 12-13) Under the "inception of title" theory, property acquired subject to a real estate

contract or mortgage is acquired when the obligation is undertaken. *In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009) (plurality opinion), citing Harry M. Cross, *The Community Property Law in Washington*, 61 WASH. L. REV. 13, 39 (1986).

Property acquired by Dr. Byers before marriage is his separate property. *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). Washington law presumes that it remains separate property, in the absence of sufficient evidence that the owner intended to convert the property from separate to community property. *Borghi*, 167 Wn.2d at 484. The party asserting that separate property has transferred to the community has the burden to prove the transfer by clear and convincing evidence. *Skarbeck,* 100 Wn. App. at 447. Significantly, the evidence must show the intent of the spouse owning the separate property to change its character from separate to community property. *Borghi*, 167 Wn.2d at 484-85. The law generally demands an acknowledged writing such as a quit claim deed or a community property agreement, when changing the nature of real property. *Id.* at 485.

The record contains no evidence that Dr. Byers intended to change the character of the Canyon Road property from his separate property to community property. The 2005 Statutory Warranty Deed

conveyed the property to Dr. Byers "as his separate estate."[4] (RP 60, Ex. 2) In 2017, Dr. Byers conveyed the property to an LLC to which he is the sole member. (RP 65). As a matter of law, the Canyon Road property was, and remains, his separate property.

Ms. Byers contends that payment of community funds towards the building's expenses necessarily transforms it into community property. (App. Br. 13-26, 43-44). The law disagrees. Assuming the community pays for expenses on one spouse's separate property, the property does not metamorphose to community property, but the community *may* obtain reimbursement for the contributions.

> Later community property contributions to the payment of obligations, improvements upon the property, or any subsequent mortgage of the property may in some instances give rise to a community right of reimbursement protected by an equitable lien, but such later actions do not result in a transmutation of the property from separate to community property.

Borghi, 167 Wn.2d at 491, n.7; *see also In re Marriage of Byerley*, 183 Wn. App. 677, 688, 334 P.3d 108 (2014) (citing *Borghi*; community funds and labor may entitle the community to a share of

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[4] Ms. Byers points out that legal title pursuant to the real estate contract did not pass to Dr. Byers until his receipt of the Statutory Warranty Deed. This is immaterial to characterization. *Stokes v. Polley,* 145 Wn.2d 341, 348 n.2, 37 P.3d 1211 (2001) (the inception of title rule has been well-settled law since 1980).

the increase in value of separate property, but does not change the character of the house itself as separate property).

Neither case relied on by Ms. Byers, *In re Marriage of Zahm,* 138 Wn.2d 213, 978 P.2d 498 (1999) and *In re Buchanan's Estate,* 89 Wash. 172, 154 Pac. 129 (1916), supports her claim that community contributions to separate property changes the character of that property. In *Zahm*, the parties acquired a house *during* the marriage. *Zahm*, 138 Wn.2d at 218. They split the down payment equally, each paying by their respect separate funds. *Id.* They then both signed a promissory note for the balance owing, creating a community debt and the monies borrowed were also therefore community. *Id.* at 224. The Supreme Court ruled that the trial court did not err in characterizing the home as community. *Id.*

The issue in *Buchanan* was characterization of corporate stock, not real property. Moreover, unlike here, the husband and wife each contributed their separate funds to purchase stock of the corporation. *Buchanan*, 89 Wash. at 175. The operation of the corporation was largely financed through community credit. *Id.* at 176. The corporation increased in value, largely through the efforts of the husband. *Id.* The Supreme Court ruled that here was such an intermingling of community earnings and separate funds as to

render the entire interest in the stock community property. *Id.* Neither case holds that alleged community contributions to separate real property converts that property into community property.

Ms. Byers did not seek reimbursement of the community's asserted contributions to Dr. Byers' separate property at trial, and does not raise or brief the issue on appeal. As a general rule, appellate courts will not consider issues not raised below. RAP 2.5(a); *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). She cannot now raise it in her reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (issue argued for first time in reply brief is "too late to warrant consideration").[5]

The trial court's findings that the Canyon Road building was acquired prior to marriage and not converted to community property

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[5] Even if she had *arguendo* raised this issue below, there is no evidence that the community had *unreimbursed* expenses. While Ms. Byers vaguely asserted that the parties had paid some of the payments on the home equity loan taken by Dr. Byers on his house to pay the down payment for the Canyon Road property (RP 682), the martial community received $100,000 in proceeds from sale of that house, which he purchased 15 years before the marriage. (RP 494) The marital community also received the rents from the Canyon Road property (RP 592-593) and lived there rent-free for three to four years. (RP 62-63, RP 381) There is no right of reimbursement of any community contribution to separate property if the payment is offset by the benefits realized by the community. *In re Marriage of Pearson-Maines*, 70 Wn. App. 86, 87, 855 P.2d 1210 (1993); *Miracle v. Miracle*, 101 Wash. 2d 137, 139, 675 P.2d 1229 (1984).

are verities. These findings are consistent with established Washington law and supported by sufficient evidence. The Court should affirm the trial court's characterization of the Canyon Road building.

D. The Trial Court's Distribution of Property was Fair and Equitable.

1. The trial court made an equal allocation of net assets after evaluating the evidence.

A trial court is in the best position to assess the assets and liabilities of the parties and determine what is "fair, just and equitable under all the circumstances." *Marriage of Brewer*, 137 Wn.2d at 769; RCW 26.09.080. Here, the trial court identified 15 community assets, totaling over $1.5 million. (CP 2414, FOF 9) After seven days of trial and admission of hundreds of exhibits, it made a discretionary, fact-based allocation of these community assets that favored Ms. Byers. (CP 2412, FOF 1; CP 2307-2359)

Ms. Byers does not challenge the trial court's award of 13 of these 15 community assets. Instead, she only complains that the trial court erred in allocated $86,000 to Dr. Byers, in two asset allocations: an allocation of $80,000 to Dr. Byers from the Ally Bank account, and a division of a $12,000 tax refund. (App. Br. 1)

Neither allocation renders the property award unjust or unequitable, and were well within the trial court's discretion.

Ms. Byers also argues that the trial court's allocation of all assets, community and separate, was unfair. She asserts that Dr. Byers received $1,045,146.50 and she, only $829,206. The obvious flaw in this argument is that, while her numbers include the separate Canyon Road property, she omits separate and community debt, almost all of which the trial court allocated to Dr. Byers. (CP 2377-78, CP 2415, CP 2423). The division of net assets was near-equal (CP 2378) with $868,311.50 awarded to Dr. Byers, and $853,229.50 to Ms. Byers. *See supra* note 2.

2. The trial court did not abuse its discretion in dividing the Ally bank account.

Ms. Byers requested in her trial brief that the trial court allocate the majority of the funds in that account to her:

> Aside from the businesses, the parties' next most significant asset is the Ally Bank Savings account ending x6474 with a balance of $319,919. Ms. Byers should be awarded the majority of this account as well as the parties' Charles Schwab investment accounts and the parties [sic] IRA retirement accounts.

(CP 1272-73) The trial court accommodated this request. It found that the account held $319,914, and awarded "all of these funds to

Ms. Byers" but for $80,000 awarded to Dr. Byers. (CP 2414, FOF 9(3))

Ms. Byers complains that Dr. Byers received a predistribution of $80,000 from the Ally Bank account. Thus, she reasons, the trial court's allocation of $80,000 from the Ally Bank account is a "second payment" to him. (App. Br. 36) However, Ms. Byers does not identify any finding of fact regarding this alleged "predistribution." While the trial court found that *Ms. Byers* had received predistributions of $50,000 of community assets (CP 2414, FOF 9; CP 2421), the trial court made no finding of that Dr. Byers had received any predistributions. Sufficient evidence demonstrates that Dr. Byers did not dissipate community assets. He testified at length that after separation, he withdrew $77,000 in increments from the Ally Bank account for the community's benefit, including marital counseling and settlement of a lawsuit against the community chiropractic business. (RP 172-176) Ms. Byers asserted in her testimony that he had withdrawn funds for the business and his personal use. (RP 686) The trial court acted within its ample discretion to assess credibility, weigh the evidence, and decide to reject Ms. Byers' argument that Dr. Byers took $80,000 as a predistribution. Ms. Byers now asks this Court to reweigh the

evidence, and reject Dr. Byers's testimony in favor of her own. The Court should decline to do so. *In re Marriage of Bundy,* 12 Wn. App. 2d 933, 942, 460 P.3d 1111 (2020) ("We do not reweigh competing testimony or inferences or make credibility determinations.")

Ms. Byers also argues that the trial court incorrectly valued the Ally Bank account at $319,914. As she acknowledges in her opening brief, that was the value of the account at the time of separation. (App. Br. 5, RP 172, Ex. 56). Trial courts have the discretion to value assets either at the time of separation or at the time of trial. *Lucker v. Lucker,* 71 Wn.2d 165, 166, 426 P.2d 981 (1967). Moreover, that was also the value she provided, not only in her trial brief but in her testimony:

> Q. And when you talked about Dr. Byers had locked down all these accounts and not given you access to funds, this entire time you had access to the Ally Bank account that had upwards of $300,000 in it; correct?
>
> A. Yes. But we had an agreement that we would not use that for personal spending.
>
> Q. And in addition, you had all of these various Charles Schwab accounts; correct?
>
> A. There was access -- there wasn't a ton of money in there. Paul had access to all the business money.
>
> Q. And as to that Ally Bank account with the $300,000 in it, this is the account from which you diverted the 30,000 that you just testified; correct?

A. Yes, those were the legal fees.

(RP 771) To the extent that Ms. Byers now argues that the trial court assigned the wrong value to the Ally Bank account, she invited that error. *See In re Marriage of Morris*, 176 Wn. App. 893, 900, 309 P.3d 767 (2013) (a party cannot set up an error at trial and then complain of it on appeal).

Finally, Ms. Byers complains that the result of this alleged error is a $10,000 difference in Dr. Byers' favor in allocation of community assets. She argues that Dr. Byers would receive $680,146.52 of the community assets and Ms. Byers, $669,292, a difference of $10,854.50. (App. Br. 37) This argument lacks merit. First, her numbers are incorrect. The trial court awarded Ms. Byers $853,299.50. *See supra* note 1. She claims she is really only receiving $159,914 instead of $239,914. (App. Br. 37). If so, her allocation of community assets is reduced to $777,300, which is $100,000 more than Dr. Byers' allocation. Second, even accepting her numbers, Ms. Byers fails to explain how a $10,000 difference in Dr. Byers' favor is somehow unjust or inequitable, particularly given allocation of the community and separate debts, and the award of maintenance.

3. The tax refund allocation is a miniscule part of the property division.

Ms. Byers' only other quarrel with the trial court's property division is that the trial court's identification of community IRS funds of $12,000 is unsubstantiated by the record. The trial court required Ms. Byers to reimburse Dr. Byers $6,000, half of these funds. (CP 2422) Even if the trial court erroneously valued this small asset, this de minimis error does not require reversal of a fair and equitable distribution of net assets of over $1.7 million. *In re Marriage of Pilant*, 42 Wn. App. 173, 181, 709 P.2d 1241 (1985).

E. The Trial Court's Spousal Maintenance Award was based on Proper Consideration of RCW 26.09.090.

Spousal maintenance is not a matter of right. *In re Marriage of Foley,* 84 Wn. App 839, 845, 930 P.2d 929 (1997). The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be just. *Washburn v. Washburn,* 101 Wn.2d 168, 178, 677 P.2d 152 (1984). Factors listed in RCW 26.09.090 include the financial resources of each party; the duration of the marriage and standard of living during marriage; and the age, physical and emotional condition, and financial obligations of the spouse seeking

maintenance, as well as the time needed by the spouse seeking maintenance to acquire education for appropriate employment.

Here, the trial court entered detailed findings of fact, which reflect a careful and proper consideration of the statutory factors under RCW 26.09.090. (CP 2416, FOF 13); *see also* CP 2378-79) It found that Ms. Byers was young (39 years old) in comparison to Dr Byers (54 years old) and both were in good health. They were married for 16 years (a mid-range marriage) and had a middle-class standard of living. The financial resources of the parties after allocation is approximately equal. Ms. Byers already had received 22 months of maintenance during the pendency of the case. Although she held two college degrees, she was voluntarily unemployed, and had made no credible efforts to seek gainful full-time employment. Based on these circumstances, the trial court found that two years maintenance was appropriate, with $2,500 being paid the first year, and $1,500 the second year. (CP 2416, FOF 13)

Ms. Byers does not contend that the trial court failed to consider the statutory factors governing maintenance set forth in RCW 26.09.090. She also does not challenge any of the trial court's findings of fact regarding the maintenance award, including the trial

court's finding that she is voluntarily underemployed. Instead, she simply disagrees with the trial court, arguing that her proposal – $6,000 for six years – was reasonable because Dr. Byers "can pay it" and she is a stay-at-home mom who needs it. (App. Br. 47)

Ms. Byers asserts that she is entitled to more maintenance, because she has no training and has never used her two college degrees. (App. Br. 46) Yet, she testified that BCM was a community business because of her contributions of skill, education and time. She does not challenge the trial court's finding that she used her education exclusively during the marriage for the parties' business endeavors and exhibited skills including marketing, accounting, finance and general business administration. (CP 2416, FOF 13) These findings are verities.

She also claims that her income is only $2,000 a month. (App. Br. 47) This is incorrect. The trial court found that her total monthly gross income was $6,927, which included imputed income of $2,340, business income of $2,087, and maintenance of $2,500, and her monthly net income $5,907.97. (CP 3157, 3164) These findings, too, are verities.

Ms. Byers again misunderstands the scope of review. Even if Ms. Byers had assigned error to findings of fact, she cannot rely

on "contrary evidence and testimony that was rejected by the trial court." *Bale v. Allison*, 173 Wn. App. 435, 458, 294 P.3d 789 (2013). The trial court effectively rejected the suggestion that Ms. Byers had a need of $6,000 per month for six more years and/or Dr. Byers had the ability to pay that amount. This Court will not reweigh evidence or revisit credibility determinations. Awarding Ms. Byers two years maintenance, with $2,500 maintenance in the first year, and $1,500 the second, is well within the trial court's broad discretion, and should be affirmed.

F. The Trial Court Did Not Abuse its Discretion in Denying Ms. Byers' Request for Attorney Fees Incurred Below.

Ms. Byers should not be awarded attorney fees, either below or on appeal. The trial court found *both* Ms. Byers and Dr. Byers to have been intransigent, resulting in unnecessary delays, misuse of community funds, and noncompliance with valid court orders. (CP 2416, FOF 14) It therefore found that each party is responsible for their attorney fees and costs. (CP 2416, FOF 14) The trial court implicitly ruled that this pattern of intransigence by the parties permeated the proceedings.

Ms. Byers does not assign error to these findings. Nowhere in her brief does she even mention the trial court's finding that she

was intransigent. Instead, she again seeks to re-try this case. The trial court was aware of the history of the litigation, and it evaluated and weighed the evidence in reaching its finding that both parties were intransigent.[6] Ms. Byers' intransigence is a verity of appeal, rendering any argument about the parties' financial resources irrelevant. *In re Marriage of Morrow,* 53 Wn. App. 579, 590, 770 P. 2d 197 (1989) ("When intransigence is established, the financial resources of the spouse seeking the award are irrelevant"). The Court should affirm the trial court's denial of fees to Ms. Byers.

Furthermore, the trial court's finding of intransigence on her part is amply supported by the record. Ms. Byers forged Dr. Byers' names on a private school tuition contract, while at the same time she brought contempt charges against Dr. Byers for failure to pay

[6] Here, Ms. Byers also parses the evidence and ignores contrary evidence in her recount of Dr. Byers' conduct. For example, she ignores that the Special Master testified at trial that Dr. Byers had been cooperative, timely and responsive to her questions. (RP 516-17). She also testified that he complied with discovery requests, and provided sufficient responses to discovery. (RP 519-520)

educational costs.[7] (RP 699-05) Despite a temporary restraining order in place on July 1, 2018 prohibiting Ms. Byers from taking any action on BCM's business accounts (CP 830, 834), she changed

---

[7] Ms. Byers' refusal to answer Dr. Byers' counsel's questions regarding this forgery are illustrative of her conduct:

Q. And so you believe it's appropriate when you are bringing contempt proceedings against Mr. Byers in this court the same month of April 2019 that you are forging his name on documents concerning issues you are bringing contempt on to this court; isn't that correct?
A. Paul always did it that way.
MS. HOLMES: Move to strike as nonresponsive.
THE COURT: It will be struck
Q. (By Ms. Holmes) The question is: "Isn't it correct"?
A. I was following the status quo of the temporary order.
MS. HOLMES: Move to strike as nonresponsive.
THE COURT: It will be struck.
Q. (By Ms. Holmes) Please answer the question, which is, "Isn't it correct"?
A. Can you re-ask the question?
Q. Isn't it correct that you forged this document in April of 2019, and contemporaneous with this you were bringing contempt proceedings in this court against Dr. Byers?
A. I simply printed his name; there was no signature.
MS. HOLMES: Move to strike as nonresponsive.
THE COURT: It will be struck.
Q. (By Ms. Holmes) Please answer the question.
A. Can you re-ask it?
MS. HOLMES: May the court reporter please re-read the question. (The last question was read back.)
A. Forging his name is not what I did.
MS. HOLMES: Move to strike, Your Honor.
THE COURT: It will be struck.
Q. (By Ms. Holmes) Please answer the question with a "yes" or a "no."
A. Yes, I wrote his name on that contract. Yes, that's correct.
Q. And it was the same time you were bringing contempt proceedings against him in this same court concerning the schooling issues; correct?
A. I would have to review the dates, but similar dates.
RP 703-705.

the fax line and security PIN for BCM (RP 108, 110, 760-761), diverted funds for BCM received from Earth Class Mail to her personal accounts (RP 116-17), changed passwords for the business Upwork and Qwest accounts (RP 767), changed the passwords for the parties' Charles Schwab and Ally Bank accounts (RP 770), and diverted $50,000 in community funds, including $30,000 from the Ally Bank account (RP 771, CP 2414). She was voluntarily underemployed. *In re Marriage of Mattson*, 95 Wn. App. 592, 605, 976 P.2d 157 (1999) (a party's voluntary underemployment constitutes intransigence). At trial, she delayed the proceedings by refusing to answer simple questions directly, including, for example, whether she had worked two or more days at her daughter's school in the summer of 2019. (RP 785-801)

This Court should also reject Ms. Byers' request for attorney fees on appeal. (App. Br. 50) She has ample resources to pay her fees. The trial court allocated $853,320 in assets to her, and awarded two more years of maintenance. She is highly educated, but elects to remain voluntarily unemployed.

REQUEST FOR ATTORNEY FEES

Dr. Byers requests attorney fees pursuant RCW 26.09.140 and in accordance with RAP 18.1. He was awarded few liquid

assets, and ordered to pay a significant equitable lien to Ms. Byers, while paying maintenance, child support, and large student loans. He will file an affidavit of financial need pursuant to RAP 18.1(c).

He also requests his attorney fees on appeal pursuant to RAP 18.9(a) necessitated entirely due to Ms. Byer's decision to appeal the trial court's wholly fact-based and discretionary decisions regarding property distribution, maintenance and attorney fees, as well as challenging its characterization of the Canyon Road property despite undisputed evidence that the property is and remains separate. An appeal is frivolous if the appellate court is convinced that the appeal presents no debatable issues upon which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal. *Mahoney v. Shinpoch*, 107 Wn. 2d 679, 691, 732 P.2d 510 (1987). Here, Ms. Byers does not challenge the trial court's findings of fact, which are verities on appeal. Instead, she just disagrees with the trial court on narrow issues, none of which go to the primary issues of whether the trial court acted within its broad discretion and fairly and equitably divided property and awarded maintenance.

CONCLUSION

The trial court reached its decisions in this dissolution case after it observed seven days of trial, assessed credibility, and weighed and evaluated the evidence. The trial court's findings are verities on appeal, and supported by sufficient evidence and the law. This Court should affirm the trial court.

Respectfully submitted this 11th day of September, 2020.

CAMPBELL BARNETT, PLLC

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Attorneys for Respondent Paul Byers

DECLARATION OF SERVICE

I, Lynell Bonnes, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed by **Campbell Barnett PLLC**, and that on today's date, September 11, 2020, I served upon the following persons a true and correct copy of this Brief via electronic service to::

Laura A. Carlsen
Carlsen Law Offices, PLLC
1001 Yakima Ave, Ste 7B
Tacoma, WA 98405
lcarlsen@carlsenlawoffices.com

Dated this 11th day of September, 2020.

By ___/s/ Lynell Bonnes_____
Lynell Bonnes

APPENDIX A

TRIAL COURT'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW, JANUARY 28, 2020

ORIGINAL

18-3-02294-0 54389517 FNFCL 01-30-20

FILED
IN CLERK'S OFFICE
JAN 28 2020
PIERCE COUNTY, Clerk
By DEPUTY

Superior Court of Washington, County of Pierce

In re the marriage of: Petitioner: PAUL BRUCE BYERS And Respondent: MIKAYLA ROCHELLE BYERS	No. 18-3-02294-0 Findings and Conclusions about a Marriage (FNFCL)

Findings and Conclusions about a Marriage

1. Basis for findings and conclusions *(check all that apply):*

The parties had a trial before the Honorable Judge G. Helen Whitener that took place from October 15 through October 23, 2019 with an oral ruling entered by the court on December 17, 2018. The trial was attended by attorney for petitioner Hillary Holmes attorney and petitioner Paul Byers, as well as attorney for respondent Jamie Walker and Mikayla Byers respondent.

Additionally the court heard testimony from Steven Kessler business valuation expert, Barry Anton psychologist concerning school placement, Stan Sidor concerning commercial building valuation, Kevin Grambush concerning business valuation, Susan Caulkins special master, Robert Lowe concerning commercial business valuation. Paul Byers + Mikayla Byers also testified.

The Court makes the following findings of fact and conclusions of law:

2. Notice *(check all that apply):*

The Respondent has appeared in this case, or has responded to or joined the *Petition*.

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3. Jurisdiction over the marriage and the spouses *(check all that apply)*:

At the time the *Petition* was filed,

The Petitioner [X] lived [ ] did not live in Washington State.
The Respondent [X] lived [ ] did not live in Washington State.

Conclusion: The court [X] **has** [ ] **does not have** jurisdiction over the marriage.
The court [X] **has** [ ] **does not have** jurisdiction over the Respondent.

4. Information about the marriage

The spouses were married on *(date)* 7/19/03 on *(city and state)* San Juan Island.

5. Separation Date

The marital community ended on *(date)*: 1/3/18. The parties stopped acquiring community property and incurring community debt on this date.

6. Status of the marriage

Divorce - This marriage is irretrievably broken, and it has been 90 days or longer since the *Petition* was filed and the *Summons* was served or the Respondent joined the *Petition*.

Conclusion: The Petition for divorce should be approved.:

7. Separation Contract

There is no separation contract.

8. Real Property (land or home)

The spouses' real property is listed below:

Real Property Address	Tax Parcel Number	Community or Separate Property
9003 Canyon Drive Kent, WA	.1922059174	[ ] community property [X] Petitioner's separate property [ ] Respondent's separate property

[X] Other *(specify)*:

Title to the property is currently held by Living Well Properties LLC. The court makes the finding that the property was purchased prior to the marriage. The court finds that there was insufficient evidence to prove commingling or conversion of the commercial property to community property. The court finds this is separate property of the petitioner with the value of $385,000 that will be awarded to him.

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Conclusion: The division of real property described in the final order is fair (just and equitable).

9. **Community Personal Property** (possessions, assets or business interests of any kind)

The court finds the parties had the following community assets:

1. Paul B. Byers DC, Inc. The court finds that there was a substantial commingling of community funds for the business. As a result the court finds the business is community property with a value of $770,000

2. The court finds there is a business known as Centers for Health, Inc. which is also known as the Groupon business. This is a community asset with a value of $187,000

3. Ally bank account with account number X2977 formally X6474 with the value of $319,914

4. Various Charles Schwab accounts in the name of wife with a value of $36,348

5. Vanguard SEP IRA and Simple IRA in the name of husband in the amount of $88,439

6. Vanguard SEP IRA and Simple IRA in the name of wife in the amount of $46,657

7. 2008 VW Jetta with a value of $3440

8. 2015 Forest River travel trailer with a value of $12,400

9. 1970 travel trailer with a value of $2000

10. United Airline Miles totaling $1,205,875 miles with a value of $18,088

11. Alaska Airlines miles totaling $3904 with a value of $59

12. IKEA furnishings purchased with community funds with a value of $2000

13. Community funds removed on 6/14/18 in the amount of $30,000

13. Business funds diverted to respondent's personal account in July and August 2018 in the amount of $1913

14. Interest on the Ally account funds from July 2018 to the date of trial in the amount of $4102

15. 2017 IRS funds in the amount of $12,000

Conclusion: The division of community personal property described in the final order is fair (just and equitable).

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10. Separate Personal Property (possessions, assets or business interests of any kind)

The **Petitioner's** separate personal property is listed below *(Include vehicles, pensions/retirement, insurance, bank accounts, furniture, businesses, etc. Do not list more than the last four digits of any account number.)*:

1. Any property acquired since the date of separation

The **Respondent's** separate personal property is listed below *(Include vehicles, pensions/retirement, insurance, bank accounts, furniture, businesses, etc. Do not list more than the last four digits of any account number.)*:

1. Any property acquired since the date of separation

Conclusion: The division of separate personal property described in the final order is fair (just and equitable).

11. Community Debt

The spouses' community debt is listed below:

1. American Express X92009 of $1701
2. Chase X6458 of $3875
3. American Express X94005 of $127
4. Chase X9485 of $985
5. Loan on Subaru Outback of $27,481

Conclusion: The division of community debt described in the final order is fair (just and equitable).

12. Separate Debt

The **Petitioner's** separate debt is listed below:

1. Mohela student loan of $68,943
2. Mohela student loan of $74,708
3. Any credit card debt incurred after the date of separation

The **Respondent's** separate debt is listed below:

1. Any credit card debt incurred after the date of separation

Conclusion: The division of separate debt described in the final order is fair (just and equitable).

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13. **Spousal Support** (maintenance/alimony)

Spousal support was requested.

Conclusion: Spousal support should *(check one)*:

The court does find that spousal maintenance is appropriate. The court made findings as to the respondent's income in regards to setting the spousal maintenance obligation finding that the respondent has two college degrees but has not worked in those fields. She's in good health. She is 39 years old. The businesses are successful do in part to her educational contribution. Her efforts of seeking employment have been less than credible including her resume with an objective of being a stay-at-home mom for the last 15 years. The court finds that she is voluntarily underemployed for the purposes of the child support obligation. The court finds that the parties have a 16 year marriage. The financial resources of the parties after the allocation is approximately equal. Dr. Byers is 54 years old in comparison of Ms. Byers age of 39. They both have good health. Ms. Byers used her education exclusively during the marriage for the parties' business endeavors. At trial she exhibited skills including marketing, accounting, finance, and general business administration. She works part-time at her child's school. She had a middle-class standard of living during the marriage. The marital community never acquired a home. The house that was once lived in was foreclosed and they lived in an unauthorized living space referred to as a shed. Ms. Byers has already received two years maintenance during the pendency of this case and has not made any credible efforts to seek gainful full-time employment in line with her education and experience. She has an additional 23 years left to build a retirement of her own. Based upon all of these circumstances the court finds that an award of spousal maintenance in the total amount of two years is appropriate with $2500 being paid for year one and $1500 being paid for year two.

14. Lawyer Fees and Costs

As to attorney fees and costs the evidence shows that at various times during this litigation both of the parties have been intransigent resulting in unnecessary delays, misuse of community funds, and noncompliance with valid court orders. Based upon these findings each party is responsible for the payment of their own attorney fees and costs.

15. Protection Order

No one requested an *Order for Protection* in this case.

16. Restraining Order

No one requested a *Restraining Order* in this case.

17. Pregnancy

Neither spouse is pregnant.

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18. Children of the marriage

The spouses have the following children together who are still dependent *(only list children the spouses have together, not children from other relationships)*:

Child's name	Age
1. Hayley Byers	13

If there are children listed above who do not have both spouses listed on their birth certificates, the State Registrar of Vital Statistics should be ordered to amend the children's birth certificates to list both spouses as parents.

19. Jurisdiction over the children (RCW 26.27.201 – .221, .231, .261, .271)

The court **can** approve a *Parenting Plan* for the children the spouses have together because *(check all that apply; if a box applies to all of the children, you may write "the children" instead of listing names)*:

Exclusive, continuing jurisdiction – A Washington court has already made a custody order or parenting plan for the child, and the court still has authority to make other orders for *(children's names)*: Hayley Byers.

20. Parenting Plan

The court signed the final *Parenting Plan* filed separately today.

21. Child Support

The dependent children should be supported according to state law.

The court signed the final *Child Support Order* and *Worksheets* filed separately today.

22. Other Findings or Conclusions (if any)

The oral ruling of Judge G. Helen Whitener on December 16, 2019 is incorporated herein as though fully set forth herein.

1/27/2020
Date

Judge ~~or Commissioner~~

FILED
DEPT. 11
IN OPEN COURT

JAN 28 2020

PIERCE COUNTY, Clerk
By _____ DEPUTY

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Petitioner and Respondent or their lawyers fill out below.

This document *(check all that apply)*:	This document *(check all that apply)*:
26208	31432
Petitioner signs here or lawyer signs here + WSBA #	*Respondent signs here or lawyer signs here + WSBA #*
Hillary A. Holmes	Jamie Walker
Print Name *Date*	*Print Name* *Date*
Paul Byers	Mikayla Byers
Date	Date

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APPENDIX B

TRIAL COURT'S FINAL DIVORCE ORDER,
JANUARY 28, 2020

18-3-02294-0 54369518 DCD 01-30-20

FILED
IN OPEN COURT
JAN 28 2020
Pierce County Clerk
By DEPUTY

Superior Court of Washington, County of Pierce

In re the marriage of: Petitioner: PAUL BRUCE BYERS And Respondent: MIKAYLA ROCHELLE BYERS	No. 18-3-02294-0 Final Divorce Order (Dissolution Decree) (DCD) [ ] Clerk's Action required: **1,2, 6, 13, 14, 16**

Final Divorce Order

1. Money Judgment Summary

No money judgment is ordered.

2. Summary of Real Property Judgment

*Summarize any real property judgment from section **7** in the table below.*

Grantor's name *(person giving property)*	Grantee's name *(person getting property)*	Real Property	
		King County Assessor's property tax parcel or account number:	Legal description of property awarded (lot/block/plat/section, township, range, county, state)
Mikayla Byers	Paul Byers	1922059174	
Lawyer: Hillary A. Holmes		represents: Paul Byers	
Lawyer: Jamie Walker		represents: Mikayla Byers	

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The court has made Findings and Conclusions in this case and now Orders:

3. Marriage

This marriage is dissolved. The Petitioner and Respondent are divorced.

4. Name Changes

Neither spouse asked to change his/her name.

5. Separation Contract

There is no enforceable separation contract.

6. Money Judgment *(summarized in section 1 above)*

None.

7. Real Property *(summarized in section 2 above)*

The real property is divided as explained below:

Real Property Address	Tax Parcel Number	Given to which spouse as his/her separate property?
9003 Canyon Drive Kent, WA	1922059174	Petitioner Paul Byers

The respondent is not on title to this property but she will comply with signing a Quit Claim Deed and Real Estate Excise Tax Affidavit required to clear title for any reason. This shall be done within seven days of any request.

8. Petitioner's Personal Property

The personal property listed below is given to Petitioner as his/her separate property:

1. Paul B Byers DC, Inc. which is a chiropractic business subject to wife being awarded the sum of $385,000 representing one-half of the value of the business. See Section 20 regarding clarification of the net obligation owed. The petitioner shall pay to respondent the $385,000 and make good faith efforts to pay this sum to respondent. If petitioner is unable to make full payment of this amount within one year of the date of entry of the Decree, then the court shall review the status of payments to see if additional security is appropriate. The court shall also then enter a judgment for the outstanding balance with the judgment accruing interest at the full statutory rate.
2. The sum of $80,000 in wife's name from Ally Bank X2977 which was formerly x6474

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3. Vanguard Sep IRA and Simple IRA in his name
4. 50% interest in the ownership and revenues of Centers for Health, Inc which is the Groupon business effective January 1, 2020. The parties shall jointly own this obligation until the parties agree to dissolve the corporation or otherwise transfer it. At this time Groupon deposits funds into the respondent's account which are due on the 1st and 15th of each month to her. As there is an occasional lag time in the deposits, the respondent shall transfer to petitioner's account at Key Bank one-half of the gross deposits from Groupon each and every month. This shall be deposited into petitioner's Key Bank account X6019 no later than the 6th and 20th of each month. Each party shall pay 50% of any obligations for the Groupon business from their share of the proceeds. The respondent shall take no steps to alter where the funds are deposited nor shall she change the passwords associated with monitoring the Groupon business. Each party shall have full access to all passwords to monitor this business. For the year 2019 the respondent received all proceeds from this business and shall be responsible for paying all filing of any tax return or claiming income on her tax return for Centers for Health and paying the appropriate taxes.
5. Living Well Properties LLC which currently holds title to 9003 Canyon Drive, Kent, WA
6. 2018 Subaru Outback
7. 50% interest in the 2015 Forest River travel trailer 26TBUD. The parties shall immediately list this for sale. Neither party shall use the trailer nor allow any third parties to use the trailer pending sale of it. Both parties will use good faith efforts to immediately sell this trailer. The trailer shall be stored and maintained in good condition pending sale. The respondent shall disclose the location of the trailer to the petitioner at all times. Upon sale each party shall receive 50% of the net proceeds.
8. 1970's travel trailer
9. One-half of the value of the Ikea furnishings purchased by the respondent within community funds. The respondent is ordered to pay petitioner $1,000 for these furnishings.
10. $15,000 payable by respondent to petitioner representing one-half of the $30,000 cash removed by respondent on 6/14/18. The respondent is ordered to pay petitioner $15,000 immediately.
11. Ally bank account holding community funds as accrued interest since July 2018 of $4,102. The respondent has maintained all of this interest. Petitioner is awarded one-half of the interest in this account which is payable by the respondent to petitioner of $2,051.
12. The respondent diverted deposits from the petitioner's business during the months of July and August in the amount of $1,913. The petitioner is awarded one-half of this amount. As a result the respondent shall immediately pay to petitioner the sum of $957.
13. The 2017 IRS tax refund was received by respondent and the sum of $6000 shall be paid by respondent to petitioner representing his interest in the refund.
14. Any and all bank accounts in his name only
15. His clothing, jewelry and personal effects
16. All household furnishings, home decor items, tools and equipment in his possession and acquired by him since the date of separation.

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9. Respondent's Personal Property

The personal property listed below is given to Respondent as his/her separate property:

1. The sum of $385,000 representing one-half the value of Paul B. Byers DC, Inc. This sum shall be paid by petitioner to respondent as provided in Section 8.1 above and Section 20 below.
2. All of the funds in the Ally Bank identified by the court as X2977 and formerly X6474 after the payment of $80,000 to petitioner
3. All of the Charles Schwab investment accounts which total approximately 14 different accounts in her name
4. Vanguard SEP IRS and Simple IRA in her name
5. 50% interest in the ownership and revenues of Centers for Health, Inc which is the Groupon business effective January 1, 2020. The parties shall jointly own this obligation until the parties agree to dissolve the corporation or otherwise transfer it. See 8.4 above.
6. 2008 VW Jetta. Respondent shall transfer the vehicle solely into her name within seven days of the date of entry of the Decree.
7. 50% interest in the 2015 Forest River travel trailer 26TBUD. The parties shall immediately list this for sale. Neither party shall use the trailer nor allow any third parties to use the trailer pending sale of it. Both parties will use good faith efforts to immediately sell this trailer. The trailer shall be stored and maintained in good condition pending sale. The respondent shall disclose the location of the trailer to the petitioner at all times. Upon sale each party shall receive 50% of the net proceeds.
8. United Airlines Miles in respondent's name totalling 1,205,875
9. Alaska Airlines Miles in respondent's name totalling 3,904
10. IKEA furniture
11. $30,000 cash subject to the payment of $15,000 to petitioner
12. All of the interest in the Ally bank account of $4,102 subject to paying petitioner $2,051
13. Deposits diverted from the business to the respondent's account in July and August 2018 of $1,913 subject to paying petitioner $957
14. 2017 IRS monies of $12,000 subject to pay petitioner $6,000
15. Any and all bank accounts in her name only
16. Her clothing, jewelry and personal effects
17. All household furnishings, home decor items, tools and equipment in her possession and acquired by him since the date of separation

10. Petitioner's Debt

The Petitioner must pay all debts s/he has incurred (made) since the date of separation, unless the court makes a different order about a specific debt below.

The Petitioner must pay the debts that are now in his/her name.

The Petitioner must pay all debts listed below:

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1. Any debt incurred since the date of separation
2. Any debt associated with any asset awarded to him
3. Mohela Student Loan of $68,943
4. Mohela Student Loan of $74,708
5. $395,000 payable to respondent as provided above and clarified in Section 20 below
6. 2018 Subaru Outback loan of $27,481
7. American Express x94005 of $127
8. American Express x92009 of $1,701
9. Chase credit card x6458 of $3,875

11. Respondent's Debt

The Respondent must pay all debts s/he has incurred (made) since the date of separation, unless the court makes a different order about a specific debt below.

The Respondent must pay the debts that are now in his/her name.

The Respondent must pay all debts listed below:

1. Any debt incurred since the date of separation
2. Any debt associated with any asset awarded to her
3. Chase credit card x4185 of $985
4. $1,000 payable to petitioner representing one-half of the value of Ikea furnishings
5. $15,000 payable to petitioner representing one-half of cash removed by respondent
6. $2,051 payable to petitioner representing one-half of interest accrued in Ally account
7. $957 payable to petitioner representing one-half of diverted deposits by respondent from business
8. $6,000 payable to petitioner representing 2017 IRS funds

12. Debt Collection

If one spouse fails to pay a debt as ordered above and the creditor tries to collect the debt from the other spouse, the spouse who was ordered to pay the debt must hold the other spouse harmless from any collection action about the debt. This includes reimbursing the other spouse for any of the debt he/she paid and for attorney fees or costs related to defending against the collection action.

13. Spousal Support

The Petitioner must pay spousal support as follows:

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FamilySoft FormPAK PL 2019

Amount:	Start date:	End date :	Payment schedule:
$2500 each month	1/1/20 *Date 1st payment is due*	12/31/21 *(If any)*	1st via direct deposit in respondent's bank account *Day(s) of the month each payment is due (for example, "the 5th," "weekly," or "half on the 1st and half on the 15th")*

Whether or not there is an end date, as a matter of law spousal support will end when either spouse dies, or the spouse receiving support gets married or registers a new domestic partnership, unless expressly stated below. (RCW 26.09.170(2).)

Make all payments to the other spouse directly by direct deposit/transfer to a bank account identified by the receiving party.

The receiving party must notify the paying party of any address or account change.

Spousal maintenance shall be adjusted effective January 1, 2021 in the amount of $1,500. The spousal maintenance shall terminate 12/31/21.

14. Fees and Costs *(Summarize any money judgment in section 1 above)*

Each spouse will pay his/her own fees and costs.

15. Protection Order

No one requested an *Order for Protection.*

16. Restraining Order

No one requested a *Restraining Order.*

17. Children

This court has jurisdiction over the children as explained in the *Findings and Conclusions* for this case.

If there are children of both spouses listed in the *Findings and Conclusions* who do not have both spouses listed on their birth certificates, the State Registrar of Vital Statistics is ordered to amend the children's birth certificates to list both spouses as parents upon receipt of a certified copy of this order and the *Findings and Conclusions.*

Note – The court does not forward this order to Vital Statistics. To amend the birth certificate, a party must provide a certified copy of this order and the *Findings and Conclusions* and pay a filing fee to the State Registrar of Vital Statistics (360-236-4347). You may order a copy of the amended birth certificate for an additional fee.

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18. Parenting Plan

The court signed the final *Parenting Plan* filed separately today.

19. Child Support

Court Order - The court signed the final *Child Support Order* and *Worksheets* filed separately today.

Tax issues and post-secondary (college or vocational school) support are covered in the Child Support Order.

20. Other orders

The petitioner is ordered to pay the respondent $385,000 representing her one-half interest in Paul B. Byers DC, Inc. In lieu of respondent making payments of sums owed to petitioner, part of this sum shall be offset. The $80,000 payable by respondent to petitioner nd from the Ally Bank account shall be offset against this sum reducing it to $305,000. Further the court shall offset the $1000 payable for the IKEA furnishings, the $15,000 payable for the cash removed by respondent, the $2051 representing interest from Ally funds, $957 representing the one-half of the diverted deposits, and $6000 representing the 2017 tax funds. This totals an additional $25,008 owed to petitioner. After this is deducted from the balance of $305,000 the net obligation payable by petitioner to respondent is $279,992 which shall be paid under the timeline set forth in Section 8.1 above.

Ordered.

1/27/2020
Date

Judge ~~or Commissioner~~

FILED
DEPT. 11
IN OPEN COURT
JAN 28 2020
PIERCE COUNTY, Clerk
By DEPUTY

Petitioner and Respondent or their lawyers fill out below.

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Petitioner signs here or lawyer signs here + WSBA #	*Respondent signs here or lawyer signs here + WSBA #*
Hillary A. Holmes	Jamie Walker
Print Name *Date*	*Print Name* *Date*
Paul Byers *Date*	*Mikayla Byers* *Date*

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Appellate Court Case Number:	54382-6
Appellate Court Case Title:	Paul Bruce Byers, Res./Cross-Appellant v Mikayla Rochelle Byers, App./Cross-Respondent
Superior Court Case Number:	18-3-02294-0

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