

No. 284891

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

**FILED**

**APR 20 2010**

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JUDITH KAY TRIGGS, Respondent

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

v.

MICHAEL KEVIN TRIGGS, Appellant.

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BRIEF OF APPELLANT

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David L. Trick  
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WSBA# 19782

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## **IDENTIFICATION OF THE PARTIES**

Michael Triggs is the appellant and was the respondent, below. He will be referred to as Mr. Triggs.

Judith Triggs is the respondent and was the petitioner below. She will be referred to as Ms Triggs.

All citations to the Clerk's Papers will be referred to with the abbreviation, "CP."

All citations to the Report of Proceedings will be referred to with the abbreviation, "RP."

All citations to the Exhibits introduced at trial will be referred to with the abbreviation, "Ex." The various tabs of Ex 2 will be referred to with the abbreviation "Ex 2.z" where z will be the tab number.

Attachments to Exhibits will be referred to with the abbreviation "Att."

## **ASSIGNMENTS OF ERROR**

1. The trial court's spreadsheet, through which it announced its ruling on characterization, valuation, and allocation of property and debt, is not supported by substantive evidence with respect to several crucial items of property and debt insofar as the trial court relied on information in exhibits introduced solely for illustrative purposes in preparing the spreadsheet and the trial court erred as a result.
2. Those findings of the trial court that are without the support of substantive evidence are based on untenable grounds, the trial court erred in making them, and they should not be upheld insofar as they prejudice Mr. Triggs.

3. The trial court used arbitrary dates for valuation of property, the net result of which was to unduly prejudice Mr. Triggs by overvaluing substantial assets assigned to him and undervaluing assets assigned to Mrs. Triggs and the trial court erred as a result.
4. The trial court failed to apply the correct burden of proof to determining the extent of Ms Triggs' separate interest in the family home, significantly prejudicing Mr. Triggs by undervaluing the community interest therein and the trial court erred as a result.
5. The court failed to consider the statutory factors listed in RCW 26.09.090 that must be considered in determining whether to award maintenance and the trial court erred in this failure.
6. The trial court's award of \$1,700 per month of maintenance to Ms Triggs to be paid by Mr. Triggs until his 66<sup>th</sup> birthday is not supported by substantial evidence of a need by Ms Triggs of maintenance in this amount given the trial court's allocation of property and debt and as a result the trial court erred in making such an award.
7. The trial court erred in dividing Mr. Triggs' social security retirement benefits between the parties, beginning on his 66<sup>th</sup> birthday.
8. The trial court erred in awarding Ms Triggs attorney fees and costs without considering the very substantial assets awarded to her in its distribution of property and debt.

#### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. In making findings of fact, is it error to rely on information contained in illustrative exhibits that is not proved by substantive evidence otherwise properly admitted? (Assignment of Error No. 1).
2. When findings of fact are based on untenable grounds, i.e., they lack the support of substantial evidence, do they require reversal if prejudice to a party resulting from such findings is shown? (Assignment of Error No. 2).

3. Does a court abuse its discretion when it values property, without explanation of the dates used for such valuation, when such valuations are contrary to the evidence and when taken as a whole significantly prejudice one party? (Assignment of Error No. 3).
4. Is it proper to value a party's current separate interest in an appreciated asset by extrapolating from the percentage of the purchase price that party had paid with her separate funds when there is evidence of community funds being used to maintain and improve the property and that the property had been refinanced through the community assuming a new obligation? (Assignment of Error No. 4).
5. Once it has been shown that the community has contributed funds to maintain and improve property that has appreciated over time which was purchased in part with one party's separate funds, does the party advancing a claim of a separate interest bear the burden to prove by clear and convincing evidence the extent of the claimed separate interest in the appreciated portion of the value of the property? (Assignment of Error No. 4).
6. Is the court required to either expressly or, in some observable manner, impliedly consider the statutory factors listed in RCW 26.09.090 when a request for an award of maintenance is being ruled upon? (Assignment of Error No. 5).
7. Is a party required to introduce into the record at least substantial evidence of her need for payment of maintenance, taking into account the trial court's valuation and distribution of community and separate property and debt, in order for an award of maintenance to be affirmed on appeal? (Assignment of Error No. 6).
8. Must the monthly amount of maintenance awarded be justified by a showing of need for such an amount of maintenance by the party requesting maintenance, taking into account the trial court's valuation and distribution of community and separate property and debt? (Assignment of Error No. 6).

9. Is it contrary to the Social Security Act to apportion a party's social security benefits by requiring a payment of maintenance in the amount of one-half of the difference between the social security benefits received by each of the parties? (Assignment of Error No. 7).
10. In ruling on a request for attorney fees, must the court consider the economic positions of the parties as they are after property and debt have been valued and distributed in order to determine if the party requesting an award of such fees has established a need for them to be paid by the other party? (Assignment of Error No. 8).

### **STATEMENT OF THE CASE**

Ms Triggs and Mr. Triggs were married in 1975.<sup>1</sup> CP p. 18. They separated on January 18, 2008. RP p. 131. While married, they had four children, RP p. 113, all of whom are now emancipated. CP p. 19.

#### Parties' Employment

Both Mr. and Ms Triggs were employed during their marriage, Exs 2.6, 2.31, although Mrs. Triggs had a hiatus from work when the children were being born, waiting until the youngest started kindergarten to return to work, RP p. 113. At the time of trial, Ms Triggs was employed as a social worker at People For People, a position she had held for 23 years. RP pp. 112, 120. Mr. Triggs was working at the Hanford site, employed

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<sup>1</sup> There is no reference to the parties' date of marriage or to several other jurisdiction facts in the record. It is assumed that they were not mentioned as there is no dispute over them. As a result, supporting references for them will only be made to the relevant Clerk's Papers.

by AGI as an electrical maintenance planner. RP p. 28. He had held that position since September 2007. RP p. 31.

Both Mr. Triggs and Ms Triggs are in the waning years of their employment. Ms Triggs was 63 years old at the time of trial. RP p. 123. Mr. Triggs was 57 years old. RP pp. 71-72. Ms Triggs had no plans to retire. RP p. 123. Mr. Triggs wanted to retire when he turned 66 in 2017. RP p. 71.

Historically Mr. Triggs has earned more than Ms. Triggs. Exs 2.6; 2.31. At the time of trial, he was being paid \$49.00 per hour for 1872 hours per year (without payment for holidays, sick time, or vacation), which resulted in gross earnings of \$91,728 per year or \$7,644 per month. Ex 4; RP p. 29. Ms Triggs was being paid \$19.83 per hour for full time employment, having paid time off for vacation, sick time, holidays, her birthday and was receiving substantial payments for longevity awards and other reasons. Ex 2.29. The court found her income to be \$3,600.00 per month.<sup>2</sup> RP p. 195.

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<sup>2</sup> There is some disagreement between the exhibits and Ms. Triggs' testimony concerning her income. Her yearend paystub for 2008 contains information showing her income to be about \$43,483.88 in 2008, or \$3,623.66 per month. Ex 2.29. Her 2008 income tax return shows a gross income of \$39,846 or \$3,320.50 per month. Ex 2.37. Her testimony was that she earned about \$ 3,520.00 per month. RP p. 123. She submitted no documentation of her current income at the time of trial and did not offer an explanation for these discrepancies.

Each party also has health problems, with Ms Triggs' being perhaps more serious than Mr. Triggs'. RP pp. 88, 113. Neither party's health problems are interfering with her or his ability to work.

#### Retirement Accounts

Each of the parties had retirement accounts at the time of trial. As might be expected from his having been the primary earner, Mr. Triggs' accounts were larger than Ms. Triggs'.

Ms Triggs had several retirement accounts, around which some confusion arose at trial: (1) an IRA at the Catholic Credit Union, which the court found contained \$2,191.00 at the time she withdrew the funds prior to the date of separation,<sup>3</sup> CP p. 107; RP p. 127; (2) a 403(b) plan, administered by American Funds, which the court found contained \$50,501.00 as of June 8, 2009, CP p. 107; Ex 2.19; (3) a 401K, also administered by American Funds, which the court found contained \$30,117.00 as of March 31, 2009, CP p. 107; Ex 2.19; and (4) a TSA plan, which the court found contained \$9,548.17, without specifying a date for valuation, CP p. 107; Ex 2.17.<sup>4</sup> The confusion about the funds seemed to arise because of two sets of events. First, because of several internal transfers occurring inside of the second account and because of the second

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<sup>3</sup> The court did not date the valuation of this IRA. Mr. Triggs testified that there was \$3,546 that was withdrawn by Ms Triggs. RP p. 26.

<sup>4</sup> The date the fund contained the specified amount is shown as June 30, 2009. Ex 2.17.

and third of these funds being combined into one 401K plan, RP pp. 136-138, with a final total value of \$83,402.48 (\$2,784.48 greater than the individual values of the prior individual plans found by the court) effective June 30, 2009. Ex 2.38. Second, because of a precipitous decline in the value of the second fund from \$92,731.11 on December 31, 2007 to \$50,501.89 on June 8, 2009 (when it was rolled into another American Funds account). Ex 2.19. The cause of this decline was the result of the overall decline of the market during this period. RP pp. 156-158.<sup>5</sup>

Ms Triggs' retirement plans were found to be community property, with one exception. Ms Triggs was contributing to her 401K plan on an ongoing basis at the time of trial. Ex 2.16. She was contributing \$200.00 per month, RP p. 122, which the court found amounted to \$3,600 in contribution of separate funds since the parties' separation, CP p. 107; RP p. 190.

Mr. Triggs also had several retirement accounts: (1) a Hanford Site Savings Plan (the "Vanguard plan"), which the court valued at \$281,477.00 as of July 7, 2009,<sup>6</sup> CP p. 107; (2) a 401K plan (the "Vivid

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<sup>5</sup> Although not made a part of its ruling, it is highly likely that the court accepted this explanation of the decline in value of these assets insofar as the court advanced the explanation *sua sponte* during Mr. Triggs' cross-examination of Ms Triggs. RP pp. 156-158.

<sup>6</sup> There is no substantive evidence in the records to support this valuation. Cf. Ex 2.14. The only mention of this value is in Exhibit 13, which was admitted solely for illustrative purposes. RP p. 74.

Learning Systems” or “Novations” or “BAC” plan), which the court valued at \$102,054.00;<sup>7</sup> CP p. 107; and (3) a 401K administered by Tradewind Services, which the court valued at \$28,217.00 without specifying a date for the valuation<sup>8</sup>, CP p. 107.

Mr. Triggs’ retirement plans were found to be community property, with one exception. CP p. 107. Mr. Triggs was contributing to his Tradewind 401K at the time of trial. Ex 2.33. He had started paying into it three months prior to separation, at approximately \$1,666 per month. RP p. 66. He agreed that \$4,800.00 of its value should be dealt with as community contributions. RP p. 75. The trial court found that \$4,800.00 of this fund was community property and that the remainder was Mr. Triggs’ separate property.

Mr. Triggs had also had had an IRA with Charles Schwab from which he had withdrawn all of the funds on April 4, 2007, several months before the parties separated. RP p. 26. Mr. Triggs withdrew \$89,406.00. RP p. 26. He was not employed at the time, but was operating his own business, Ace Electric, through which he generated no significant net

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<sup>7</sup> There is no substantive evidence in the records to support this valuation. Cf. Ex 2.13. The only mention of this value is in Exhibit 13, which was admitted solely for illustrative purposes. RP p. 74.

<sup>8</sup> There is no substantive evidence in the records to support this valuation. Cf. Ex 2.33. The only mention of this value is in Exhibit 13, which was admitted solely for illustrative purposes. RP p. 74.

income. RP pp. 27-28, 106-108; Exs 2.3, 2.1.<sup>9</sup> The IRA withdrawal was his only income in 2007 prior to starting his current position in the fall of that year. RP p. 108. His accounting of the disposition of the funds withdrawn from the IRA is listed in Exhibit 5, which shows with two exceptions that they were used for community purposes. Ex 5; RP pp. 78, 92-106. At the time of separation, he had not yet purchased the 2008 Mazda listed in Ex 5, but had expended almost all of the remainder of the funds. RP p. 62. He had the money he would spend on the car in his Yakima Federal Account, which he would close in April 2008. RP pp. 66-67. Aside from the funds he would spend on the car, he had \$4,023.00 in the account at the time of separation. RP p. 87.

Each party also had Social Security benefits that had accrued. Exs 2.6, 2.31. Mr. Triggs updated the information concerning the benefits he would receive based on his earnings through 2008, indicating that they would be \$2,100 per month. RP p. 37. Ms Triggs provided no information on her anticipated monthly benefits as the page containing the information is missing from Ex 2.31 and she did not testify to it.<sup>10</sup>

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<sup>9</sup> Ex 2.1, Mr. Triggs' 2007 income tax return, lists \$92,952.00 in IRA distributions. Mr. Triggs testified that \$3,546.00 of this was from his wife's withdrawal from her IRA in 2007. RP p. 26.

<sup>10</sup> It is possible that Ex 2.31 contains this information and that only the copy of it provided to Mr. Triggs at trial did not. Ms Triggs' counsel did state during opening argument that her currently anticipated benefit at age 66 would be \$1,382. RP p. 18.

### Bank Accounts

At separation, Mr. Triggs had three bank accounts: the Yakima Federal account discussed above, a checking account at Key Bank, and a savings account at the Catholic Credit Union. RP p. 50. Immediately after separation, he closed the account at Yakima Federal. RP pp. 66-67. Aside from a statement by Mr. Triggs that he deposited into the Key Bank account about \$4,000 left over from the funds he removed from the IRA as discussed above, RP pp. 104-105, there is no evidence of the balance of this account at separation. By shortly after the time Mr. Triggs had purchased the Mazda, the balance in the two accounts was approximately \$15,000.00. RP 50; Ex 2.27, Att 4.

At the time of trial, Mr. Triggs had been saving approximately \$1000.00 per month for the last year. RP p. 91. He had approximately \$12,700.00 in his account at Catholic Credit Union, RP p. 92, Ex 2.35, and had had \$8,477 in his account at Key Bank as of February 24, 2009, RP p. 56, Ex 2.34.

There was testimony about Ms. Triggs having two bank accounts at Yakima Valley Credit Union with about a \$1000.00 in "the account" at the time of separation. RP p. 139. The court found that she had \$1000.00 in each of these accounts. CP p. 107.

### Family Home

Prior to the parties' marriage, Ms. Triggs owned a house on Bristol Way. RP p. 46; Ex 2.25. The parties resided there and paid the mortgage from community funds. *Id.*

In 1981, Ms. Triggs' house was sold. RP p. 47. She realized \$30,497.50 from the sale. Ex 2.25. \$30,000 of the funds was used as the down payment on the house being purchased, the one that would become the family home.<sup>11</sup> RP 47; Ex 2.26. The purchase price of the home was \$65,000. *Id.* As detailed above, the mortgage was paid off in 2007 with the funds Mr. Triggs removed from his IRA at Charles Schwab. Ex 5; RP pp. 92-106; Exs 8, 9. At the time of trial, it was valued at \$165,000. RP pp. 60, 130; Ex 36. The parties agreed that the house would be awarded to Ms Triggs. RP p. 60.

### Loan to Emma

About three and one-half to four years prior to trial, the Triggs made a \$9,000 loan to their daughter, Emma, so she could purchase a car. RP pp. 68, 110, 139, 165. Emma made no payment on the loan. RP p. 165. The loan was not memorialized in writing. *Id.* Sometime after separation, Mr. Triggs "gifted" the loan to Emma. RP p. 68. Although

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<sup>11</sup> Ms. Triggs requested that she be awarded \$30,000 as her separate interest or that her contribution be extrapolated forward with her interest in the house being set at 42% and that she be awarded \$68,000 as her separate interest. RP pp. 16,164, Ex. 13. The trial court awarded her \$75,900.00 as her separate interest in this asset. CP p. 107.

she was aware of the loan, Ms Triggs was not aware of Mr. Triggs having gifted it to Emma. RP p. 139. Ms Triggs did not testify that she disagreed with the funds having been gifted to their daughter or that she wanted to seek repayment of these funds from her daughter.

### Debts

At the time of separation, the parties had a few debts: a Capital One credit card solely in Ms. Triggs' name in the amount of \$28,493.22 (as of the December 2007 billing), RP pp. 111-114; an account at Macy's in the approximate amount of \$2,000.00, RP p. 140; Exs 2.8, 2.27 Att. 5; and a \$1,500 debt owed to Catholic Credit Union, RP p. 163. There was also testimony concerning ongoing property taxes and a yearly payment owed to Roza Irrigation District, but only concerning such obligations as had accrued after separation, when Ms Triggs had sole use of the house. RP pp. 140-141.<sup>12</sup>

### Monthly budgets

Ms. Triggs submitted a listing of monthly expenses totaling \$2900.99 per month.<sup>13</sup> Ex 2.9, RP p 117. The sole expenses listed for housing costs were \$175.00 per month for taxes and insurance. Ex 2.9. She testified that she expected to have additional medical expenses for

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<sup>12</sup> Although both were listed in the court's ruling, neither party knew of a debt to Sears, RP p. 140, and there was no testimony concerning a debt to Valencia Yard.

<sup>13</sup> This amount varies from that listed in Ms Triggs' Financial Declaration, i.e., \$2,7120.00. Ex 2.8.

surgery on her bladder. RP p. 117. She testified that she needed help to meet her monthly expenses and requested that maintenance continue in the amount of \$1,400.00, the amount of temporary maintenance she had been receiving under the temporary order. RP pp. 125, 139.

Ms Triggs did not testify as to her net income at the time of trial. Her yearend paystub for 2008 showed a year-to-date net income of \$33,102.80, or \$2,759 per month in net income. Ex 2.29. It also showed that she had placed \$1,187.50 into a 125 Health Care Reimbursement Plan. *Id.*

Mr. Triggs' Financial Declaration showed that he had monthly living expenses of \$2710.00. Ex 2.7. He had been making a substantial payment to his retirement account (the Tradewind 401K), which he had decreased to \$1,250 per month when he had to rent a place to live. RP p. 31. He also was able to make deposits totaling \$6,000 into his savings account at Catholic Credit Union in January and February 2009, RP pp. 52-53; Ex 2.35. As stated above, he had approximately \$21,000 in his bank accounts at or before trial. RP pp. 65, 92; Exs 2.34, 2.35.

#### Attorney Fees

Each party had incurred attorney fees at the time of trial. Ms. Triggs submitted a billing for \$8,027.50 in fees and \$720.00 in costs. Ex 2.30. She testified that she had not been able to pay her attorney, RP p.

124, although her financial declaration showed that she had paid \$2,000.00, Ex 2.8. Mr. Triggs had paid \$9,000.00 in fees, although he had had \$3,000 refunded to him. RP pp. 44-45, 59-60.

#### Procedural History

Ms Triggs filed a Petition For Dissolution Of Marriage in Yakima County Superior Court on February 13, 2008. CP pp 32-35. On March 7, 2008, Mr. Triggs filed his Response.<sup>14</sup> CP pp. 27-29. A temporary order was later entered.

Trial was held on July 13, 2009. The court's ruling was issued on August 7, 2009. In its ruling, the court awarded Ms Triggs maintenance in the amount of \$1700.00 per month, payable until Mr. Triggs' 66<sup>th</sup> birthday, at which time it was to be one-half the difference between the Social Security payments Mr. Triggs received and those received by his wife. CP pp. 12-13. The trial court also awarded Ms. Triggs attorney fees in the amount of \$6,000, payable at \$500 per month. CP pp. 11, 13. It also characterized and distributed property and debt between the parties as laid out in the spreadsheet prepared by the court. CP pp. 10-27.

Final orders were entered on August 27, 2009. *Id.* This appeal followed.

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<sup>14</sup> Taken together, these two documents establish the jurisdictional facts necessary for the court to have granted the parties as Decree of Dissolution, even in the absence of testimony to such facts.

## ARGUMENT

When a party to a dissolution appeals a trial court's decision on characterization, valuation, and distribution of their property and on an award of maintenance, that party bears a heavy burden before this court.

We once again repeat the rule that trial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. . . . The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion.

*In re Marriage of Landry*, 103 Wn.2d 807, 809-810, 699 P.2d 214 (1985)

(citations omitted).

This case presents facts where such a heavy burden is met by Mr. Triggs as the trial court committed manifest abuses of discretion in several regards.

**I. In making its findings, the trial court improperly relied on an exhibit admitted solely for illustrative purposes and as a result some findings critical to the division of property and debt lack the support of substantial evidence.**

A. The information contained in illustrative exhibits 3 and 13 cannot be used for substantive purposes.

During the course of the trial, Ms Triggs frequently referred to Exhibits 3 and 13 (an updated version of Exhibit 3), both during cross examination of Mr. Triggs and in presentation of her own testimony. Not

all of the information contained in these exhibits was supported by either testimony or exhibits admitted into evidence. The exhibits were introduced solely for illustrative purposes. RP pp. 11, 74.

Exhibits used for illustrative purposes do not constitute substantive evidence. *Cf. In re Woods*, 154 Wn.2d 400, 427, 114 P. 3d 607 (2005); *State v. Lord*, 117 Wn.2d 829, 855-856, 822 P.2d 177, 193-194 (1991).

As a result, to the extent that the information in these exhibits exceeds that which is elsewhere introduced as substantive evidence, it is error to rely on the exhibits as the evidentiary basis for factual findings.

B. The trial court's spreadsheet by which it made its findings of fact and ruled on characterization, valuation, and distribution of assets and debts is improperly based on the information contained in the illustrative exhibits.

The trial court issued its ruling in part via a spreadsheet in which it characterized, valued, and allocated the Triggs' property and debt. CP p. 107. Comparing the spreadsheet and Exhibit 13 strongly suggests that the trial court used Exhibit 13 as a model for its spreadsheet. While this procedure is not improper in itself, the findings of fact made by the court, in its spreadsheet or elsewhere, must be supported by substantial evidence. If such support does not exist for the court's findings, to the extent that the court's decision is based on such findings, it is based on untenable grounds.

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. *State v. Rundquist*, 79 Wash.App. 786, 793, 905 P.2d 922 (1995) (citing WASHINGTON STATE BAR ASS'N, WASHINGTON APPELLATE PRACTICE DESKBOOK § 18.5 (2d ed.1993)), review denied, 129 Wash.2d 1003, 914 P.2d 66 (1996).

*In re: Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362, 1366 (1997) (emphasis added).

It is easily seen that such error has been committed here. The trial court's spreadsheet, like Exhibit 13, contains several entries for which there is no substantive evidence in the record to support them. These include: (1) Mr Triggs' Vanguard account, which is valued at \$281,477.00, a value that is not found in the record;<sup>15</sup> (2) Mr. Triggs' Novations or BAC 401K plan, which is valued at \$102,054.00, a value that is not found in the record;<sup>16</sup> and (3) debts of \$75.00 to Sears, a debt of which neither party claimed any knowledge, and of \$350 to Valencia Yard, on which no testimony or documentary evidence was adduced. Insofar as the record provides no support for the values assigned these

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<sup>15</sup> Exhibit 14 has the values of \$263,054.92 (as of March 31, 2009) and \$328,446.20 (as of September 30, 2007) listed for the Vanguard account.

<sup>16</sup> Exhibit 13 has the values of \$89,925.50 (as of March 31, 2009) and \$138,920.27 (as of July 23, 2007) listed as values for this plan.

assets and debts, the decision is based on untenable grounds with respect to them.

C. The trial court's improper use of the information contained in the illustrative exhibits prejudiced Mr. Triggs.

Even if this decision is based on untenable grounds, there must be a showing that the error in some way prejudiced Mr. Triggs if the error is to be grounds for reversal. *In re the Welfare of MG*, 148 Wn.App. 781, 791, 201 P.3d 354, 359 (2009), citing *In re Ferguson*, 41 Wn.App. 1, 5, 701 P.2d 513 (1985). It is clear that at least one of these errors significantly prejudiced Mr. Triggs.

The error with respect to the Vanguard account is probably harmless error insofar as the account was to be divided equally between the parties by QDRO. Hence any error in valuation of the account affected each of the parties essentially equally.

The error with respect to valuation of the Novations or BAC 401K plan did significantly prejudice Mr. Triggs. The value assigned to this asset was \$12,128.50 more than the evidence of its value closest to trial.<sup>17</sup>

The error with respect to the debts is of a minor nature, amounting to \$425.00 in unsubstantiated community liabilities being assigned to Ms Triggs. The error is, however, highly probative of the trial court having

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<sup>17</sup> The greater value of the account in 2007 is subject to the reasoning the trial court advanced and apparently adopted with respect to the drastically declining value of Ms Triggs' retirement account between December 2007 and June 2009. RP pp. 156-158.

simply relied on Exhibit 13 as the source of the figures used to fill in the spreadsheet encapsulating its decision on characterization, valuation, and distribution of assets.

With there being no evidence to support these findings of fact and with Mr. Triggs having been substantially prejudiced by them, the decision is manifestly unreasonable and should be reversed.

**II. The trial court's lack of a stated rationale for choosing valuation dates for assets combined with the dates used to value assets resulted in an inequitable result.**

**A. There are limits on the trial court's discretion to value and dispose of property in a dissolution.**

“The court has broad discretion in the disposition of property in dissolution actions, and that disposition will not be disturbed absent a manifest abuse of discretion.” *Marriage of Manry*, 60, Wn.Ap. 146, 148, 803 P.2d 8 (1991). “On the other hand, upon noting an abuse of discretion which fosters an inequity, we will correct the decree in such a way as to remove or ameliorate such inequities.” *Lucker v. Lucker*, 71 Wash.2d 165, 167, 426 P.2d 981 (1967).

Without explanation of its reason for doing so, the trial court used several different dates to value property and debt. The collective result of the use of these various dates produced an inequitable result with the prejudice thereof accruing to Mr. Triggs.

B. Without explanation, the trial court used several different valuation dates for the parties' retirement accounts.

As detailed above, the trial court valued the BAC account as of July 9, 2009, a date for which there was no evidence of the account's value. This resulted in the property assigned to Mr. Triggs being valued at \$12,128.50 more than it was worth as of March 31, 2009, the last date on which a value for the account was available. Ex 2.13.

The trial court also valued Ms Triggs' American Fund 403(b) as of June 8, 2009 and her People for People 401K as of March 31, 2009, giving them a combined value of \$80,618.00.<sup>18</sup> CP p. 107. The substantive evidence she submitted showed that the value for the combined funds as of June 30, 2009 was \$83,402.28, Ex. 2.38, or \$2,784.48 more than the court found them to be worth.

C. The trial court tacitly used an unidentified date well prior to trial to value the loan to Emma in order to determine that it was an assignable asset.

The trial court also assigned to Mr. Triggs the value of a loan he and his wife had made to their daughter, Emma. They had made a \$9,000.00 loan to her 3 ½ to 4 years prior to trial. RP p. 110. According to Ms Triggs, Mr. Triggs did not want to make the loan to Emma, but Ms Triggs insisted on making the loan. RP p. 153. The loan was not

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<sup>18</sup> This value and the dates of valuation are the same as those listed by Ms Triggs on her Ex 13.

memorialized in writing. RP p. 165. No payment had been made on it in the 3 ½ years prior to trial. *Id.* Sometime after separation, Mr. Triggs recognized that their daughter was not going to be able to pay the loan back as she had no money. RP p. 68. He then gifted her the loan. *Id.* While Ms Triggs did not know that Mr. Triggs was forgiving the loan to their daughter, RP p. 111, there is no evidence that Ms Triggs ever took action to collect on it nor that she had any desire to do so.

Under RCW 4.16.080(3), an action on a contract not in writing must be commenced within three years, a period that had expired as to the loan to Emma by the time of trial. In order for the trial court to have concluded that the loan represented an asset, it must have valued the loan at a time well before trial. Had the value of the loan been valued as of the date of trial, even without Mr. Triggs having forgiven the loan, it still would have had no value as the promise to repay had become unenforceable.

Again, the time at which this asset was valued resulted in Mr. Triggs being assigned an asset valued at substantially more than what it was worth, i.e., \$9,000 for an asset that had no value at all.

D. The trial court used different and inconsistent dates to value the parties' bank accounts.

At the time of separation, Mr. Triggs had three bank accounts: (1) a savings account at Catholic Credit Union, (2) a savings account at Yakima Federal, and (3) a money market checking account at Key Bank. While there is no direct evidence of the contents of these accounts as of the exact date of separation, shortly after separation, these accounts had in them about \$15,000 plus the money that would be used to purchase a Mazda (which the trial court valued at its purchase price and allocated to Mr. Triggs). Rather than look to the value of these accounts at the time of separation in characterizing, valuing, and distributing property, though, the trial court looked to the value of Mr. Triggs' bank accounts at quite divergent times.

The trial court valued the Catholic Credit Union account as of March 31, 2009, finding that it contained \$12,771.24. While the value of this account on this date is supported by the evidence, see Ex 2.35, it does not suffice to show the funds in this account to be community funds. As Exhibit 2.35 shows, Mr. Triggs had been making substantial deposits to this account since separation. The evidence shows deposits of at least \$6,000 to the account occurring in the first three months of 2009. There is

no support for doing as did the trial court and characterizing the entire value of this account as of March 31, 2009 as a community asset.

Likewise, in its spreadsheet, the trial court valued the Key Bank account at \$8,509.00 as of November 1, 2007. The only obvious source for such a valuation is Exhibit 13, Ms. Triggs' illustrative exhibit, which provides both such a value and such a valuation date. There is no explanation made by the trial court or found in the evidence why this would suffice as evidence to establish that there was a community asset worth this amount to allocate to Mr. Triggs.

The only true evidence of the value of these accounts is provided in Mr. Triggs' statement of their joint worth shortly after separation, i.e. \$15,000. The trial court's decision to value these accounts respectively well before and long after separation resulted in a net overvaluation of their value to the community in the amount of \$6,280.24.

E. The result of the trial court's unexplained choice of valuation dates resulted in a net detriment to Mr. Triggs of more than \$30,000.

Nowhere does the trial court provide an explanation of how or why it chose to use the various dates for valuing these assets. It appears that the trial court simply took the information, both the value for the assets and the dates of valuation, directly from Ms Triggs' Ex. 13. Irrespective of how it came to the results, however, the end result of the trial court's

chosen method of determining a valuation date for these assets resulted in Mr. Triggs having assets assigned to him overvalued by \$27,408.74 and Ms Triggs having assets assigned to her undervalued by \$2,784.48, a total difference of \$30,193.22.

While the trial court has discretion in the method it uses to determine the time or times at which assets will be valued, there are limits on such discretion. As noted above, when an inequity results, it should be corrected. Here, the trial court's use of multiple, sometimes unspecified, valuation dates and its unspoken, improper reliance on an exhibit introduced by Ms Triggs for illustrative purposes only worked such an inequity upon Mr. Triggs. Given that there is no explanation for why the trial court adopted the approach it did, the result reached cannot be sustained.

**III. When making its findings, the trial court mischaracterized the extent of Ms Trigg's separate interest in the family home, thereby reducing both the community interest in it and the amount thereof awarded to Mr. Triggs which resulted in an inequitable result.**

A. The trial court has a duty to properly characterize property as community and separate prior to determining its distribution.

In a dissolution, the trial court has a duty to properly characterize property as separate or community. RCW 26.09.080(1) and (2).

“To accomplish this the court may consider the source of the property and the date of acquisition. *Marriage of Olivares*, 69 Wash.App. 324, 329, 848 P.2d 1281 (1993). Although failure to properly characterize property may

be reversible error, mischaracterization of property is not grounds for setting aside a trial court's property distribution if it is fair and equitable. *In re Marriage of Shannon*, 55 Wash.App. 137, 140, 777 P.2d 8 (1989).”

*Marriage of Gillespie*, 89 Wn.App. 390, 948 P.2d 1338, 1343 (1997).

Not all mischaracterizations of property require reversal, however. This court “need not remand the distribution issue to the trial court unless”(1) the trial court's reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would have divided it in the same way.” *Marriage of Shui*, 132 Wn.App. 568, 586, 125 P.3d 180, 189 (2005), rev. den'd. 158 Wn. 2d 1017, 149 P.3d 377 (2006) quoting *Shannon*, 55 Wash.App. at 142, 777 P.2d 8.

B. The trial court attempted to divide property between the parties in an essentially equal manner, thereby making it much less than clear that the court would have distributed the property in the same manner if it had properly valued the extent of Ms Triggs' separate interest in the house.

In this case, the trial court mischaracterized a large portion of the community's interest in the family home as Ms Triggs' separate interest. The trial court distributed the parties' community property and debt in an essentially equal manner, with a net total of \$304,167.50 being awarded to Mr. Triggs and \$301,514.50 being awarded to Ms Triggs. The trial court was silent in its findings in regard to this distribution, except to indicate that it was “fair and equitable.” CP p. 20. Given these limited findings

and the court's apparent intent to divide the property relatively equally, it is far from clear that had the property been correctly characterized that the trial court would have distributed property and debt in the same manner. Hence, reversal is proper on this issue, provided that it is shown that the trial court did mischaracterize a large portion of the community's interest in the family home as Ms Triggs' separate interest. See *Shui*, 132 Wn.App. at 587, 125 P.3d 180.

C. Ms Triggs has a \$30,000 separate interest in the family home from her contribution of her separate funds in purchasing it.

It is not contested that Ms Triggs has a separate interest in the family home arising from her contribution to its purchase from the proceeds of the house she owned prior to marriage. This interest should be set at \$30,000, the amount of her contribution.<sup>19</sup> The issue is the extent of Ms Triggs' interest in the appreciated value of the house, which occurred between May 18, 1981 when it was purchased for \$65,000, Ex. 2.26, and May 21, 2009 when it was valued at \$165,000, Ex. 2.36.

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<sup>19</sup> Although there was testimony concerning the community making six years of mortgage payments on Ms Triggs' house, of the community paying for utility bills, and by inference the community paying for insurance and property taxes, such evidence is insufficient to overcome the presumption that Ms Triggs' separate interest in her house is her separate property. As a result, this issue will not be argued here.

D. The trial court left unaddressed an issue concerning the extent of the community's interest in the appreciation in value of the family home.

It is uncontested that the community made all payments beyond the down payment required under the real estate contract through which the family home was purchased. This can be interpreted as the community paying for its share of the interest in the family home over time and, under such an analysis, would not affect extrapolating Ms Triggs' share of the family home based on its final value. There are at least three problems with adopting this view as the end of the analysis of this issue, though, as the trial court appears to have done.

The first problem for the approach used by the trial court comes from other unquestioned evidence of the community making investments in the home for improvements, paying taxes, and maintaining the home. The evidence shows that in 2007 and 2008, Mr. Triggs spent almost \$9,000 in community funds on such: \$5,276 for new vinyl storm windows, \$1,487 for property taxes and \$2,200 for yard work and landscaping. Ex. 5. There is no evidence to show that Ms Triggs made any further contribution of separate property to pay for maintenance of or improvements to the home or for property taxes. These expenses were, instead, paid by the community. This raises the issue of the source of the increase in the house's value, i.e., if was it from community contributions

it would increase the community's percentage of interest in the appreciated value of the house.

The second problem for the approach used by the trial court comes from the Triggs having obtained a home equity loan to remodel the house and to pay for Ms Triggs' daughter's (Mr. Triggs' step-daughter's) wedding reception. RP pp. 45-46. This raises the same issue as before, but also adds the issue dilution of Ms Triggs' separate interest via the community acquiring a new obligation on the home and paying for it with community funds.

The third problem for the approach used by the trial court comes from the presumption that "[p]roperty acquired during marriage is presumed to be community property, unless this presumption is rebutted by clear and convincing evidence." *Olivares*, 69 Wash.App. at 331, 848 P.2d 1281. Aside from noting that it was making its finding concerning Ms Triggs' separate interest in the family home based on "clear, cogent, and convincing evidence," RP pp. 189-190, the trial court makes no reference to this issue nor citation to any evidence beyond the proportion of the purchase price of the family home constituted by Ms Triggs down payment. *Id.*

E. Ms Triggs had the burden of proving the extent of her separate interest in the appreciated value of the house and failed to meet it.

Each of these problems ultimately have the same genesis and require the same resolution. Ms Triggs was not held to her burden of proof with respect to establishing her separate interest in the appreciated value of the family home. The appreciation occurred during the marriage. The evidence also shows community contributions over and above payment of its share of the purchase price financed via the real estate contract. The evidence shows the community refinancing the home and restructuring the debt on the house. Such facts require Ms Triggs to do more to trace the increased value of her contribution of separate funds than to merely ask for a share of the property's final value equivalent to the percentage of the purchase price she paid with her separate funds.

As a result of Ms Triggs' failure to present such evidence, the increased value of the house should have been characterized as community property. "Where there is any uncertainty in tracing an asset to a separate property source, the law resolves the uncertainty in favor of a finding of community character." *Marriage of Gillespie*, 89 Wn.App. 390, 948 P.2d at 1343, *citing Connell v. Francisco*, 127 Wash.2d 339, 351, 898 P.2d 831 (1995).

As argued above, given the trial court's apparent goal of apportioning community property and debt essentially equally, this failure to properly allocate the burden of proof justifies reversal of the trial court's decision on this point.

**IV. The trial court failed to consider the statutory factors to which a court must look when ruling on a request for maintenance and erred as a result.**

RCW 26.09.090, the statute governing an award of maintenance, provides as follows:

(1) In a proceeding for dissolution of marriage ... the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and

financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

In this case, the court awarded maintenance in the amount of \$1,700 per month<sup>20</sup> payable until Mr. Triggs' 66<sup>th</sup> birthday, at which time it was to be one-half the difference between the Social Security payments Mr. Triggs received and those received by his wife. CP pp 12-13. In making this award, however, the court provided no rationale for doing so, aside from noting the parties' respective gross monthly income, RP p. 195, and making the summary finding that "Wife has the need and Husband has the ability to pay," CP p. 19.

When the trial court fails to make fair consideration of the statutory factors, reversal of the decision is proper. *Marriage of Mathews*, 70 Wn.App 116, 123, 853 P. 2d 462 (1993). In order to determine if a trial court has considered statutory factors that it is required to examine,

we first look to see if the trial court entered specific findings on each factor. *Horner*, 151 Wash.2d 884, 896, 93 P.3d 124. If the trial court did not enter the specific findings, we look to see if substantial evidence was presented on each factor and whether the " trial court's findings of fact and oral articulations reflect that it considered each factor." *Id.* A trial court abuses its discretion if it does not satisfy either of these methods of documenting its consideration of the child relocation factors. *Id.*

*Bay v. Jensen*, 147 Wn.App. 641, 196 P.3d 754 (2008).

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<sup>20</sup> This award is \$300 per month above that requested by Ms Triggs.

Neither of these tests is met here. There are no specific findings with respect to each factor. There is nothing in the trial court's findings of fact or oral ruling to show any consideration of any of the factors listed in RCW 26.09.090. For these reasons alone, the trial court's decision to award Ms Triggs lifetime maintenance should be reversed.

**V. The trial court's award of \$1,700 per month in maintenance to Ms Triggs is not supported by substantial evidence of Ms Triggs needing an award of maintenance in this amount.**

If the issue of the court having failed to make findings sufficient to show that it properly considered the required factors in awarding maintenance is set aside and the award of maintenance examined in its own right, it is found that there is not substantial evidence to support the trial court's stated finding that wife has the need for maintenance and husband has the ability to pay.

"On appeal, a trial court's findings of fact will be upheld if supported by substantial evidence. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wash.2d 873, 879, 73 P.3d 369 (2003). " Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise." *In re Marriage of Hall*, 103 Wash.2d 236, 246, 692 P.2d 175 (1984)." *Marriage of Bernand*, 165 Wn.2d 895, 903, 204 P.3d 907 (2009).

The evidence presented at trial does not meet this standard, even if it is accepted fully at face value. The evidence presented by Ms Triggs shows that in 2008, her net monthly income was \$2,759 per month. Ex 2.29. Her listing of monthly expenses showed that her needs were \$2,900.99 per month, or \$141.99 over her expenses.

While Ms Triggs may argue that she has greater financial needs than this as she has less time and ability to prepare for her retirement, again, the facts do not support this position. She was awarded outright the family home, which is unencumbered and valued at \$165,000. She was awarded all of her retirement accounts, valued at \$93,766. She was awarded a one-half interest in Mr. Trigg's Vanguard retirement account in the amount of \$140,738.50. The assets available to her to help fund her retirement thus total \$399,504.50.

Ms Triggs will continue to contribute to her retirement account during her remaining years of working. She will have Social Security available to her, probably in excess of \$1,382 per month. If it is assumed that she will live about 17 years beyond her 66<sup>th</sup> birthday, taking just the current value of her retirement account and setting aside the equity she has in the house awarded to her, she will have \$1,149 per month just from withdrawing the principle on these accounts. Her expenses will probably have gone down. But even if they do not, there is only a \$370 difference

between this very conservative estimate of her income and her current expenses.

The evidence thus does not provide substantial support for the trial court's finding that Ms Triggs has the need for maintenance in the amount of \$1,700 per month. The trial court should accordingly be reversed on this issue.

**VI. There is no basis for the trial court having placed a perpetual lien on Mr. Triggs' future earnings and to require him to keep working until at least the age of 66.**

If the court goes beyond the trial court's one finding and looks for other reasons to sustain the trial court's award of maintenance, it still remains excessive. "The standard of living of the parties during marriage and the parties' post-dissolution economic condition are paramount concerns when considering maintenance and property awards in dissolution actions." *Marriage of Sheffer*, 60 Wn.App. 51, 57, 802 P. 2d 817 (1990). Here, there was no true evidence of the parties' standard of living while together beyond proof of their current incomes. It is quite clear that Mr. Triggs was making no money when he was self-employed for more than a year, gaining his current position only in September 2007, four months before the couple separated. RP p. 31. During this time, Mr. Triggs made a considerable withdrawal from a retirement account to be able to meet expenses. Also during this time, Ms Triggs worked at her

current position, making essentially the same as she does now. But there is little to support any conclusions about the Triggs' pre-separation standard of living sufficient to allow it to be used to justify an award of \$1,700 per month in maintenance.

As for Mr. Triggs' ability to pay \$1,700 per month in maintenance, it is well within the evidence that he can do so at present. It will drastically reduce his standard of living, while providing Ms Triggs more than \$1,400 per month in income over her documented needs. It will require him to forgo recouping the retirement benefits assigned to his wife and will greatly compromise his ability to purchase a home to replace the fully paid for home he and his wife had enjoyed while they were together.

But the trial court's decision goes beyond the present. It requires Mr. Triggs to continue to work until he is 66 years old or to find some other way to pay maintenance while meeting his own needs. He is essentially precluded from retiring or even from reducing his hours or taking another position. Ms Triggs is being granted a "perpetual lien" on his ability to produce income in derogation of a long line of cases holding that this is improper. See *Sheffer*, 60 Wn.App. at 54, 802 P.2d 817, citing *Hogberg v. Hogberg*, 64 Wash.2d 617, 619, 393 P.2d 281 (1964).

The trial court makes no explanation of its reasons for granting Ms Triggs \$1,700 per month in maintenance until Mr. Triggs turns 66 years

old. The evidence presented fails to provide support for this award, either. The trial court should be reversed on this issue.

**VII. The court improperly assigned a portion of Mr. Triggs' Social Security benefits to Ms Triggs in the guise of an award of maintenance.**

Under 42 U.S.C. Sec. 407(a) of the Social Security Act, it is forbidden to transfer or reassign “[t]he right of any person to any future payment under this title...” It is categorically impermissible to create a such a payment obligation via a community property settlement, equitable distribution of property, or other division between spouses or formal spouses. 42 U.S.C.A. Sec. 659(i)(3)(B)(ii).

The supremacy of federal law on such issues was established in *Hisquierdo v. Huisierdo*, 439 U.S. 572, 590 S.Ct. 802, 59 L.Ed.2d 1 (1979). Although *Hisquierdo* dealt with benefits under the Railroad Retirement Act, the analysis therein under the federal constitution’s supremacy clause has been found to be equally applicable to statutory provisions governing social security benefits. *See Marriage of Zahm*, 138 Wn.2d 213, 978 P.2d 498 (1999).

In *Zahm* the court considered the interplay of the provisions governing distribution of property under RCW 26.09.080 and the federal restrictions on creating obligations against social security benefits. It held that “federal statutes secure social security benefits as the separate

indivisible property of the spouse who earned them.” *Zahm* at 502, 978 P.2d 498. The court also found that it was permissible to consider the social security benefits to which each spouse is entitled in the process of evaluating their economic situations. *Id.* at 503. The court did find that there is a limit to dealing with social security benefits, however. It is impermissible to “calculate a specific formal valuation of [a party’s] social security benefits and award [the other party] a precise property offset based on that valuation...” *Id.* It is also impermissible to simply divide such benefits. *Id.* at 501.

While *Zahm* dealt with division of property under RCW 26.09.080, the same principles apply to an award of maintenance. By analogy, while it is permissible to look to the parties’ expected social security benefits to determine their relative economic positions, it remains impermissible to base an award of maintenance on a valuation of such benefits or to divide them between the parties.

Here, the trial court made just such an impermissible division of Mr. Triggs’ social security benefits. It ordered that, “Maintenance shall terminate upon Husband’s 66<sup>th</sup> birthday, at which time Husband shall pay as maintenance one-half of the difference between his amount of social security and the amount that Wife is receiving of social security, if any.

The amount of maintenance shall be reconsidered to take into account any changes in Wife's receipt of social security or its amount." CP p. 13.

This portion of the court's maintenance order is nothing but a division of Mr. Triggs' social security benefits. Mr. Triggs' social security benefits are not being considered in making an award of maintenance. Rather the benefits themselves are being divided, albeit via a calculation rather than a through a percentage order.<sup>21</sup>

This portion of the court's order is clear error and should be reversed.

**VIII. The trial court erred in making an award of attorney fees to Ms Triggs without conducting any analysis of whether she had the need for such an award.**

Attorney fees can be awarded in a dissolution under RCW 26.09.140. This statute provides that in making such an award, the court is to consider "the financial resources of both parties." In this case, while the trial court awarded Ms Triggs attorney fees in the amount of \$6,000, payable at \$500 per month with 5% interest on the unpaid balance, it made only a summery finding that "The wife has the need for payment of fees and costs and the other spouse has the ability to pay these fees and costs." CP p. 19.

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<sup>21</sup> This part of the order is also rather confusing insofar as it is not clear what Mr. Triggs is being ordered to pay if he is not drawing social security at age 66 or whether he has any obligation to maximize his monthly benefit by waiting until he reaches such an age to start drawing it.

There is not substantial evidence in the record to support such a finding, though. Ms Triggs was awarded nearly \$400,000 in assets.<sup>22</sup> While Ms. Triggs may not want to use these assets to pay her attorney, while she may choose to do otherwise, she clearly has the ability to pay her own attorney fees.

As the record does not contain substantial evidence to show Ms. Triggs has a need for assistance in paying her attorney fees, it was error for the court to make such a finding and error for the court to award fees to Ms Triggs.

**IX. Costs on Appeal are requested by Mr. Triggs**

Appellant requests that he be awarded fees under RCW 26.09.140 and RAP 14.1 through 14.6 in the event it is determined that he is the substantially prevailing party.

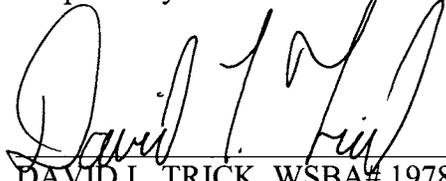
**CONCLUSION**

Mr Triggs respectfully requests that this court find that the trial court erred in the ways outlined above, that this court remand this matter to the trial court for further action to be taken pursuant to this court's curative instructions, and to award Mr. Triggs costs as allowed under the Rules of Appellate Procedure for having maintained this appeal in order to correct the errors committed below.

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<sup>22</sup> The court's spreadsheet show the net allocation of property and debt to Ms Triggs to be \$377,414.50.

Respectfully submitted this 18<sup>th</sup> day of April 2010.

A handwritten signature in black ink, appearing to read "David L. Trick", written over a horizontal line.

DAVID L. TRICK, WSBA# 19782  
Attorney for Michael Triggs, Appellant

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**FILED**

**APR 20 2010**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR YAKIMA COUNTY**

<b>In re the Marriage of:</b>	)	
Judith Kay Triggs,	)	
	)	<b>No.: 08-3-00133-7</b>
<b>Petitioner,</b>	)	
	)	<b>CERTIFICATE OF SERVICE</b>
and	)	
Michael Kevin Triggs,	)	
	)	
<b>Respondent</b>	)	

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am over the age of 18, competent to testify, and am not a party to this action.

On April 19, 2010 I sent, by Attorney Messenger Service, a copy of Brief of Appellant filed herein to W. James Kennedy, attorney for Petitioner, at 101 South 12<sup>th</sup> Ave, PO Box 1410, Yakima, WA 98907-1410.

Dated this 19<sup>th</sup> day of April 2010 at Yakima, WA.

  
MEL CARTMELL