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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

WITHERSPOON KELLEY

Court of Appeals Cause No. 304591
Superior Court Cause No. 09-3-02035-1
**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

CRAIG DICKSON

Appellant

v.

DANEILLE DICKSON

Respondent

BRIEF OF RESPONDENT

Salina, Sanger & Gauper
Martin L. Salina WSBA #6905
Attorney for Respondent
422 West Riverside, Suite 824
Spokane, WA 99201
(509) 838-2700

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I. ARGUMENT

A. The Trial Court Neither Erred Nor Abused its Discretion in Awarding Spousal Maintenance to Ms. Dickson.

The only limitation placed upon the trial court's ability to award spousal maintenance is that the amount and duration, considering all relevant factors, be just. Washburn v. Washburn, 101 Wash.2d 168, 677 P.2d 152 (1984).

Here, the trial court specifically considered the evidence, as well as the statutory factors set forth in RCW 26.09.090 (C.P. 814).

Mr. Dickson argues that the trial court failed to consider an alleged disproportionate division of assets in favor of Ms. Dickson, in its analysis of spousal maintenance.

In fact, Ms. Dickson was awarded assets valued at \$876,715, along with an equalizing judgment in the amount of \$1,953,012, for a total award of \$2,829,727 (C.P. 824).

Mr. Dickson was awarded a net asset value of \$4,900,834, less a property equalization payment of \$1,953,012, leaving him with a net worth of \$2,947,821 (C.P. 824). In fact, even after payment of the property

equalization payment, Mr. Dickson received a larger award than Ms. Dickson.

Mr. Dickson argues that he cannot, from a net income of \$23,714 per month, afford to pay Ms. Dickson \$6,500 per month in spousal maintenance.

The trial court found that after the payment of spousal maintenance, Mr. Dickson had remaining net cash flow of \$12,303 per month (C.P. 797). The trial court found that after the receipt of spousal maintenance and payment of tax, Ms. Dickson had a net cash flow of \$5,725 per month (C.P. 797).

From the \$12,303, Mr. Dickson was also ordered to pay child support for his daughter (\$1,257 per month), college tuition for Jordan (\$4,165 per month), and high school tuition for his daughter (\$1,250 per month). After meeting these obligations, Mr. Dickson was left with a net cash flow of \$5,631 per month.

Thus, after payment of court ordered amounts, Mr. Dickson's net cash flow would be \$5,631 per month, and Ms. Dickson's net cash flow was \$5,725 per month.

Mr. Dickson argues that the trial court should have considered the interest accruing on the property equalization payment (\$19,530 per month) as a factor in his ability to pay spousal maintenance.

The property equalization payment from Mr. Dickson to Ms. Dickson is mathematically mandated as a consequence of two large assets having been awarded to Mr. Dickson.

First, he was awarded all right, title, and interest in the community enterprise known as Dickson Iron & Metal. The value assigned to this asset was \$2,500,000 (C.P. 818). Secondly, he was deemed to have received the value of certain community assets which were forfeited to the federal government as a consequence of his criminal activity. These forfeited assets were valued at \$1,358,763 (C.P. 816).

The total value then of these two assets, the business enterprise and the forfeited assets, was \$3,858,763. The equalizing payment, in a 50/50 division of assets, would be one-half of this value, or \$1,929,381. Thus, the equalizing payment / judgment is almost entirely the result of awarding to Mr. Dickson the business enterprise, as well as assigning the value of the forfeited assets to him.

If the \$1,358,763 in forfeited assets had been available to distribute to Ms. Dickson, rather than forfeited by Mr. Dickson, the large accrual of interest on the property equalization payment might have been eliminated, if not substantially reduced.

A person must come into a court of equity with clean hands. Pierce County v. State, 144 Wash.App. 783, 832, 185 P. 3d 594 (2008).

A party's dissipation of assets is legitimately considered by the trial court in resolving equitable considerations in a dissolution of marriage action. In re Clark's Marriage, 13 Wash.App. 805, 811, 538 P.2d 145, 149 (1975).

The court did not order Mr. Dickson to pay the judgment interest monthly. He will not be subject to contempt as a consequence of his failure to do so. He was awarded assets (including the value for assets forfeited by him) valued at almost \$5 million dollars. Certainly, he has the present ability from these assets to pay the judgment and eliminate the accrual of interest. Thus, offsetting judgment interest as if it were being paid on the one hand, and arguing an inability to pay the interest on the other, is meritless.

Mr. Dickson's alleged error on the basis that the trial court failed to consider Mr. Zirkan's income, is not supported by any reference to the record, or citation to authority and, therefore, should not be considered by this court.

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

B. The Trial Court Neither Erred Nor Abused its Discretion in its Characterization of Post-Separation Payments.

The issue concerning the characterization of post-separation payments is discussed in detail in the Findings of Fact at paragraph 2.21(9).

The inability to secure a temporary order, specifically delineating child support and spousal maintenance during the pendency of this action, was problematic due to the non-existence of tax records and/or a lack of reliability relative to the existing records.

The valuation of the business was problematic in that corporate income, as reported in tax returns and financial statements, was posted exclusively by the husband, and most transactions were conducted in cash.

The potential for inaccuracy was aggravated by the fact that at the time of trial in August of 2010, the parties had not filed either personal or corporate tax returns for 2009. At the time of the second trial in July of 2011, once again, the husband had still not filed his personal income tax returns for 2009 or 2010, and corporate tax returns for 2009 and 2010 had not been filed. Wife had filed her 2009 tax return.

The court has, therefore, chosen to rely primarily on the corporate and personal tax returns for 2006, 2007, and 2008 in valuing this business entity.
(C.P. 819).

The lack of reliable financial information, as well as the forfeiture of \$1,358,763 of community assets, made it difficult to present to the trial court accurate, current data as to an ability to pay, and need for spousal maintenance and child support.

As a result, the court entered into series of orders which provided for distributions of cash, cash transfer payments, and interim resolutions.

At trial, the court was requested by both parties to retroactively characterize pre-trial payments and distributions as either property distributions or spousal maintenance. The court, at paragraph 2.21(9) of the Findings of Fact, articulates the competing positions and essentially

denied the credit Mr. Dickson once again requests here. Additionally, the court denied Ms. Dickson 's request for retroactive spousal maintenance.

The court stated as follows:

The husband has requested an offset against these obligations and that he be given "credit" for car payments, car insurance for the children, funds that he has deposited to the children's debit cards, credit for payment of the children's private school educations, payments on credit cards during the pendency of this action, as well as the mortgage payment on the residence and rental value, which was occupied by Ms. Dickson during the pendency of this action. Community income was used to pay post-separation debts secured by Ardea Lane (i.e. mortgage payments).

Although Ms. Dickson received distributions from community funds during the pendency of this action, these distributions that were made were relatively equal to the distributions made to Mr. Dickson, with the exception of the \$60,000 in cash, which Ms. Dickson utilized before the funds were deposited to the safety deposit box.

Therefore, the court will not award retroactive child support and spousal maintenance but, on the other hand, the court will only grant to the husband credit for payments that have been made on account or pursuant to the court order as identified on the attached Exhibit A.

The liabilities to be assumed and paid by husband are set forth under the Liability section of Exhibit A.

In summary, the court has thoughtfully considered the cash flow of the parties during the pendency of this action, has considered what the wife has had available as operating capital, and what the husband has had available as operating capital, and deems it appropriate in consideration

of that amount, as well as the other factors, that no retroactive support for spousal maintenance is appropriate and that Mr. Dickson should be obligated to pay and receive credit for payment of some \$97,230 in community debt. The court deems that the debts set forth on Exhibit A are community in nature.
(C.P. 820)

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.

State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

C. The Trial Court Neither Erred Nor Abused its Discretion by

Awarding Attorney's Fees.

RCW 26.09.140 provides as follows:

Payment of costs, attorneys' fees, etc.

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of

the proceeding or enforcement or modification proceedings after entry of judgment.

An award of fees is discretionary with the court. Knight v. Knight, 75 Wash.App. 721, 729, 800 P.2d 71 (1994). In general, the court balances the needs of the requesting party against the other party's ability to pay. Kruger v. Kruger, 37 Wash.App. 329, 333, 679 P.2d 961 (1984).

The court may also consider the extent to which one spouse's intransigence caused the spouse seeking a fee award to require additional legal services. In re Marriage of Crosetto, 82 Wash.App. 545, 565, 918 P.2d 954 (1996). A trial court does not exceed its authority in awarding fees when a spouse's conduct constitutes bad faith. Seals v. Seals, 22 Wash.App. 652, 658, 590 P.2d 1301 (1979).

Determining whether a fee award is appropriate requires an analysis of the parties' relative abilities to pay. Leslie v. Verney, 90 Wash.App. 796, 807, 954 P.2d 330 (1998).

Here, after completing a two-week trial, but before the trial court issued a ruling, the FBI seized cash, checks, and other assets (CP 713-715).

Mr. Dickson, on the basis of the FBI seizure, successfully requested a second trial (CP 360-61). He argued that the seized assets and the impact of the FBI raid represented a basis for reopening the evidence.

The second trial, therefore, was, in its entirety, the proximate result of Mr. Dickson's criminal activity (see Exhibit P-76).

Mr. Dickson's gross income was found to be \$23,714 per month. Ms. Dickson's only income was found to be spousal maintenance in the amount of \$6,500 per month (C.P. 818).

Mr. Dickson, through his criminal activity, created the necessity for a second trial and the accrual of substantial additional costs and fees.

As between the parties, Mr. Dickson had a greater relative ability to pay fees.

The alleged "double dip" simply results in 12% interest being paid by Mr. Dickson on both the equalizing judgment and on the attorney's fees judgment. This, therefore, is not a "double dip."

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re

Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

D. The Trial Court Neither Erred Nor Abused its Discretion in its Calculation of Child Support, Contributions on Tuition, and Post Secondary Educational Support.

Mr. Dickson did testify that his wages alone were \$10,000 per month at the time of trial (RP 980).

However, the trial court found that in 2006, 2007, and 2008, Mr. Dickson's wages were \$235,000, \$283,000, and \$335,720, respectively (C.P. 818).

The trial court found it necessary to rely upon these three years for accurate income information for Mr. Dickson in that the tax returns had not been filed for 2009 or 2010, personally, and had not been filed for the corporation for 2009 or 2010 (C.P. 817).

The trial court struggled with Mr. Dickson's failure to provide current, accurate income information.

Once again, the court emphasizes that due to the bookkeeping methodology being entirely dependent upon the husband's postings alone, and given the fact that most

transactions were conducted in cash and not by check, and given the volatility of the marketplace, particularly in 2008, the valuation of this business enterprise was particularly difficult. (C.P. 818).

Mr. Dickson also argues that it was error on the trial court's part for failing to impute income to Ms. Dickson.

Ms. Daneille Dickson was 40 years old at the time of trial in July of 2010 (RP 56). She was a high school graduate, having graduated from Mead High School in 1988 (RP 56).

The parties were married in July of 1991, and separated in August of 2009.

During the marriage, Ms. Dickson had attended a psychology class and had attended some entry level computer classes, those having been attended ten years prior to separation (RP 56-57).

The parties had commenced living together in 1986, when she was 14 years old and Mr. Dickson was 19 years old (RP 58).

She had worked as a waitress in 1986 - 89; had worked at a debt collection agency for five or six months, but when her son Jordan was born in 1992, she did not return to work again until 2008 (RP 60 - 61).

Her assistance to Mr. Dickson in the operation of DI&M consisted of painting buildings, cleaning, separating invoices, going to the bank, and running to get lunch (RP 62).

In November of 2008, Mr. Dickson and Ms. Dickson opened a coffee shop / bakery, known as Rogue Coffee Cravings & Cabernet (RP 61, 226).

It was intended to provide a job primarily to Ms. Dickson's sister, Sophia Rosenbaum, who was having trouble finding work (RP 217 - 218).

Ms. Dickson's participation in the business was to open the store in the morning, start baking, grocery shopping, wash dishes, take care of clients, and make coffee (RP 222). Ms. Rosenbaum worked from 11:00 a.m. to 7:00 p.m., and she was paid \$1,200 every two weeks (RP 224).

The business never made a profit (RP 224).

The parties discussed closing the business as early as April of 2009, after having only been opened for six months (RP 225 - 226).

After filing for divorce in August of 2009, Ms. Dickson tendered the management responsibilities of the business back to Mr. Dickson, and he managed the business from that time forward (RP 226, 227).

Ms. Dickson had no further involvement in the business after September 4, 2009 (RP 228).

The business known as "Rogue" was established as a corporation in 2008 and, after five and a half months of operation, had lost \$68,356 and paid officer compensation of \$600 (Ex. R-128.44).

After eleven months of operation, the business had lost \$70,396.68 (Ex. R-128.47).

Ms. Dickson, at the age of 40, with a high school education, had no marketable skills at the time of the divorce. She was drawing no income from the Rogue, the business was losing money, she was in the middle of a divorce, and the parties agreed that Mr. Dickson would assume the day-to-day responsibilities.

At the time of trial, Ms. Dickson was unemployed.

At the time of trial, Ms. Dickson had no recent relevant work history or education that would mandate an imputation of income.

The trial court correctly chose not to impute income to Ms.

Dickson, stating:

For the purposes of calculating child support and spousal maintenance, the court is utilizing the spousal maintenance figure alone, that being \$6,500 per month, as Ms. Dickson's income at this time. (C.P. 819)

Mr. Dickson argues that the trial failed to consider the income of Mr. Zikan. RCW 26.19.071(4)(b) specifically excludes Mr. Zikan's income from the "gross monthly income" of Ms. Dickson.

Mr. Dickson has failed to cite any reference to the record indicating that the trial court failed to consider the income of Mr. Zikan.

The trial court entered Findings of Fact relative to the tuition for Regan Dickson, and post-secondary educational support for Jordan Dickson (C.P. 819).

The trial court also entered detailed findings relative to the income of the parties (C.P. 818).

The court found Mr. Dickson's net income, after payment of spousal maintenance, to be \$12,303, and Ms. Dickson's net income, after the receipt of spousal maintenance, to be \$5,725 per month (C.P. 797).

As has been previously argued herein, after payment of spousal maintenance, tuition, and post-secondary educational support, Mr. Dickson's remaining net cash flow was \$5,631 per month, approximately equal to Ms. Dickson's net cash flow.

Clearly, the court determined that Mr. Dickson had the ability to pay these expenses, and that Ms. Dickson did not. At trial, Mr. Dickson

had been able from this earnings to pay for Regan's private tuition, and for Jordan's college tuition (RP 2050). The court found that Mr. Dickson had been willing to, and had voluntarily provided funds independently to each child (C.P. 804).

Although Ms. Dickson testified that she was willing to contribute, she did not testify that she would pay one-half of Jordan's educational expenses. She testified that she would do what she was able to (RP 471).

RCW 21.19.065 provides as follows:

(1) Limit at forty-five percent of a parent's net income. Neither parent's total child support obligation may exceed forty-five percent of net income, except for good cause shown. Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

Clearly, the educational needs of Regan and Jordan warrant the child support and post-secondary educational support awards. At the time of the court's order, Jordan had completed his freshman year at Whitman College in Walla Walla, Washington. Regan had attended St. George's and Gonzaga Prep, and had been admitted into Valor Christian School in Colorado (C.P. 810).

The court spoke at length concerning the talents of these exceptional children.

Both children are, and have been, college material, if you will. Jordan is sensitive and competitive. He is rather black and white in his academic pursuits. He is strong in math. In fact, he earned a perfect SAT score before he graduated.

He is interested in basketball, but is not attending Whitman on a basketball scholarship. This will be certainly a topic for conversation between dad and Jordan, but his intent to remain at Whitman does appear to be fairly solid.

Regan was also a delightful student in her school. She did well in academics, although she did have some trouble this last year with her finals. She is social, she dances, she sings, and she is going to be exploring all of the other opportunities that may be presented in Highlands Ranch, Colorado, which is the site of her new school, Valor Christian.
(RP 2051.)

There is "good cause" to provide for Mr. Dickson's contribution in excess of 45% of his net income on the basis of substantial wealth, as well as educational needs.

Mr. Dickson argues that In re Marriage of Daubert, 124 Wash.App. 483, 99 P.3d 401 (2004), requires that both parties' income be considered for the purposes of tuition and post-secondary support allocation. Although this is fundamentally true, in this instance, where Ms. Dickson's income, pursuant to the court's findings, is maintenance alone, and where

the court has found that Ms. Dickson needs maintenance in the amount of \$6,500 per month, without requiring her to contribute toward Regan's and Jordan's tuition expenses, the court was justified in not ordering Ms. Dickson to participate. To do so would simply cause the court to be required to increase her maintenance award.

For purposes of the record, the court may consider this analysis as a deviation.

The trial court, inasmuch said the same at the presentment hearing as follows:

There may be a good basis to recognize a deviation with regard to the tuition. (Transcript of presentment hearing, September 21, 2011, page 100, lines 24 and 25.)

Mr. Dickson alleges the court is required to use a two-child standard in that Jordan is receiving post-secondary educational support.

This issue was not before the court in Daubert in that it had not been appealed. Marriage of Daubert, 124 Wash.App. 483, 99 P.3d 503 (2004).

Mr. Dickson fails to provide any authority for the proposition that the trial court, under the facts of this case, is required to utilize a one-child standard.

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

Child support is reviewed for a manifest abuse of discretion. Marriage of Griffin, 114 Wash. 2d 772, 791 P.2d 519 (1990).

The trial court's findings on these issues were reasonable and supported by the record.

E. The Trial Court Neither Erred Nor Abused its Discretion in its Characterization of the Ardea Lane Home Residence.

The residence on Ardea Lane was purchased during the marriage in 2002, and was held in both parties' names (RP 65, Ex. P-23).

Property acquired during marriage is presumptively community property. In re Marriage of Hadley, 88 Wash.2d 649, 662, 565 P.2d 790 (1977).

Mr. Dickson fails to cite any authority that requires evidence of commingling.

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

F. The Trial Court Neither Erred Nor Abused its Discretion in its Determinations of Retroactive Child Support / Spousal Maintenance / Credit for Payment of Debt.

Mr. Dickson argues that the court's ruling was "clear," then moves on in his argument to enunciate numerous factual allegations and computations, without any recitation to the record whatsoever (RAP 10.3(6)).

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re

Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

G. The Trial Court Neither Erred Nor Abused its Discretion in its Determination of Value of DI&M.

The valuation of goodwill is a question of fact. Suther v. Suther, 28 Wash.App. 838, 627 P.2d 110, review denied, 95 Wash.2d 1029 (1981).

Findings of Fact supported by substantial evidence in the record will not be reversed on appeal. Trans-Canada v. King County, 29 Wash.App. 267, 271, 628 P.2d 493, review denied, 96 Wash.2d 1002 (1981).

Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise. Smith v. Shannon, 100 Wash.2d 26, 666 P.2d 351 (1983); Ridgeview Properties v. Starbuck, 96 Wash.2d 716, 638 P.2d 1231 (1982).

Here, the trial court found that Hall methodology number 3, the capitalization of excess earnings, was the most appropriate methodology to utilize in valuing DI&M (C.P. 817).

This was the primary approach utilized by the Ms. Dickson's expert, Mr. Douglas J. Brajcich.

Mr. Dickson argues that the "Hall 3" method should be limited to the valuation of professional practices alone. Essentially, Mr. Dickson argues that as a matter of law, this methodology cannot be utilized to value DI&M. Mr. Dickson fails to cite any case law from any jurisdiction in support of this proposition.

"Hall 3" incorporates the excess earnings method as defined by the IRS in Revenue Ruling 68-609, 1968-2 C.B. 327. The Hall court describes method 3 as follows:

The IRS variation of capitalized excess earnings method takes the average net income of the business for the last five years, and subtracts a reasonable rate of return based on the business's average net tangible assets. From this amount, a comparable net salary is subtracted. Finally, this remaining amount is capitalized at a definite rate. The resulting amount is goodwill. In re Marriage of Hall, 103 Wash.2d 236, 244, 692 P. 2d 174 (1984).

This goodwill or intangible value is then added to the value of the tangible assets to provide a total value of the business.

The fact that Ms. Dickson's expert, Mr. Dan Harper, testified that in his business judgment the straight capitalization accounting

methodology was a more appropriate method, should not surprise this court. As stated in Suther, citing to a tax journal, the valuation process has been described as a matter of judgment and opinion, rather than mathematics. Suther, citing Banks, Present Value and the Close Corporation, 49 Taxes, The Tax Magazine, 33, 35 (January, 1971).

The fact finder is given wide latitude in the weight given expert opinion. Marriage of Sedlock, 69 Wash.App. 484, 849 P.2d 1243 (1993).

As stated in Sedlock at page 491:

Where, as here, a trial court determines that the true value of an asset may lie somewhere between the values testified to by "expert A" and "expert B," the trial court may adopt a "compromise" figure.

Mr. Brajcich valued the business enterprise at \$3 million dollars (RP 631). Mr. Harper's value ranged from \$1,494,153 to \$1,642,675 (RP 1202 - 1207).

The trial court enunciated a lengthy analysis of the court's rationale, as well as the underlying evidence in support of adopting the methodology of Mr. Brajcich (C.P. 817).

Ms. Dickson's expert, Mr. Douglas J. Brajcich, testified that in his utilization of "Hall 3," he used both a three-year analysis and a four-year

analysis in making his computations. In addition, he considered two additional years (RP 644-645).

When pressed by counsel as to why he didn't use five years in his calculations, Mr. Brajcich explained that he considered the two preceding years, but that in his business judgment, the utilization of four years was appropriate in that the previous years were less creditable (RP 645).

The inquiry on appeal is limited to whether any substantial evidence supports the trial court's findings, even though other reasonable interpretations may appear. Marriage of Ziegler, 69 Wash.App. 602, 849 P.2d 695 (1993).

The application of the formulas in Hall must be considered in the context of expert testimony and business judgment.

In re Marriage of Hall, supra, certainly supports the proposition that blind allegiance to formulas is not favored. Hall, at page 245.

These five methods are not the exclusive formulas available to trial courts in analyzing the evidence presented. Nor must only one method be used in isolation. One or more methods may be used in conjunction with the Fleege factors to achieve a just and fair evaluation of the existence and value of any professional's goodwill.

In fact, it has been enunciated that there is no definitive formula for ascertaining the value of goodwill. In re Marriage of Lukens, 16 Wash.App. 481, 558 P.2d 279 (1976).

At In re Marriage of Brooks, 51 Wash.App. 882, 756 P.2d 161 (1988), our appellate court approved the trial court's averaging the excess earning method and the IRS variation of the capitalization method, so long as it was supported by expert testimony. Brooks at page 891. The trial court in that case, issued a letter opinion, and that trial court also considered a three-year average.

Here, the trial court elected to value the business enterprise prior to the forfeiture of assets and attendant negative publicity surrounding Mr. Dickson's criminal plea.

The valuation date of an asset rests in the sound discretion of the trial court. Lucker v. Lucker, 71 Wash.2d 165, 426 P.2d 981 (1967).

Here, the trial court, having concluded testimony after two weeks of trial on August 18, 2010 (CP 701), but before the trial court issued its ruling, elected not to reopen the valuation issue in the second proceeding.

The second proceeding was held after the business premises of DI&M, as well as the personal residences of the parties, had been raided (CP 701).

Additionally, between the first and second hearings, the FBI seized cash, checks payable to the order of DI&M, the account balances, personal vehicles, and business records (CP 713-715).

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

H. The Trial Court Neither Erred Nor Abused its Discretion in Finding that the \$448,470 in Un-cashed Checks were Community Property Assets.

The first trial in this matter ended after approximately two and a half weeks of testimony on August 18, 2010 (CP 701).

On August 31, 2010, before the trial judge had issued her ruling, the FBI seized assets of the parties, including 448,470 in un-cashed checks issued to DI&M (CP 713 - 715). These checks were seized from the person of Mr. Dickson, who was carrying them in a duffle bag and on his way to work (RP 194).

These checks were dated / issued from the middle of July of 2010, through the third and fourth week of August, 2010 (RP 1909). Mr. Dickson testified that they had not been deposited because he had a "pile of paperwork coming out of trial" (RP 1909, line 15).

Mr. Dan Harper, Mr. Dickson's valuation expert, included in his valuation a balance sheet for the tangible assets of the corporation (Ex. R-128.18).

Mr. Harper's balance sheet lists the cash of DI&M at "\$217,000 based on 8/13/09 Bank of America bank statement" (Ex. R-128.18).

Mr. Douglas J. Brajcich, Ms. Dickson's valuation expert, valued DI&M as of December 31, 2008 (RP 631).

Neither expert's valuation could have included any value for these un-cashed checks, given the timing listed above. These checks had been totally undisclosed until their seizure on August 31, 2010.

The trial court was concerned about whether or not, her inclusion of the un-cashed checks as an asset might represent a duplication of Mr. Harper's or Mr. Brajcich's values (RP 1916, lines 2-3).

However, given the chronology of their disclosure, and given Mr. Dickson's possession and control of the evidence (the checks), it was his burden, not Ms. Dickson's to prove that their inclusion would result in a duplication (Jolliffe v. Northern Pacific Rail Company, 52 Wash. 33, 100 P. 977 (1909)).

In that Ms. Dickson was unaware of the \$448,470 in un-cashed checks during the 2010 trial, they were not listed in her Joint Management Report. There could be no valid reason for Mr. Dickson's failure to list them on his Joint Management Report, other than intentional non-disclosure.

Mr. Harper, in his report, placed no value on accounts receivable of DI&M (Ex. R-128.18). Mr. Brajcich, in his report, placed no value on accounts receivable (Ex. P-34).

Mr. Dickson introduced no evidence to support any contention that the un-cashed checks represented payment to DI&M for accounts

receivables that had otherwise been considered in the trial court's valuation analysis.

If these payments were, in fact, payments of accounts receivables, they simply had not been included in the previous valuations entirely because of Mr. Dickson's non-disclosure.

Exhibit A to the Findings of Fact and Conclusions of Law and to the Decree of Dissolution, are balance sheets which document the identification, valuation, distribution, and characterization of assets and debts of the parties as determined by the trial court (C.P. 821 - 824).

At paragraph 5.7, Bank Accounts, in the Exhibit A, it is clear that the trial court expressly excluded Dickson Iron & Metals, Inc. bank accounts. They were "deemed considered in Dickson corporate valuation" (C.P. 822).

The trial court, in an effort to avoid duplication, treated funds deposited to the corporation bank accounts as included in the valuations already considered, but excluded un-cashed checks as assets to be added to the values previously testified to.

The trial court's dilemma is explained by her at the presentment hearing as follows:

See, this was not evidence before the Court. All of this is subsequent activities that have exposed additional assets that would be corporate assets but for the inability for the Court to recognize anything but their forfeiture and their amount of forfeiture allocating to Mr. Dickson. They would have been community assets. They are credited to his side of the asset list.

(RP 24, Presentment hearing of September 21, 2011)

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.

State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

I. The Trial Court Neither Erred Nor Abused its Discretion in its Determination that Mr. Dickson was Appropriately Charged for 100% of the Value of the Forfeited Community Property Assets.

A Plea Agreement was entered on December 29, 2010 by Craig Dickson (CP 713). The Plea Agreement included the stipulation and agreement by Mr. Dickson to the forfeiture of \$1,369,389 of assets (see Ex. P-76).

The element of Mr. Dickson's offenses are listed in the Plea Agreement and include a detailed defining of his engagement in structured transactions (see Ex. P-76).

Ms. Dickson acknowledges that Mr. Dickson's acts, which resulted in his plea, occurred during the marriage. However, these criminal acts were the criminal acts of Mr. Dickson alone. The trial court provided detailed Findings of Fact on this issue as follows:

Mr. Dickson is, and at all times was, the manager of Dickson Iron & Metals, Inc. As such, he was in charge of all corporate activities, including banking activities. Items 11 and 12 above (Dickson account) will not be allocated individually. Item 10, Cash Forfeiture, is attributable to husband's actions harming the community financially. The banking activities in which Mr. Dickson engaged, as set forth in his Plea Agreement, have resulted in his guilty plea. These activities were criminal in nature. These activities were not in furtherance of a legitimate community purpose. As a consequence of his criminal activities, community assets have been forfeited. This is a Finding of Fact that the court must consider in reaching an equitable division of assets and debts.
(C.P. 816.)

It has been held that a trial court may consider the dissipation of assets and the failure to account for assets in the trial court's deliberations, relative to an equitable distribution. In re Clark's Marriage, 13 Wash.App. 805, 811, 538 P.2d 145, 149 (1975).

It has been held at In re Marriage of Wallace, 111 Wash.App. 697, 45 P.3d 1131 (2002), review denied, 148 Wash.2d 1011, 64 P.3d 650 (2003), that the economic misconduct of the husband was properly considered by the trial court when dividing property.

At In re Marriage of Steadman, 63 Wash.App. 523, 821 P.2d 59 (1991), it was held that the trial court did not abuse its discretion in requiring the husband to assume certain business tax liabilities incurred by him in that a court may consider a party's gross fiscal improvidence, squandering of marital assets, or deliberate and unnecessary incurring of tax liabilities.

The trial court, in this instance, deemed that it was equitable to assign to Mr. Dickson the entire value of the forfeited community assets. A trial court has broad discretion in distributing marital property, and its discretion will be reversed only if there is a manifest abuse of discretion. In re Marriage of Rockwell, 141 Wash.App. 235, 170 P.3d 572 (2007), review denied, 163 Wash.2d 1055, 187 P. 3d 752.

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

J. The Trial Court Neither Erred Nor Abused its Discretion by its Determination that Ms. Dickson's Effort to Secure a Return of Community Property Did Not Cause a Release of her Community Property Interests in Forfeited Assets.

Mr. Dickson argues that Ms. Dickson "gave up" her interests in the forfeited assets by entering into a Stipulation for settlement.

This issue is raised for the first time on appeal and, therefore, should not be considered. State v. Bolton, 23 Wash.App. 708, 598 P.2d 734 (1979).

Furthermore, the argument is made without any recitation to the record or citation of authority and, therefore, should not be considered on appeal. Marriage of Wallace, 111 Wash.App. 697, 45 P.3d 1131 (2002).

Mr. Dickson cites In re White v. White, 105 Wash.App. 545, 20 P.3d 481 (2001) for the proposition that the trial court could not consider

the value of the assets forfeited by Mr. Dickson in that they did not exist at the time of the second trial.

Here, the trial judge did not distribute to Mr. Dickson forfeited assets. Rather, the court determined the value of the forfeited assets and discussed her analysis as follows:

The court determines that in arriving at an equitable disposition of assets and debts, the value of the assets forfeited should be assigned to Mr. Dickson in calculating his net worth on the attached Exhibit A.
(C.P. 816)

In White, supra, the court improperly made an award of an asset that no longer existed. In this case, the discussion of the forfeited assets is included in order to mathematically quantify the court's consideration relative to an equalization payment.

A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll vs. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971).

A court's decision . . . is based on untenable grounds if the factual findings are unsupported by the record. In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 136 (1997).

The trial court's findings on these issues were reasonable and supported by the record.

Finally, this claim or legal position was not raised at trial, and should not be heard for the first time on appeal. Garrett v. Shiners' Hospitals for Crippled Children, 13 Wash.App. 77, 533 P. 2d 144 (1975).

K. Attorney's Fees

Mr. Dickson, pursuant to RAP 18.1(b), requests an award of attorney's fees for her costs and fees incurred in this appeal. The necessary Affidavit of fees and expenses will be filed in accordance with RAP 18.1(d).

II. CONCLUSION

The trial court's detailed Findings of Fact, Conclusions of Law, Order of Child Support, and Child Support Worksheet detail clearly and concisely the substantial evidence relied upon in resolving the issues before the court.

The court's resolution of issues pertaining to identification, valuation, characterization, and disposition of assets and debt is based upon substantial evidence.

Further, the court's award of spousal maintenance is based upon her consideration of the statutory criteria, as well as substantial evidence.

The trial court did apply the appropriate standards in its determination of child support, post-secondary educational support, and tuition, and its order in this regard is based upon substantial evidence.

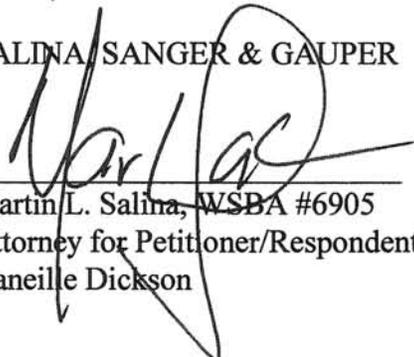
The court's award of attorney's fees is supported by substantial evidence.

The rulings of the trial court should be affirmed.

Finally, Ms. Dickson should be awarded her attorney's fees on appeal.

Respectfully submitted this 1st day of April, 2013.

SALINA/SANGER & GAUPER

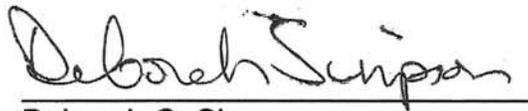


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Attorney for Petitioner/Respondent
Daneille Dickson

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 7 day of April, 2013, the foregoing Brief of Respondent was filed with the above-named Court and delivered to the following persons in the manner indicated:

Connie L. Powell	VIA REGULAR MAIL	<input type="checkbox"/>
1316 W. Dean Avenue	VIA CERTIFIED MAIL	<input type="checkbox"/>
Spokane, WA 99201	HAND DELIVERED	<input checked="" type="checkbox"/>
Joseph H. Wessman	VIA REGULAR MAIL	<input type="checkbox"/>
422 W. Riverside Ave.,	VIA CERTIFIED MAIL	<input type="checkbox"/>
Suite 1100	HAND DELIVERED	<input checked="" type="checkbox"/>
Spokane, WA 99201		



Deborah G. Simpson