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STATE OF WASHINGTON  
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Court of Appeals, Division III, No. 32594-6-III

Spokane Country Superior Case Number: 10-3-01727-3

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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SHEILA CLAIRE JEWETT,

Petitioner/Appellant,

v.

ROBERT HENRY JEWETT

Respondent/Respondent.

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BRIEF OF RESPONDENT

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## I. ARGUMENT

**A. Substantial evidence supports the trial court's determination that the property set forth in Exhibit A to the *Findings of Fact and Conclusions of Law* is all the community property of the parties (as made in Finding of Fact 2.8).**

According to Washington case law,

Evidence may be substantial even if there are other reasonable interpretations of the evidence. *Sherrell v. Selfors*, 73 Wn.App. 596, 600-01, 871 P.2d 168 (1994). “We defer to the trial court's determinations on the persuasiveness of the evidence, witness credibility, and conflicting testimony.” *Snyder*, 152 Wn.App. at 779. ***Therefore, we will not disturb a trial court's finding of fact if substantial, though conflicting, evidence supports the finding.*** *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010).

*In re Marriage of Swaka*, 179 Wn.App. 549, 558, 319 P.3d 69 (2014)(*emphasis added*).

At trial, Sheila<sup>1</sup> testified to producing a “third and final list of assets,” which was “created this year.” (RP 109.) That list was contained as part of Exhibit No. 36. (RP 107.) With respect to the purpose of the list that she created, Sheila testified that “I was trying to write down every single asset that we had to help the court better distribute, or know what to distribute, or –.” (RP 109.)

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<sup>1</sup> Because the Appellant has been referenced by several last names in this proceeding, the parties are referenced in this brief by their first names as a matter of clarity. No disrespect is intended.

Bob disputed the ownership of some of those assets, noting that various pieces of equipment were purchased by and titled in the name of Tim Jewett (Bob's father); however, Bob did not suggest any additions to Sheila's list of assets. (RP 260.)

The trial court divided the community assets that were presented to it. Sheila did not present evidence for the existence of any other particular community assets. Her statement that “. . . there's more, I just couldn't – that should've been added but I didn't have time to do it” does not provide evidence of the actual existence of any additional, specific asset, nor was the existence of any such additional community asset was never argued at trial. (RP 112.) A trial court cannot be expected to divide community assets that have never been identified and the existence of which has never been proven.

Furthermore, the parties' testimony substantially conflicted on the identification of (a) property in the possession of Bob, (b) property in the possession of Sheila, and (c) property that both parties had already taken actions to dispose of or destroy.

For example, Sheila testified that “[h]e took a lot of our appliances, he took a lot of our – our silverware, our bedding, our towels.” (RP 65.)

But in response to questioning at trial, Bob testified as follows:

Q. [Ms. Harrington]: Okay. Look at the appliance in kitchen cookware. What do you have that was on that list?

A: [Mr. Jewett]: **What do I have out of here?**

Q: Yes.

A: **Some of this I don't know what it says.**

Q: Because you –

A: **Oh, rec... – rectang... – rectangular baker, okay I – never mind. I don't think I got anything off this list. I believe that's what's in the house.**

(RP 367; *emphasis added.*)

Ultimately, the trial court concluded that neither Bob nor Sheila was a credible witness as to the issue of possession of and valuation of assets:

“Now, I have to listen to the evidence and from the evidence try to determine what the facts are. And one thing I have to do in doing that is make decisions as to the credibility of witnesses. And I'm going to tell you right up front, I think primarily because of the conflict and the anger and the unreasonableness here, ***I haven't been able to find either one of you, in a number of areas here, particularly credible.*** And primarily, when it comes to valuing in your property and telling what it is worth and describing the quality of your property. I do think you're both blinded by your anger, by your self-interest. And quite frankly, I think a lot of the issues I have with your credibility here relates to the fact that both of you here have, what I see to be, a very – I'll call it a lull or a limited understanding, surprisingly, of business, even though you've had a business – or businesses. And you both have a very limited understanding of financial issues and you have a very

naïve, unrealistic approach to money and what's involved here. And given your age and given the money hat you have had, the business you've had, the debts you've had and what you've gone through here, it's – it's somewhat shocking to the court. ***But I think a lot of the problems here is you're just not being – neither one of you, realistic.***"

(RP 474-75; *emphasis added.*)

There is substantial evidence in the record to support the trial court's list of assets set forth in Exhibit A to the Findings of Fact and Conclusions of Law. This list is accurate based on the trial court's reasonable interpretation of conflicting testimony and the list of assets produced by Sheila herself.

**B. The trial court correctly found that Bob has a separate property interest in Jewett Crushing (Finding of Fact 2.9).**

RCW 26.16.010 states the following:

Property and pecuniary rights owned by a spouse before marriage and that acquired by him or her afterwards by gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his or her spouse, and he or she may manage, lease, sell, convey, encumber or devise by will such property without his or her spouse joining in such management, alienation or encumbrance, as fully, and to the same extent or in the same manner as though he or she were unmarried.

At trial, Mr. Bridges, a Certified Public Accountant, testified about the percentages of interest allocated to Bob and Tim Jewett in their partnership:

Well, initially, when Tim talked to us, we had to set the partnership up, we set it up as 50 percent Tim Jewett and 50 percent Bob Jewett. And the three years that we did '97, '98, and 1999 it was 50/50 for those three years that we prepared those returns.

(RP 300.)

When Mr. Bridges was asked whether the percentage ownership of the partnership changed at some point he responded:

Yes, it did. The – the 2000 return, which is the first year that we didn't prepare it, I noticed that the - - the ownership percentages had changed from 90 - - changed from 50/50 to 90 percent Tim Jewett, 10 percent Bob Jewett. And that's evidenced by the schedule K-1s that are in these tax returns.

(RP 304.)

Mr. Bridges also testified that Tim Jewett contributed at least \$914,851 of capital to Jewett Crushing and never drew a salary nor a capital distribution. (RP 309, 315.) Mr. Bridges further testified that this relative percentage of ownership “was consistent all the way through the very last return of 2008.” (RP 304.)

The partnership between Bob and his father filed tax returns on behalf of Jewett Crushing as early as 1997, but Bob and Sheila were not married until 2000. (RP 128.) When Sheila was asked if she and Bob were married during the time the partnership started filing returns, she confirmed that they were not. (RP 128.)

Sheila testified that she performed duties for Jewett Crushing, such as taking care of the books, greasing the machinery, and providing safety training for the employees. (RP 26-30.) She also testified that she put money into the business (money she obtained from her medical settlement and from her parents), but she never disputes that the partnership was between Bob and Tim. (RP 31.)

There is clear evidence that from 2000 forward, the ownership of Jewett Crushing was delineated as 90% owned by Tim Jewett and 10% owned by Bob Jewett. (RP 304.) The only value of the business at the time of trial lay in the value of its equipment, as noted by Mr. Bridges:

Jewett Crushing had no value as a going concern, obviously, it—it had nothing but losses. You couldn't borrow money from—from anybody. Based on this, if they ask for your tax returns, you're sunk, or any kind of financial statements, you're sunk. The only value it'd have is whatever the liquidation value was for the—the equipment.

(RP 315.)

Therefore, at least 90% of the value of the business (i.e., the remaining equipment) was owned by Tim Jewett when he died. If Bob receives some portion of the interest held by the Estate of Tim Jewett as the result, that interest was obtained by inheritance and is therefore separate property.

Pursuant to RCW 26.16.010, the trial court was correct in finding that that Bob had a separate property interest in Jewett Crushing for the following reasons: first, because the partnership was formed before Bob and Sheila were married and was therefore property “owned by a spouse before marriage,” and second, because the Estate of Tim Jewett owns 90% of Jewett Crushing, and the only remaining value of that business is lay in its equipment; therefore, 90% of the value of that equipment belonged to the Estate of Tim Jewett and would only accrue to Bob through inheritance, “acquired by him or her afterwards by gift, bequest, devise, descent, or inheritance.”

**C. Substantial evidence supports the trial court’s determination that the parties have community liabilities as stated in Exhibit A (Finding of Fact 2.10).**

The duty of the trial court was to fairly divide the assets and liabilities. RCW 26.09.080. The liabilities to be distributed by the trial court are not limited to particular types of judgments – a fact which is apparent from review of this record alone, where the trial court assigned liabilities for car payments, as an example. It is clear and undisputed from the record that a liability existed with respect to the Critchfield property:

Ms. Harrington:            Bob, could you turn to 126? What is that?

**Mr. Jewett:** Looks like a Superior Court Judgment against me and Sheila for our Critchfield house.

Ms. Harrington: And what's the total on there, the total judgment amount?

**Mr. Jewett:** 480,715.88.

Ms. Harrington: Your Honor, I offer the certified copy of this amended judgment and decree of foreclosure.

Mr. Ferguson: No objection.

The Court: So 126 is admitted.

Ms. Harrington: I also offer 101, which is the husband's proposed property division.

Mr. Ferguson: No objection.

The Court: It'll be admitted.

Ms. Harrington: Now, Mr. – or Bob –, could – we heard Mr. Howell say yesterday that he purchased the property at Critchfield for, I believe it was \$270,000. Is that – do you recall that?

**Mr. Jewett:** I do.

Ms. Harrington: Can you turn to 127?

**Mr. Jewett:** Okay.

Ms. Harrington: Can you tell the court whether or not you're aware that there is in fact a deficiency judgment against you and

Sheila for the difference between what Mr. Howell sold the property for and what the judgment amount was?

**Mr. Jewett:** **I was notified by Lewiston Credit Bureau of this for 184 thousand –**

Mr. Ferguson: Objection. Hearsay.

**Mr. Jewett:** **How is it hearsay?**

Ms. Harrington: It's hearsay, yes. But I guess we could do the math with what the— what the evidence that is before the court already.

(RP 383-384.)

On appeal, Sheila argues that “while the Amended Judgment gave the judgment creditors the right to obtain a deficiency judgment against the parties personally after the trustee’s sale, no deficiency judgment was ever entered.” (*Brief of Appellant* at 17.) However, a “deficiency judgment” is not required to create a community liability, and it is *liabilities* with which the court is concerned, not judgments.

In this regard, the following facts are undisputed: a) the Amended Judgment was for \$480,715.88; b) the Critchfield property was sold for \$270,000; and c) the Amended Judgment gave creditors the right to obtain a deficiency judgment. (RP 383, Exhibit 126.)

It is, therefore, immaterial whether a *deficiency judgment* had been entered at the time of trial; the right to do so existed, and the liability therefore existed.

Substantial evidence supports the trial court's finding that the liability for the Critchfield property of \$184,139.75 does, in fact, exist.

With respect to tax warrants, the *Brief of Appellant* states, "Mr. Jewett's undisputed testimony was that the tax warrants had been paid. No evidence shows when the warrants were paid. However, it is undisputed that the warrants no longer existed at the time of trial." (*Brief of Appellant at 17*) Unfortunately, Sheila makes no reference to any relevant parts of the record or to any authority, so it is unclear what argument she is intending to make. RAP 10.3(a)(5) states that in the brief of the appellant, "[r]eference to the record must be included for each factual statement." RAP 10.3(a)(6) provides that the brief of the appellant should contain "argument in support of the issues presented for review, together with citations to legal authority and *references to relevant parts of the record.*" RAP 10.3(a)(6)(*emphasis added*). "We do not address issues that a party neither raises appropriately nor discusses meaningfully with citations to authority." *Saviano v. Westport Amusements, Inc.*, 144 Wn.App. 72, 84, 180 P.3d 874, (2008), citing RAP 10.3(a)(6). "We will not consider contentions unsupported by

argument or citation to authority in the appellate brief.” *State v. Mills*, 80 Wn.App. 231, 234, 907 P.2d 316 (1995). Bob cannot meaningfully respond to Sheila’s reference to tax warrants because the *Brief of Appellant* makes no reference to relevant parts of the record or to any authority. Therefore, since the substantial evidence supports the finding that community liability for the Critchfield property of \$184,139.75 does exist, it must be concluded that there is substantial evidence to support the trial court’s Finding of Fact 2.10 that the parties have community liabilities as stated in Exhibit A.

**D. Substantial evidence supports the trial court’s finding that Bob was assigned all the community liabilities and that Sheila has the ability to support herself (Finding of Fact 2.12).**

In her *Brief of Appellant*, Sheila argues, “Mr. Jewett was not assigned all the community’s liabilities” because “no deficiency judgment or tax warrants existed.” (*Brief of Appellant* at 18.)

First, there is serious logical error in this argument. If Bob were assigned a liability that did not in actuality exist, this would not provide evidence for the conclusion that “Mr. Jewett was not assigned all the communities liabilities.” If a liability assigned to Bob did not exist, then he would have been assigned fewer liabilities, but he might still clearly have been assigned *all the liabilities that existed*. To prove that Bob was not assigned all of the community liabilities, one would need to point out

a liability that existed but was not assigned to Bob rather than pointing out a liability that *was* assigned to him but that did not exist.

Second, as argued above, it is irrelevant to the question of liabilities that there was no deficiency judgment with respect to the Critchfield property. Regardless of whether a deficiency judgment had been filed at the time of trial, the right to file such a judgment existed; therefore, the liability for the Critchfield property still existed. That liability was assigned to Bob.

Sheila's statement in the brief that "[m]oreover, Exhibit A fails to show the 2011 and 2012 delinquent taxes owed by and assigned to Ms. Wilson [Sheila]," is, at best, an occurrence of harmless error that should be disregarded. RCW 4.36.240 states the following:

The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

It is unclear from the record whether the trial court considered the tax liability for 2011 and 2012 a community debt or separate debt. (See RP 507-508.) But what *is clear* is that Sheila's attorney does not object to the court's decision regarding this matter:

The Court: So, she should be liable for her own – taxes on her own income.

Mr. Ferguson: Yeah.

(RP 507.)

In any event, even though Sheila was assigned the tax liability on her own income in 2011 and 2012, this amounts to a very small fraction of the community debt, the rest of which was assigned to Bob. Hence, the assertion of Finding of Fact 2.12 that Respondent [Bob] was awarded all of the community liabilities was essentially correct, and the omission of Sheila's tax liabilities on her personal income from 2011 and 2012 was, at most, a harmless error. This is particularly true given that Sheila fails to argue why such an error (if it exists) would make any difference to the outcome.

The record shows substantial evidence that Sheila has the ability to support herself. Sheila was receiving monthly payments from the sale of her espresso stand. (RP 360.) Sheila testified that during the marriage, she worked for Costco for approximately seven years, she worked at Todd Richardson's legal office as a secretary/receptionist for three and a half years, she worked as a cashier at a grocery store, she worked as a coffee shop attendant, and she worked as a real estate agent for nine years. (RP 149-152.) At the time of the trial, she still had her Idaho real estate license, and by her own testimony, it would only cost between \$500 and \$600 dollars to renew her real estate license in Washington,

which she could have done by taking on employment in any of the areas in which she already had experience. (RP 152.) Therefore, the record contains substantial evidence that Sheila had the ability to support herself.

**E. The trial court's division of the parties' assets was fair and based on the necessary statutory factors for disposition.**

Sheila claims that the parties' property was divided inequitably as a result of the trial court's failure to seriously consider the length of the parties' marriage, the parties' post-dissolution economic circumstances, or the extent of their community property.

In her brief, Sheila argues that the trial court "failed to pay heed to the fact that Mr. Jewett absconded majority of the parties' property with any value." (*Brief of Appellant* at 20). However, as noted above, there was conflicting testimony with respect to what Bob took to North Dakota. (RP 367.) Bob testified as follows concerning property that Sheila alleges he took to North Dakota:

Ms. Harrington: Do you have all this stuff?

**Mr. Jewett: Out there?**

Ms. Harrington: Right. I mean, do –

**Mr. Jewett: Well, no ---**

Ms. Harrington: – you personally –

**Mr. Jewett:**

**- I don't have no 13 conveyors. I don't have - I have - some Snap-on tools, I have a - Mac toolbox. I mean, I have some stuff but ball mount, I don't know what that is. You know, I do have screwdriver sets, I have pliers, I have sockets, I have - what's this 16-inch two horse Husqvarna saw? That should have been in the van trailer at home, I think. Forty-eight ounce DB hammer - dead blow hammer, year I think I got that. That's in my millwright box. Tie downs, what do you mean by tie downs? Motorcycle tie downs? If they're motorcycle tie downs, yeah, I have my motorcycle tie downs. Lincoln welder, no I did not. Husqvarna 326, no, I don't have that. Weed eater gas mix, no I don't have that. Wet and dry Dewalt vac, yes, I do. A Napa radiator, no, that went into a Suburban. Remote light, black model, I don't know what that is. Seventy-five-foot, two 75 garden hoses, yeah, I probably got garden hoses. I mean, I got stuff that I took that I work with garden hoses we use for water compaction. I don't know what the ball mount is. Mag heaters, I don't know what that is, what she's got as a mag heater. Rubber maid something, lat... - latchable tote? Seven of them, could have. I mean, I think the - rubber maid totes is we bought a bunch of them to move for her. I think most of them are still on the front porch. Sheila's**

**put my boots and stuff in them and some stuff and sent them and I think took them up to the storage shed a couple of them.**

(RP 364-365.)

Furthermore, Bob noted that Sheila had herself sold some of their community property:

Ms. Harrington: And you have identified the proceeds that Sheila received for those items six through nine but you haven't included them in her side of the column, and why is that?

**Mr. Jewett: By the way I understood it—it was what she was living on.**

Ms. Harrington: Okay.

**Mr. Jewett: So – so be it.**

Ms. Harrington: Then the next item—well, is there any other property that you are aware of that was sold by Sheila during the pendency of this action that's not included on here?

**Mr. Jewett: I have assumption that the stuff that is missing was sold by her. But I don't know that. I do knot that – that she was involved with the missing boost axle, the water tank that's owned by Cornish, tilt deck trailer, obviously semi-truck tires and wheels that was there.**

(RP 356.)

Given the conflicting testimony about the possession of community property, the trial court had the right as the “trier of fact” to determine “which testimony was worthy of belief”:

It was for the trier of fact to determine which testimony was worthy of belief. The trier of fact was free to believe one witness and not believe another. We will not "substitute our judgment for the trial court's, weigh the evidence, or adjudge witness credibility."

*In re Marriage of Greene*, 97 Wn.App. 708, 714, 986 P.2d 144 (1999).

On appeal, Sheila also argues that the trial court awarded Bob his millwright tools and states that “the award of these assets alone conferred upon Mr. Jewett a higher earning potential than Ms. Wilson.” (*Brief of Appellant* at 20.) But she fails to note that the millwright tools were clearly not community property but separate property obtained before the marriage. (RP 367.)

Furthermore, she does not explain how her conclusion that the award of the millwright and construction tools would help Bob ply his trade is relevant to her argument that the division of assets was not fair. She does not argue that award of the millwright and construction tools ought to have been made to her or that doing so would have increased her ability to ply her own trade. She does not argue that the trial court had some obligation to impede Bob’s ability to ply his trade. The trial court

clearly indicated that none of the property in the possession of the parties had significant value. Further, Sheila makes no demonstration that she was prevented from plying her trade. She still retained her Idaho real estate license and she testified that she would be able to renew her Washington real estate license. (RP 152.) These licenses were the tools of Sheila's trade, just as the millwright and construction tools were for Bob. Sheila makes no clear argument on appeal as to this issue.

Sheila also suggests that because Bob was awarded the majority of the equipment remaining from Jewett Crushing that this was a "valuable advantage" that Bob should not receive "without compensating the person who helped him obtain it." (*Brief of Appellant* at 21.) However, this claim ignores the fact that the court assigned all liabilities to Bob as well, a total debt obligation of \$241,200, and that it was highly likely that the liabilities assigned to him would overwhelm any remaining assets. (RP 385.)

Given Sheila's work history and her training and licensing as a real-estate agent, there is no evidence that "the trial court's division of assets furnished Ms. Wilson a below-poverty level of existence" as Sheila argues in her brief or that Bob has been left in any better circumstances. (*Brief of Appellant* at 21.) The trial court's division of

the parties' assets was fair and based on the necessary statutory factors for disposition.

**F. The trial court correctly denied Sheila's request for maintenance after properly considering the statutory maintenance factors.**

In reference to RCW 26.09.090, Sheila argues that the trial court failed to consider (1) her financial resources and her ability to meet her needs independently; (2) the time necessary for her to find employment; (3) the standard of living established during the marriage; (4) the duration of the marriage; (5) her age and financial obligations; and (6) Bob's post-dissolution financial resources. (*Brief of Appellant*, pg. 22.)

First, it should be noted that:

Nothing in RCW 26.09.090 requires the trial court to make specific factual findings on each of the factors listed in RCW 26.09.090(1). The statute merely requires the court to consider the listed factors. Despite the court's failure to list the influence of each factor in its ruling, we find no basis for reversing the maintenance award for lack of consideration of the listed factors.

*Mansour v. Mansour*, 126 Wn.App. 1, 16, 106 P.3d 768 (2004).

Second, even though the trial court is not required to "list the influence of each factor in its ruling," the trial court in this case did that very thing:

*(1) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his ability to meet his or her needs independently....*

The trial court clearly considered the separate and community property awarded to Sheila as well as her ability to meet her needs independently; in fact, the trial court explicitly concluded on the record that Sheila could meet her needs independently and should have already been doing so throughout the pendency of the action.

***Maintenance and attorney fees, I feel realistically here there isn't need.***

(RP 489; *emphasis added.*)

And despite the things that you have both testified to here, I'm convinced that ***you both could've been working and that you should've been working*** and that you're ***voluntarily underemployed*** here. And you can make whatever excuses you want but ***you both have the ability to support yourself.*** You both haven't been supporting yourself and ***I don't think that Mrs. Jewett's injury, which really keeps her from working at Costco or standing, affects her ability to get a decent job...***

(RP 489; *emphasis added.*)

No maintenance. You both need to get a job, pay your bills and ***support yourself.*** I make very clearly here, ***you have the ability to do that*** and their divorce is going to be final as soon as possible here and I hope that resolved the problems that you've had and hope you both can move on here. So, no award either way for maintenance. No award of attorney's fees and I'm at the end of my notes.

(RP 489; *emphasis added.*)

So I hope you can gain some skills because ***you both have the ability to earn enough money to support yourselves*** and to live a happy life.

(RP 477; *emphasis added.*)

The law statute in question here essentially requires that I consider *what you have* and *the character of what you have* and how long you've been married and *the economic circumstances that you're going to be left in at the end here*. And to try to take all these factors into consideration and do something in dividing the property and debts that's just and equitable here.

(RP 475; *emphasis added.*)

There won't be any adjustment or any credit for equipment that *Mrs. Jewett sold during pendency at the action* and if there's any claim made, again, by Jewett Crushing the partnership against her for selling the items, Mr. Jewett will be required to indemnify and hold her harmless.

(RP 485; *emphasis added.*)

I'm going to award the wife all of her interest in that Pony – *all the community interest* in the Pony Espresso contract, or that particular business. *So the stream of payments on the contract will continue to go to her.*

(RP 486; *emphasis added.*)

There a gun safe, big heavy object. I don't know what she's going to do with it but she wants it. Mr. Jewett wants it too but there's an order here that won't let him possess guns and I'm going to leave it where it – *I'm going to award that to Mrs. Jewett...*

(RP 486; *emphasis added.*)

I'm going to award the Sky vehicle, the Saturn, and this Jeep Wrangler, and I don't think there's much net value to either one, but *I'm going to award that to Mrs. Jewett here.*

(RP 483-84; *emphasis added.*)

I'm going to order that Mr. Jewett be liable for the loan and all of the vehicles and *essentially all of the debt.*

(RP 484; *emphasis added.*)

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

Contrary to Sheila's argument, the statute does not require the trial court to consider "the time necessary for Ms. Wilson to find employment," rather it is to consider the time necessary "to acquire sufficient education or training to enable the party seeking maintenance to find employment..." (*Brief of Appellant* at 24; RCW 26.09.090(1)(b).) Here, the trial court explicitly found that Sheila already possessed sufficient education or training to find employment appropriate to her skills, interests, style of life, and other attendant circumstances, and even more specifically, she was "voluntarily underemployed," meaning that she was not working as the result of her own choice. (RP 489.) 'Voluntary employment' is brought about by one's own free choice and is intentional rather than accidental. *In re Blickenstaff*, 71 Wash.App. 489, 493, 859 P.2d 646 (1993). Therefore, the trial court concluded that Sheila required *no* time to find employment when it concluded that she should have already been employed throughout the pendency of the action. (RP 489.)

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

Contrary to Sheila's argument, the trial court discussed the standard of living established during the marriage at great length and found that the standard of living the parties experienced was the result of "shocking" financial irresponsibility and that neither of the parties should expect it to continue. (RP 474.)

***You've both been extremely, and this is an understatement, extremely irresponsible during your marriage here in handling finances and managing money.***

(RP 476; *emphasis added.*)

As I said, you're both very irresponsible when it comes to money. You've consistently during the course of your marriage, undisputable I hear, ***spent more than what you earned.*** And if it weren't for gifts from people, if it weren't for loans and inheritances that you both came into here, ***I don't know how you would have survived.***

(RP 476; *emphasis added.*)

***You've lived beyond your means.*** You loan – borrow money. You run businesses. You've incurred debts. You don't pay them, yet you go on trips, or you went on trips. You bought an expensive boat and guns and four-wheelers, all kinds of toys, and ***you lived, under the circumstances here, a lifestyle you couldn't afford.*** ***And at the end of your marriage you're going to both be paying the price for a long time.*** And you have maybe been enabled by these people that cared for you but you've taken advantage of these people and ***someday the money is going to run out and it might be now.***

(RP 477; *emphasis added.*)

*(4) The duration of the marriage or domestic partnership*

Contrary to Sheila's argument, the trial court explicitly stated that it was required to consider how long the parties had been married, and that, in fact it had:

The law statute in question here essentially requires that I consider what you have and the character of what you have and ***how long you've been married*** and the economic circumstances that you're going to be left in at the end here. And to try to take all these factors into consideration and do something in dividing the property and debts that's just and equitable here. And again, this has been very contentious and in the end, while it might be hard to place values on the property, making a division that's just and equitable, I really, as I said, don't find to be too difficult.

(RP 475.)

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

Sheila argues that the trial court did not consider her age and her financial obligations. The trial court explicitly considered her age on the record:

And you both have a very limited understanding of financial issues and you have a very naïve and unrealistic approach to money and what's involved here. And ***given your age*** and given the money that you have had, the business you've had, the debts you've had and what you've gone through here, it's – it's somewhat shocking to the court.

(RP 474; *emphasis added.*)

Further, the trial court noted that Bob would be liable for all the community debt of the parties, and that he would be responsible to indemnify Sheila if his company makes any claim against her for the equipment she sold during the pendency of the dissolution proceeding (RP 484-85); therefore, Sheila was left without significant financial obligations of any sort.

*(6) 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.*

Finally, Sheila argues that the trial court failed to consider Bob's post-dissolution financial resources. This is also not accurate. The trial court considered Bob's future pension (RP 486), his responsibility to indemnify Sheila for any civil claims made against her that might result from her decision to sell his company's equipment during the pendency of the divorce proceedings, and the fact that all of the community debt was assigned to him. (RP 484-85.) The trial court even considered Bob's future inheritance, saying:

Now, when we think this through as a practical matter, ***that pretty well should protect you, Mrs. Jewett***, because Mr. Jewett's going to inher... – he is going to inherit the 90 percent of his father's, based on his testimony, his brother gets a dollar and ***he gets the rest of the estate***. So, this should end the battle as to dividing the property. And I don't know whether Mr. Jewett thinks he's a big loser or Ms. Jewett thinks she's a big winner. I don't think this

property has, that either of you are going to get here, very much of a value.

(RP 482; *emphasis added*.)

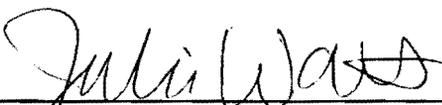
Therefore, the trial court correctly denied Sheila's request for maintenance after properly considering the statutory maintenance factors.

## II. CONCLUSION

Sheila's arguments on appeal are without merit, and Bob therefore respectfully requests that the ruling of the trial court affirmed.

Sheila requests attorney's fees on appeal pursuant to RCW 26.09.140. She argues that "based on the analysis of the parties' financial resources" provided in her brief, she is entitled to attorneys' fees pursuant to RCW 26.09.140; however, the arguments in her brief are baseless and without merit, therefore her request for attorney's fees on appeal must also fail. Sheila initiated this appeal and required Bob to incur costs and attorney fees responding to her baseless requests, and Bob respectfully asks this Court that both parties pay their own fees and costs on appeal.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of MARCH, 2015,

  
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JULIE C. WATTS/WSBA #43729  
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of March, 2015 the undersigned caused a true and correct copy of the foregoing document to be served by the method indicated below to the following parties:

HAND DELIVERY  
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