

FILED  
Court of Appeals  
Division III  
State of Washington  
3/6/2018 10:02 AM

Court of Appeal No. 35317-6-III

IN THE COURT OF APPEALS  
OF THE  
STATE OF WASHINGTON  
  
DIVISION THREE

---

In re the Marriage of:

DAYRA R. SALCEDO,

Appellant,

v.

JORGE SALCEDO

Respondent.

---

APPEAL FROM THE SPOKANE COUNTY SUPERIOR COURT

Cause No. 15-3-02770-9

The Honorable Annette S. Plese

---

APPELLANT'S OPENING BRIEF

---

CATHY M. HELMAN, WSBA #43731  
Attorney for Appellant  
Burke Law Group, PLLC  
221 N. Wall Street, Suite 624  
Spokane, WA 99201  
(509)466-7770  
cathy@burkelg.com

TABLE OF CONTENTS

Table of Authorities ..... iii

A. Assignments of Error ..... 1

1. The trial court erred by denying Ms. Salcedo’s request for a continuance when it found that the Salcedo’s domestic relations matter had been pending for over a year and was past timing standards. .... 1

2. The trial court abused its discretion in denying Ms. Salcedo’s request for a continuance when discovery was still outstanding. ... 1

3. The trial court erred in Findings and Conclusions about a Marriage #8 that the division of real property described in the Final Order is fair (just and equitable.) ..... 1

4. The trial court erred in Findings and Conclusions about a Marriage #9 that the division of community personal property described in the Final Order is fair (just and equitable.)..... 1

5. The trial court erred in Findings and Conclusions about a Marriage #13 that there was not a need for maintenance for the wife longer than six months based on the wife’s education, experience, and her portion of the assets awarded to her. .... 2

6. The trial court erred in Findings and Conclusions about a Marriage #14 that each party should pay his or her own costs and fees, and that the payment from the trust account are the only award of attorney fees to be made. .... 2

7. The trial court erred in Findings and Conclusions about a Marriage #22: Other Findings # 27 that Ms. Salcedo is extremely educated just short of her Master’s degree, that she worked in the past as a translator, and she has ability to find employment right away. .... 3

8. The trial court erred in Findings and Conclusions about a Marriage #22: Other Findings #34 that there was no evidence at trial that Ms. Salcedo made any real efforts to find employment

other than testimony that she would need to go back to school and wished for a longer period of maintenance. With the additional six months of maintenance, the court found that sufficient based on the circumstances. Ms. Salcedo also received a larger amount of the trust money to use to pay expenses and attorney fees. .... 3

9. The trial court erred in Findings and Conclusions about a Marriage #22: Other Findings #35 that Ms. Salcedo was capable of obtaining a job..... 3

B. Statement of the Case..... 5

C. Argument ..... 21

1. Whether the trial court erred in denying Ms. Salcedo’s request for a continuance..... 21

2. The trial court’s distribution of property was not fair and equitable ..... 30

3. Ms. Salcedo has the need for attorney’s fees on appeal ..... 39

D. Conclusion ..... 40

Certificate of Service ..... 42

TABLE OF AUTHORITIES

WASHINGTON CASES

*Balandzich v. Demeroto*, 10 Wn. App. 718, 519 P.2d 994, review denied,  
84 Wn.2d 1001 (1974) ..... 22

*Chamberlin v. Chamberlin*, 44 Wn. 2d 689, 270 P.2d 464. (1954).... 23, 24

*Friedlander v. Friedlander*, 80 Wn.2d 293, 494 P.2d 208 (1972) ..... 38

*In re Marriage of Crosseto*, 82 Wn. App. 545, 918 P.2d 954 (1996) 26, 32,  
40

*In re Marriage of Hall*, 103 Wn.2d 236, 692 P.2d 175 (1984)..... 33

*In re Marriage of Luckey*, 73 Wn. App. 201, 868 P.2d 189 (1994)..... 37

*In re marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989) ..... 38

*In re Marriage of Muhammad*, 153 Wn.2d 795, 108 P.3d 779 (2005)..... 31

*In re Marriage of Olivares*, 69 Wn. App. 324, 848 P.2d 1281 (1993)..... 32

*In re Marriage of Rockwell*, 141 Wn. App. 235, 170 P.3d 572 (2007) ... 32,  
33, 34, 35, 39

*In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989)..... 32

*In re Marriage of Urbana*, 147 Wn. App. 1, 195 P.3d 959 (2008) ... 30, 31,  
32

*In re Marriage of Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984) ..... 38

*In re the Marriage of Konzen*, 103 Wn.2d 470, 693 P.2d 97 (1995)..... 41

*Makoviney v. Svinth*, 21 Wn. App. 16, 584 P.2d 948 (1978)..... 23

*Stacy v. Stacy*, 68 Wn.2d 573, 414 P.2d 791 (1966)..... 34

*State v. Downing*, 151 Wn.2d 265, 87 P.3d 1169 (2004) ..... 21, 22

STATUTES

RCW 26.09.080 ..... 25, 31, 42

RCW 26.09.090 ..... 37

RCW 29.09.080 ..... 31

RULES

CR 26 ..... 30

CR 40(e)..... 23

LAR 0.4..... 25

RAP 18.1..... 41, 42

A. ASSIGNMENTS OF ERROR

1. The trial court erred by denying Ms. Salcedo's request for a continuance when it found that the Salcedo's domestic relations matter had been pending for over a year and was past timing standards.
2. The trial court abused its discretion in denying Ms. Salcedo's request for a continuance when discovery was still outstanding.
3. The trial court erred in Findings and Conclusions about a Marriage #8 that the division of real property described in the Final Order is fair (just and equitable.)
  - a. Correspondingly, the trial court's Final Divorce Order #7 requiring the home to be sold and splitting the proceeds between the parties is in error.
4. The trial court erred in Findings and Conclusions about a Marriage #9 that the division of community personal property described in the Final Order is fair (just and equitable.)
  - a. Correspondingly, the trial court's Final Divorce Order #8 giving petitioner half of the proceeds from the sale of the home, \$24,393 of the remaining trust funds, \$47,222.00 of the trust funds distributed prior to trial, \$82,422 from the husband's TSP retirement, and \$7,216 of husband's PERS

retirement account s is in error.

- b. And the trial court's Final Divorce Order #9 giving respondent half of the proceeds from the sale of the home, \$24,393 of the remaining trust funds, \$5,823.00 of the trust funds disturbed prior to trial, all remaining funds the husband's TSP retirement after distribution to wife, and all remaining funds in the of husband's PERS retirement account after distribution to wife is in error.

5. The trial court erred in Findings and Conclusions about a Marriage #13 that there was not a need for maintenance for the wife longer than six months based on the wife's education, experience, and her portion of the assets awarded to her.

6. The trial court erred in Findings and Conclusions about a Marriage #14 that each party should pay his or her own costs and fees, and that the payment from the trust account are the only award of attorney fees to be made.

- a. Correspondingly, the trial court's Final Divorce Order #14 requiring each party to pay their own cost and fees is in error.

7. The trial court erred in Findings and Conclusions about a Marriage #22:  
Other Findings # 27 that Ms. Salcedo is extremely educated just short of her Master's degree, that she worked in the past as a translator, and she has ability to find employment right away.
8. The trial court erred in Findings and Conclusions about a Marriage #22:  
Other Findings #34 that there was no evidence at trial that Ms. Salcedo made any real efforts to find employment other than testimony that she would need to go back to school and wished for a longer period of maintenance. With the additional six months of maintenance, the court found that sufficient based on the circumstances. Ms. Salcedo also received a larger amount of the trust money to use to pay expenses and attorney fees.
9. The trial court erred in Findings and Conclusions about a Marriage #22:  
Other Findings #35 that Ms. Salcedo was capable of obtaining a job.

#### ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. Whether the trial court's finding that the domestic relations matter had been pending for over a year and was past timing standards was supported by the facts of the case and the local court rule.
2. Whether the trial court abused its discretion by not granting Ms. Salcedo's request for continuance when discovery was still

outstanding, the parties' mediation attempts and substitution of attorneys delayed trial preparation, and when the rules liberally allow for continuances in dissolution actions.

3. Whether the trial court's division of real property and personal property in the divorce order was just and equitable, as found in the Findings and Conclusions #8 and 9, and Final Order #7 to 9, based on the parties 17 year marriage, high standard of living, and earning income of the parties.
4. Whether the court's finding that there was no evidence at trial that Ms. Salcedo made any real efforts to find employment other than testimony that she would need to go back to school.
5. Whether the trial court's finding that Ms. Salcedo was just short of getting her masters, worked as a translator, and was capable of obtaining and finding a job right away was supported by the evidence when Ms. Salcedo never worked as a translator, had not worked in over 10 years, could not practice psychology in Washington, and began her master's degree in 2002 and never finished her master's degree.
6. Whether the trial court's finding that there was not a need for maintenance for the wife longer than six months based on the wife's education, experience, and her portion of the assets awarded to her was

supported by the record when Ms. Salcedo had not worked in over 10 years, could not practice psychology in Washington, and never finished her master's degree.

7. Whether the trial court's finding that each party should pay his or her own costs and fees was supported by the evidence of each party's income and earning capacity.

#### B. STATEMENT OF THE CASE

Dayra Salcedo and Dr. Jorge Salcedo met in 1998 in Maryland. (RP 225) When the couple met, Dr. Salcedo was a physician in his native country of Colombia and was working towards being certified to practice medicine in the United States. (RP 214) Ms. Salcedo was working part time at the airport store and going to school in order to keep her student visa. (RP 226) She was also from Colombia, where she graduated from college and worked as a psychologist. (Exhibit R116)

Soon after meeting, the couple moved to Chicago for Dr. Salcedo to complete his residency in radiology. (RP 225) Ms. Salcedo continued in school in Chicago to keep her student visa. (RP 227) She attended a master's program in organizational psychology, but never finished; she needed to complete her thesis. (RP 264, 288, Exhibit R116) She also gave private Spanish lessons part time. (RP 227, 373) The couple was married on August 1, 1999. (CP 465)

Soon after Ms. Salcedo got together with Dr. Salcedo, she recognized that Dr. Salcedo was suffering from depression. (RP 227-28) She convinced him to meet with a therapist and get on medication. (RP 228) He was diagnosed with Obsessive Compulsive Disorder (OCD). (RP 69-70, 155-56, RP 231) He experienced anxiety at work because of his OCD. (RP 163)

For their entire marriage, Ms. Salcedo's priority was making sure Dr. Salcedo was stable. (RP 231) She woke him up, laid out his clothes, found his keys, and was with him as much as possible. (RP 230) Most importantly, she gave him medication regularly, even to the extent that she would bring it to him at work. (RP 230)

In 2002, after Dr. Salcedo finished his residency, the Salcedo's moved to McAllen, Texas. (RP 228) Dr. Salcedo's salary was \$280,000 per year. (RP 228-29) Ms. Salcedo attended school for one semester to keep her visa. (RP 291) She took structure, design, and drawing classes. (RP 291)

A year later they moved to El Paso, where Dr. Salcedo earned up to \$440,000. (RP 142, 229) In the meantime, Dr. Salcedo became a U.S. citizen. (RP 229) Ms. Salcedo was still in the United States under a student visa, which continued her requirement to go to school. (RP 229-30) She attended two or three semesters at the University of Texas, El

Paso, taking art classes. (RP 292) Ms. Salcedo was eventually able to get her green card and stopped going to school. (RP 292) She also volunteered for a health care related organization. (RP 375)

Dr. Salcedo changed jobs a few more times in Texas. (RP 232, 233, 234) He worked in Eagle Pass, Texas, close to the border with Mexico, where his Spanish speaking skills were useful. (RP 239) He earned about \$350,000 a year and had a 401K retirement plan. (RP 239-41)

At one point while in Texas, Dr. Salcedo lost his job and stopped taking his medication. (RP 325) He became more anxious, irritable, and aggressive. (RP 235) Ms. Salcedo talked to Dr. Salcedo's therapist and as a result, Mr. Salcedo went back on medication. (RP 237) The years 2006 and 2007 were harder years financially for the Salcedos, but they had no problems making ends meet. (RP 299)

During Dr. Salcedo's job hunts, Ms. Salcedo would try to make the process easier for him by accompanying him on interview trips, attending breakfast and dinners, and speaking with doctors and administrators. (RP 233) She did these things to reduce his anxiety. (RP 233)

Around August of 2008, the Salcedos moved to Spokane, Washington. (RP 240) Dr. Salcedo got a job at the Veterans Administration (VA) hospital. (RP 240) His salary was about \$250,000,

and he received retirement and health benefits. (RP 48, 240) While in Spokane, the Salcedos purchased a private disability policy to protect them in the event that Dr. Salcedo was not able to practice medicine under his specialty. (RP 76-77)

In 2010, the Salcedo's had their first child. (RP 231-32, 243) Their second child was born in 2013 (RP 244) Once the children were born, things changed and Ms. Salcedo was no longer able to devote all her time to Dr. Salcedo. (RP 305-06) Ms. Salcedo was the children's primary caretaker and a stay at home mom. (CP 529)

In 2014, Dr. Salcedo's condition flared. (RP 80, Exhibit 30) He stopped taking his medication while studying to pass board certification. (RP 74-75) His situation deteriorated. (RP 80) It became difficult for Dr. Salcedo to complete basic tasks. (RP 80) Dr. Salcedo and Ms. Salcedo began having conflicts over household finances. (RP 255) Even Dr. Salcedo's sister noticed an increase in Dr. Salcedo's anxiety, distress, and depression in November 2014. (RP 369) He also became very anxious and aggressive toward Ms. Salcedo and his co-workers. (RP 253) Ms. Salcedo was scared and left the home with the children. (RP 250-252) She lived in a shelter for four months. (RP 251)

In January 2015, Dr. Salcedo was suspended from employment with the VA. (RP 254) His employer believed he read a number of x-rays

incorrectly, which he attributed to his anxiety. (RP 165, 171) He wasn't taking his medication at the time. (RP 254) The VA continued to pay Dr. Salcedo during the suspension while he and his attorneys were working termination procedures and issues. (RP 258)

Ms. Salcedo returned home shortly after Dr. Salcedo told her that he was fired. (RP 253-54) She arranged an appointment with Dr. Salcedo's psychiatrist, Dr. Mark Chalem. (RP 153, 155, 255) Dr. Salcedo agreed to go back on medication. (RP 255) Dr. Salcedo improved substantially. (RP 255) The conflict over household finances lessened. (RP 256)

By July 2015, Dr. Salcedo began getting anxious again. (RP 257) Ms. Salcedo noticed that Dr. Salcedo stopped taking his medication. (RP 257) Dr. Salcedo was fixated on finances and refused to give Ms. Salcedo any money. (RP 260) He made her beg for money for basic expenses, such as gas and pet food. (RP 261)

In August 2015, while the couple was still married, Dr. Salcedo opened a separate checking account in his name only, Washington Trust, ending # 8374. (RP 104, 108, 260) Dr. Salcedo thought Ms. Salcedo was being defiant and not cooperating with his plans for the couple's finances. (RP 426-27) Dr. Salcedo withdrew \$10,000 from the joint account to start the separate account ending #8374. (RP 108-09) Additionally, all of Dr.

Salcedo's salary was going into a separate account in September 2015. (RP 106) Dr. Salcedo was still receiving \$6,000 every two weeks from the VA. (RP 425) The balance of the community account was \$0 as of August 27, 2015. (RP 131) Ms. Salcedo had no way to pay bills. (RP 263)

Ms. Salcedo petitioned for dissolution on December 15, 2015. (CP 3-7) At the time of separation, Ms. Salcedo and Dr. Salcedo had approximately \$30,000 to \$40,000 in credit card debt. (RP 425) Dr. Salcedo used the money he transferred from the community account and his community income to pay off his credit card debts. (RP 425) In January 2016, Dr. Salcedo opened a new separate account, ending #0240 and closed the account ending #8374. (RP 99-100) He had \$28,594.00 in the account when it closed. (RP 101)

A hearing for temporary orders occurred on January 28, 2016. (CP 131-34) At the hearing, Dr. Salcedo also told the court that his income from the VA ended the first week of March 2016. (RP 143) He also told the court that he only had \$15,000 being held in his account. (CP 142) However, the court's temporary order transferred \$27,000 held by Dr. Salcedo into an attorney trust account for the parties, with Ms. Salcedo receiving \$5,000.00 from this account for attorney fees. (CP 131-34) The court also ordered that the parties equally share Dr. Salcedo's remaining

payments from the VA and Dr. Salcedo's monthly social security payments. (CP 134)

In March 2016, Dr. Salcedo received \$100,000 from the insurance company as result of his disability. (RP 82-83, Ex. 31, 32) The approval letter from the disability insurance company stated that Dr. Salcedo would receive \$10,000 a month through May 2031. (RP 85) However, it also stated that if the disability was due to a mental disorder, than the payments would occur for 24 months. (RP 85-86) The letter did not indicate if Dr. Salcedo's payments would end in 24 months or continue on. (Exhibit P34)

Even through this time period, the case was moving forward. Ms. Salcedo and Dr. Salcedo tried twice to mediate a settlement agreement, to no avail. (RP 5-6) There also had been multiple changes of attorneys on both sides. (RP 16-17) Originally, Dr. Salcedo was represented by Mr. Hector Quiroga. (CP 29-30) On February 8, 2016, Mr. Quiroga withdrew and Martin Salina and Michael Grover substituted in as counsel. (RP 135-36) On April 27, 2016, Dr. Salcedo changed attorneys again and Mr. Bevan Maxey appeared as counsel. (CP 157) On August 30, Mr. Paul Mack withdrew as Ms. Salcedo's attorney and Mr. Doug Hughes appeared. (CP 315-17)

On June 29, 2016, Ms. Salcedo served Dr. Salcedo's counsel with interrogatories and requests for production. (CP 397) Dr. Salcedo did not

respond as requested. (CP 397) He had left the country shortly after the dissolution began. (CP 529) He returned only long enough to move to Texas. (RP 529)

Trial was originally set for October 3, 2016. (CP 153) The trial court continued the trial date to December 5, 2016 to allow for the second mediation. (CP 319-20)

On October 27, 2016, six weeks before trial, Ms. Salcedo requested a continuance to conduct full discovery. (CP 323) She filed a declaration with the court explaining that discovery was delayed because Dr. Salcedo was out of the country and the attempts at mediation to settle the matter without trial. (CP 323) She informed the court that she needed information on his employment and income to prepare her claim for maintenance, and an evaluation of Dr. Salcedo's mental health issues to determine if or what limitations were needed in the parenting plan. (CP 323-24)

At the hearing on November 15, 2016, which was 11 months after Ms. Salcedo filed her petition, the trial court denied Ms. Salcedo's request for a continuance. (RP 383) The court found that the matter had been pending for over a year and needed to be resolved, and there were time standards that needed to be carried out. (RP 16) The court found that

mediation failed, that Ms. Salcedo was given time to prepare, and that the parties needed to go to trial with the issues. (RP 17)

Once the court denied the first request for a continuance for discovery, Ms. Salcedo's counsel diligently attempted to get answers to the discovery requests served on Dr. Salcedo back in June 2016. (CP 397) Ms. Salcedo's attorney met with Dr. Salcedo's attorney on November 18, 2018, and the materials were promised by November 23, 2016. (CP 397) Dr. Salcedo answered a portion of the interrogatories, but he did not respond or produce documents as part of the requests for production. (CP 397) He also did not object to the requests. (See CP 399-349)

When the extent of the lack of discovery became clearer to Ms. Salcedo's new attorney, and he realized it would impede the ability for a fair trial, he again petitioned the trial court for a motion to compel and a continuance of the trial with accompanying affidavit. (CP 396-398, RP 19-20) He informed the court that opposing counsel had indicated that discovery had not been conducted, which was incorrect. (CP 397) He explained his diligent attempt to get discovery answers after the denial of the continuance, and Dr. Salcedo's failure to respond to a single request for production. (CP 397) He named the documentation still needed- evidence of assets, bank statements, insurance policies, tax returns, evidence of debts- and that the lack of this information made it impossible

to examine Dr. Salcedo on expenses, assets, and debts. (CP 397) This evidence was needed for trial to determine maintenance and division of property. (CP 397) Even the joint trial management report could not be completed without the information, and going forward with the case would be trial by surprise and unfair to both parties. (CP 397)

Dr. Salcedo responded by saying that most of the documentation was in the home and he did not have access to it. (CP 390- 393) He contended that Ms. Salcedo was the only person who could have provided the documentation, including the information regarding Dr. Salcedo's social security disability, his personal retirement accounts, his separate bank statements, and information on the current status of his employment. (CP 391-392)

The trial court stated that it understood the issue of trying to get ready for trial without having all the information. (RP 34) But the court repeated its earlier ruling that the matter had been pending over a year and that both parties were as ready as they could be for trial. (RP 34) The court wanted to get the divorce done because it was "way past time standards at this point." (RP 35)

Meanwhile, Dr. Salcedo brought six months of his separate bank statements to court the first morning of trial. (RP 35) The trial court took a

break for an hour to allow Ms. Salcedo to review the newly produced statements and then proceeded with trial. (RP 35)

On the first day of trial, Dr. Salcedo testified that he had no knowledge of financial information that was only in his name. (RP 419) However, on the second day, Dr. Salcedo brought a bag of documents to trial and during testimony took documents from the bag to refresh his memory. (RP 423) He testified to new financial documents, copies of checks, and deposits, all of which were requested in discovery. (RP 419) And, when questioned by his counsel under oath, he recalled much of the information he didn't remember before. (RP 419)

When asked why he did not present his documentation earlier, Dr. Salcedo claimed he didn't have any of the documents because they were in the house and it was easier for him to ask Ms. Salcedo to get the papers. (RP 422) Still, Dr. Salcedo acknowledged that he had the statements from his separate accounts where he deposited community funds because these statements were sent to his P.O. Box and not his house. (RP 424-25) He only looked at the bank statements because Ms. Salcedo's counsel asked about them at trial. (RP 422)

Dr. Salcedo was also asked to provide copies of his earning statements from the VA part of discovery. (RP 433) However, he did not produce any recent pay stubs establishing the amount of income he

received and if or when it stopped. (RP 434) Dr. Salcedo admitted that he could have obtained these statements by downloading them online. (RP 433-34) The only documentation was a pay stub from back in November 2015 found by Ms. Salcedo. (RP 75)

Dr. Salcedo make several incorrect statements about his income. (RP 429) He initially told the court in a pretrial hearing that he had no income after October 2015. (RP 429) But, at the time, he was getting \$12,000 a month from income and diverting it into a separate account to which Ms. Salcedo had no access. (RP 134) He also told the court that he was only being paid out of sick leave and vacation time, but his pay stub as of November 2015 showed that he still hadn't used much of either. (RP 429) His pay was coming from his salary. (RP 430) He continued to receive payments through the spring of 2016. (RP 81) Again, no pay statements were submitted to verify if the income had stopped. (RP 434) Nor did he provide a copy of his updated social security earnings statement for trial. (RP 56)

Dr. Salcedo testified that he was still receiving \$10,000 a month from his disability insurance policy, but the payments were ending in March 2017. (RP 85, 328) However, he provided no documentation to that effect. The disability policy remained unclear whether the \$10,000

payments were to end in 2031 or after 24 months due to a mental disability. (RP 85)

Dr. Salcedo was also approved for Social Security benefits. (RP 86-86) He was receiving \$2,200 in Social Security for himself and \$1,200 in Social Security for the children. (RP 393) He received a letter explaining his benefits in September or October 2015. (RP 87, Ex 35) He also received a letter explaining that his two children would be receiving benefits. (RP 87)

As for Dr. Salcedo's ability to work, Dr. Mark Chalem testified that Dr. Salcedo's OCD symptoms lessened since separation and his return to medication. (RP 200, 209) Furthermore, the medication did not cause any significant impairments when taken. (RP 202) Dr. Salcedo seemed more relaxed, more cheerful and generally better physically and emotionally than Dr. Chalem had ever seen. (RP 209) Dr. Chalem believed Dr. Salcedo would be able to work again once the stress of the divorce was over. (RP 174) Dr. Salcedo testified that he was currently taking his medication and was willing to follow the recommendations of his therapist. (RP 417-18) Dr. Salcedo testified that it was his intent to get back to work as soon as possible. (RP 397)

As for his medical license, Dr. Salcedo resigned from his position in Spokane at the VA. (RP 69) However, he did not lose his license in

Texas. (Exhibit R133) On October 17, 2016, the Texas Medical Board entered into an agreement with Dr. Salcedo that he should contact the Colorado Education Program or the University of California San Diego Physician Assessment and Clinical Education program for an assessment to determine if Dr. Salcedo needed to complete an education program before resuming his medical practice. (RP 398) He stated that he needed to take an exam in Texas, and the cost would be \$16,000 to \$18,000 for three months of preparation courses. (RP 397)

However, Dr. Salcedo also failed to mention that his license was still active and didn't expire until 2018, a fact that was not discovered until trial. (RP 441) Dr. Salcedo had in his pocket proof of his valid license in Texas. (RP 441) He also did not produce documents from the Texas medical board until questioned about it on the stand. (RP 465) Ms. Salcedo's attorney asked Dr. Salcedo about the numerous documents that he did not produce during discovery. (RP 461) In response, Dr. Salcedo called his Texas attorney and was able to get a number of documents that evening regarding his licensing. (RP 462) The documents were from October 2016 and available to Dr. Salcedo. (RP 463)

As for Ms. Salcedo's employment, she testified that she has a bachelor's degree in psychology, but never finished her Master's program. (RP 264) In order work in Washington, she needs a license, which would

require her to go back to school. (RP 347) She spoke with her school in Chicago and they told her she needed to start over. (RP 279) The program would take about 4 to 5 years. (RP 279-80) She also needed 3,000 hours of supervision. (RP 280) Ms. Salcedo also testified that she was looking for employment as a teacher assistant. (RP 256) She had not worked in 19 or 20 years. (RP 279)

At the end of trial, Ms. Salcedo still had unanswered questions about deposits and payments in the separate bank accounts, miscellaneous international payments, what was needed for Dr. Salcedo to return to the practice of medicine in Texas, and if or when his disability payments were ending. (RP 479, 481-82, 484) There was no documentation supporting the value of the VA retirement account other than an email that Dr. Salcedo sent to his attorney claiming how much money he was told was in the account. (RP 31, 469) There was also a 401K in El Paso that was not addressed by Dr. Salcedo despite the discovery request. (RP 376) Dr. Salcedo acknowledged the account, but stated that the money was distributed in 2011. (RP 376) Dr. Salcedo also had an IBC bank account and a Chase bank account that were not disclosed in discovery and it was undetermined if they were still open. (RP 137-38, 139)

For relief, Ms. Salcedo requested \$5,000 per month in maintenance for six years, the value of the home, her vehicle, the remainder of the trust

account, and the retirement accounts. She also asked Dr. Salcedo to take the debts. (CP 445-456)

The trial court issued a written decision on February 8, 2017 and final orders on April 20, 2016 (CP 465-477, 534-38) The court ordered Dr. Salcedo to continue to pay \$5,000 in maintenance until May 2017, and then to pay \$425.00 for two months. (CP 536-37) The court split the equity in the home, the retirement accounts, and the remainder of the trust. (RP 534-38) The court also ascribed to Ms. Salcedo the amount of \$47,227 that she received from the community trust account during separation. (CP 535) Dr. Salcedo was awarded the community debt in the amount of \$23,943.00. (CP 527, 536) The court also awarded no attorney fees to Ms. Salcedo because she had already received \$19,000.00 from the trust account for attorney fees. (CP 528)

In making this division, the trial court concluded that Ms. Salcedo was entitled to only a short period of maintenance to find employment. (CP 527) A longer period was not needed based on Ms. Salcedo's education, experience, and the portion of the assets awarded to her. (CP 527) The court found that Ms. Salcedo was currently unemployed and had been unemployed throughout the marriage, but was capable of obtaining a job. (CP 531) She was extremely educated, was just short of her Master's degree, and worked in the past as a translator. (CP 531) The court also

found that there was no evidence that Ms. Salcedo made real efforts to find employment other than testimony that she needed to return to school. (CP 531)

As for Dr. Salcedo, the trial court found that he was currently on disability, but had “no doubt from his history that he will become employed in the near future.” (CP 530) The court expected Dr. Salcedo would again be working long hours as he did in the past. (CP 530)

Ms. Salcedo appeals. She contends that the court erred by failing to grant her a continuance in order to conduct discovery. She also contends that the trial court’s property distribution was not just and equitable and was an abuse of discretion because it failed to account for each party’s earning potential and failed to consider the economic condition that the decree will leave the parties.

### C. ARGUMENT

#### 1. Whether the trial court erred in denying Ms. Salcedo’s request for a continuance

In both criminal and civil cases, the decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court.” *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). We

review a trial court's decision to grant or deny a motion for continuance for abuse of discretion. *Id.* We will not disturb a trial court's decision unless the appellant clearly shows that its decision is manifestly unreasonable or is based on untenable grounds or is done for untenable reasons. *Id.*

In exercising discretion to grant or deny a continuance, trial courts may consider the necessity of reasonably prompt disposition of litigation; the needs of the moving party; the possible prejudice to the adverse party; the prior history of the litigation, including prior continuances granted the moving party; any conditions imposed in the continuances previously granted; and any other matters that have a material bearing on the trial court's exercise of discretion. *Balandzich v. Demeroto*, 10 Wn. App. 718, 720, 519 P.2d 994, review denied, 84 Wn.2d 1001 (1974).

“Whether the ruling of a court on a motion for a continuance is within the proper exercise of its sound discretion usually depends on the facts of the particular case, the chief test being whether the grant or denial of the motion operates in the furtherance of justice. . . . a continuance should be granted if a denial thereof would operate to delay or defeat justice; and courts have been said to be liberal in continuing a cause when to do otherwise would deny applicant his day in court.” *Chamberlin v. Chamberlin*, 44 Wn. 2d 689, 702, 270 P.2d 464. (1954).

Although a trial court has discretion to grant or deny a motion for continuance, the motion must nonetheless comply with the applicable rules. *Makoviney v. Svinth*, 21 Wn. App. 16, 28, 584 P.2d 948 (1978).

Superior Court Civil Rule (CR) 40(e) provides in part:

A motion to continue a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and address of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

CR 40(e).

Most courts take a liberal view toward granting continuances, especially in divorce cases and particularly where a continuance is the first one sought. *Chamberlin v. Chamberlin*, 44 Wn. 2d 689, 703, 270 P.2d 464. (1954). Whether the court's ruling on a motion for continuance is within proper exercise of its sound discretion usually depends on facts of particular case, the chief test being whether granting or denial of motion operates in furtherance of justice, so that continuance should be granted, if denial thereof would delay or defeat justice, and courts are liberal in

continuing causes when to do otherwise would deny the applicant for continuance his day in court. *Id.*

Here the trial court abused its discretion when it denied Ms. Salcedo's motion for continuance. First, the trial court's main reason for denying the continuance, which was timing, was not supported by the facts of the case or the court rule. The court erroneously found that the case had been pending over a year and was way past time standards at that point. However, the case had not been pending for over a year. Ms. Salcedo filed her petition for dissolution on December 15, 2015. Her first request for a continuance was made 11 months after she filed her petition and a month before trial on December 5, 2016. (CP 15, RP 15) This was less than one year, not over one year. Ms. Salcedo's case had not been pending for an egregiously long period as the trial court thought.

Additionally, the case was not way past time standards. Spokane County Superior Court Local Administrative Rule (LAR) sets the standards for timely disposition of civil cases. LAR 0.4. For Domestic Relations matters, the court anticipates that 90% of all domestic relations matters should be settled, tried, or otherwise concluded within 10 months of the date of the case filing; 100% within 18 months; except for individual cases in which the court determines exceptional circumstances exist for which continuing review will occur. LAR 0.4(a)(2). The Salcedo

case was not way past standards, since 10% of cases take up to 18 months after filing to be tried, and some even longer. The Salcedo case was pending less than a year and still had over six months to be tried and still be within standards. It was never “way over standards.” The trial court erred by basing its denial on time standards.

Second, the court’s denial of the continuance was an abuse of discretion. The denial of the motion operates against the furtherance of justice. Discovery was needed to determine the extent of the party’s assets and debts. This lack of evidence hindered the court in its obligation under RCW 26.09.080 to consider the nature and extent of the community and separate property, and make a just and equitable division and distribution of all property and liabilities of the parties. See RCW 26.09.080.

The evidence requested was material to the dissolution. As stated in the declaration of Ms. Salcedo’s trial attorney, Dr. Salcedo did not respond to a single request for production. (CP 376) This included his separate bank statements, evidence of assets in his name only, insurance policies, tax returns, or evidence of debt. This evidence was material because it was necessary to ascertain the assets of the parties, and Dr. Salcedo’s income, expense, and debts. The economic condition of each spouse upon dissolution is a paramount concern of the court. *In re Marriage of Crosseto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996). The

absence of this information required Ms. Salcedo to speculate about the extent of the community assets, the value of the assets, and Dr. Salcedo's income and ability to pay the maintenance she requested. (CP 435)

Ms. Salcedo acted with due diligence in attempting to procure the requested information and in petitioning the court for a continuance. She served Dr. Salcedo with interrogatories and requests for production on June 29, 2016. However, Dr. Salcedo never responded. He left the country while the case was pending. During this time, the parties attempted mediation twice.

Ms. Salcedo requested a continuance for discovery on October 27, 2016, more than six weeks before trial. She filed a motion for a continuance and declaration, informing the court of the material information to be discovered and her diligence in obtaining the information but for Dr. Salcedo's absence and mediation attempts.

Once the court denied the first request for a continuance for discovery, Ms. Salcedo's counsel diligently attempted to get answers to the discovery request from Dr. Salcedo. Ms. Salcedo's attorney again petitioned the court for a continuance after he could not get answers to the requests for production. Counsel filed an affidavit with the court explaining that the financial information was crucial to the court's ultimate

division of assets. The continuance request could have been granted before trial began. Ms. Salcedo acted diligently.

While Ms. Salcedo's counsel did not move to enforce the timeline for completing discovery, this was not dilatory under the facts of the case. Counsel explained in his declaration that the parties attempted mediation to resolve the case prior to incurring large discovery expenses (CP 378) And a change in counsel for both parties contributed to the delay in demanding discovery responses. (RP 16-17)

Furthermore, Ms. Salcedo did not have access to employment records, separate bank statements, and financial accounts that were in Dr. Salcedo's name only. These documents were crucial to the just and equitable distribution of assets.

For instance, Dr. Salcedo had sole control over his separate bank statements and pay stubs, and these were necessary to enforce the court's order that the couple split Dr. Salcedo's income. Dr. Salcedo also misrepresented the amount and duration of his income with the VA and disability payments, so his self-reporting could not be trusted. His leave and earning statements from the VA would have cleared up the question of when he stopped getting a salary and when his vacation and sick time was paid out. Also necessary was information on the status of his license in Texas, what was needed to resume practicing, and the cost and time frame

to become employable. He again provided misleading testimony to the court that his license was suspended, but when questioned under oath, he revealed that his license was still active and he could practice in Texas.

Another example of the information that was not available but necessary for the dissolution was the information on disability. Dr. Salcedo claimed that his disability ended in March 2017, but he presented no documentation to establish that his disability was ending then and not the 30 years as explained by the letter from the insurance company. He presented nothing that established the ending date alleged. As proof of the uncertainty, the court found that the date he testified to at trial was not accurate and speculated to the correct ending date. This information was material for determining whether Dr. Salcedo had the ability to pay the six years of requested maintenance and/or whether an unequal distribution of community property was warranted to allow Ms. Salcedo to maintain the standard of living and prepare for employment.

In addition, there were not multiple trial continuances in this case. Only one prior continuance was granted in September 2016 because the parties were attempting mediation for the second time. The trial was moved from October 3, 2016 to December 5, 2016 to accommodate mediation. (CP 298)

Had the continuance been granted, the documents could have been provided to Ms. Salcedo without much delay. Ms. Salcedo requested documents that were readily available to Dr. Salcedo. In fact, Dr. Salcedo brought a bag with him to trial and pulled out information depending on what question he was asked to answer. Additionally, when he didn't have documentation, such as bank statements or information about his license to practice medicine in Texas, he was able to have them available the next day of trial.

While there was some dispute whether a CR 26(i)<sup>1</sup> discovery conference occurred, this was irrelevant to Ms. Salcedo's motion for continuance under CR 40(e). Ms. Salcedo filed a motion to continue because she wanted more time to complete discovery so that she and the court could have a complete picture of the couple's assets and Dr. Salcedo's income. A CR 26(i) conference was not necessary for requesting a continuance.

The court abused its discretion in denying Ms. Salcedo's request for a continuance to complete discovery.

---

<sup>1</sup> CR 26(i) requires counsel for the parties to confer with respect to a motion or objection regarding discovery before bringing the matter before the court.

2. The trial court's distribution of property was not fair and equitable

“A property division made during the dissolution of a marriage will be reversed on appeal only if there is a manifest abuse of discretion.” *In re Marriage of Urbana*, 147 Wn. App. 1, 9, 195 P.3d 959 (2008), quoting *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). “A trial court abuses its discretion if its decision is manifestly unreasonable, based on untenable grounds, or based on untenable reasons.” *In re Urbana*, 147 Wn. App. at 9-10.

In a marriage dissolution property division, the trial court distributes property in a manner that is “just and equitable after considering all relevant factors” RCW 26.09.080. This includes, but is not limited to:

- (1) The nature and extent of the community property;
  - (2) The nature and extent of the separate property;
  - (3) The duration of the marriage or domestic partnership;
- and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

RCW 26.09.080.

“These statutory factors are not limiting and the trial court may consider other factors such as ‘the health and ages of the parties, their

prospects for future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable future acquisitions and obligations, and whether the property to be divided should be attributed to the inheritance or efforts of one or both of the spouses.” *In re Urbana*, 147 Wn. App. at 11, quoting *In re Marriage of Olivares*, 69 Wn. App. 324, 329, 848 P.2d 1281 (1993).

The ultimate concern of the court is the economic condition in which the decree will leave the parties. *In re Marriage of Crosseto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996). The division need not be equal nor focus on mathematical preciseness: the goal of fairness is achieved “by considering all circumstances of the marriage and by exercising discretion, not by utilizing inflexible rules.” *In re Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989). If a court’s dissolution “decree results in a patent disparity in the parties' economic circumstances,” the trial court will have committed a manifest abuse of discretion and reversal is warranted. *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007).

The trial court’s division of property was a manifest abuse of discretion. The division was not just and equitable under the factors. The award results in a disparity in the parties economic conditions after dissolution. Dr. Salcedo’s significantly higher earning capacity will allow

him to maintain a high standard of living as compared to Ms. Salcedo. Ms. Salcedo should have been awarded maintenance for a longer period of time, or alternatively, a larger percentage of the community property.

- a. Dr. Salcedo's earning capacity as a physician created an economic disparity between the parties

Dr. Salcedo's education and training as a radiologist will provide him with a significantly higher earning capacity than Ms. Salcedo. The future earning capacity is a substantial factor to be considered by the trial court in making a just and equitable property distribution. *In re Marriage of Rockwell*, 141 Wn. App. 235, 248, 170 P.3d 572 (2007). Earning capacity is not a divisible asset, although it is a factor to be considered when dividing the community and separate property in a dissolution proceeding. *In re Marriage of Hall*, 103 Wn.2d 236, 247–48, 692 P.2d 175 (1984). “[I]n considering a party's future earning capacity, the trial court may consider the age, health, vocational training and work history of the party.” *In re Rockwell*, 141 Wn. App. at 248.

Placing parties in roughly equal financial positions requires considering the combination of the division of property and the expected income and earnings of the parties. *Rockwell*, 141 Wn.2d at 249. “The future earning capabilities of the wife, if she has no other means of support, represent one of the important concerns of the courts in divorce

cases, and must be considered in comparison to those of her husband. It would be manifestly unjust to leave the wife and children with a low and uncertain standard of living while the husband retains a much higher one.” *Stacy v. Stacy*, 68 Wn.2d 573, 576, 414 P.2d 791 (1966).

In *Rockwell*, the court considered a husband’s earning capacity during his career as a mechanical engineer and in sales, even though he had been laid off six years earlier and had stopped seeking employment. *Id.* at 239-40. The husband had been making approximately \$90,000 a year. *Id.* In contrast, the wife was older, had stopped working due to health concerns, and was receiving a pension. *Id.* 240. In dividing the property, the court considered the husband’s earning capacity and imputed income to him. *Id.* at 246-250. The court considered the husband’s age, health, significant work experience, his two bachelor’s degrees, and his knowledge in a variety of areas, and concluded that he could make at least \$70,000 a year. *Id.* at 246. The court estimated that the husband would be able to work for another seven years and would have \$490,000 in future earnings. *Id.* 246-47. The trial court used the division of property and expected income and earnings of the parties to divide the property, with a 60 percent going to the wife and 40 percent to the husband. *Id.* at 249.

Here, the trial court found that Dr. Salcedo had the ability to return to work in the near future. Yet it failed to adequately consider Dr.

Salcedo's earning potential when making an equitable distribution of property. While Dr. Salcedo and Ms. Salcedo were married, he earned between \$250,000 and \$350,000 almost every year. The trial court found that Dr. Salcedo had the ability to return to work, but never considered the amount of his earning potential. While the trial court awarded Dr. Salcedo a larger percentage of the debt, the property division was still not equitable and just. Like *Rockwell*, Dr. Salcedo had the potential to earn more and he testified that his plan was to return to work. Ms. Salcedo would never be able to make this income, and at the time Dr. Salcedo could not pay maintenance, so a larger distribution of property in Ms. Salcedo's favor was warranted.

b. Ms. Salcedo did not have the education or experience to find a job quickly

The trial court's findings regarding Ms. Salcedo's ability to immediately find work is not supported by the evidence. The evidence shows that Ms. Salcedo's education would not lead to employment and that she had no recent work experience. Ms. Salcedo had a Master's degree in psychology from Colombia that was 20 years old. She had not practiced in the field since she left Colombia and was not licensed to practice in the United States. She never finished her Master's in Chicago, and her classes were from 2002. Also, while she took classes in art and

design, these miscellaneous courses were taken to keep her green card and did not increase employability.

Ms. Salcedo had no significant work experience that would help her to become employed right away. She never worked as a translator, and there is no evidence in the record to support this finding. Ms. Salcedo's focus after marrying Dr. Salcedo was to help him manage his illness. Her job was to make sure he was stable enough to do his job. She held a few part time jobs, but was a stay at home mom after the children were born. The trial court's finding that Ms. Salcedo would be able to find employment quickly is not supported by the evidence.

- c. Ms. Salcedo was entitled to maintenance or, alternatively, a larger percentage of the community property under the factors of RCW 26.09.090

A request for maintenance is controlled by RCW 26.09.090. Its nonexclusive list of factors to be considered includes:(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, (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; (d) The duration of the marriage; (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. RCW 26.09.090.

The purpose of maintenance is to support a spouse until he or she is able to become self-supporting. *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). There is no right to spousal maintenance in Washington, but the denial of maintenance is reviewed for abuse of discretion. *Friedlander v. Friedlander*, 80 Wn.2d 293, 297–298, 494 P.2d 208 (1972).

A spouse's capacity for self-support does not automatically preclude an award for maintenance. *In re marriage of Morrow*, 53 Wn. App. 579, 585, 770 P.2d 197 (1989). "The duration of the marriage and the standard of living established during the marriage must also be considered, making it clear that maintenance is not just a means of providing bare necessities, but rather a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time." *Id.*, quoting *In re Marriage of Washburn*, 101 Wn.2d 168, 178-79, 677 P.2d 152 (1984).

Even if Ms. Salcedo was able to find employment, she would not be able to find a job that would place her in economic parity with Dr. Salcedo as a physician. He had the potential to make upwards of \$350,000, while she had no employment history or professional license to achieve the standard of living she was accustomed to during the 17-year marriage. She invested in Dr. Salcedo's career by devoting her time to making sure he was stable. This sacrifice was to the detriment of her own career. To reach a livable wage post dissolution, Ms. Salcedo needs more education. Ms. Salcedo testified that it would take 4 to 5 years to become licensed as a psychologist.

Because of the high standard of living, the 17-year length of the marriage, and the need for education so Ms. Salcedo can provide comfortably for herself, a longer period of maintenance was necessary. Alternatively, because Dr. Salcedo was temporarily unemployed, a larger percentage of community property was warranted as in *Rockwell*. This would have placed Ms. Salcedo in an economic position closer to Dr. Salcedo. The trial court's division of property failed to divide the property in a just and equitable manner that provides for an equalized standard of living.

- d. The trial court erred by not awarding Ms. Salcedo her attorney fees after the dissolution when she had the need and Dr. Salcedo had the ability to pay

Under RCW 26.09.140, “[t]he 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.” RCW 26.09.140. The decision to award attorney fees in dissolution proceeding is within trial court's discretion. *In re Crosseto*, 82 Wn. App. at 563.

Ms. Salcedo made a showing of need. She had no income at the time of dissolution and no earning potential. In comparison, Dr. Salcedo had the potential for employment at a substantial salary. Admittedly, Ms. Salcedo received attorney fees of about \$19,000 in advance from the trust account. However, this amount was counted as part of her property award by the court. This transformed the \$19,000 from attorney fees to property distribution. The result is that Ms. Salcedo received no attorney fees during the dissolution, although she was in need and Dr. Salcedo’s

advanced earning potential provided him with the ability to pay. The trial court erred in not awarding Ms. Salcedo attorney fees during the dissolution.

3. Ms. Salcedo has the need for attorney's fees on appeal

“If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.” RAP 18.1(a). *In re the Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1995). Again, RCW 26.09.140 permits the appellate court, using its discretion, to order a party to pay the other party's costs and attorney's fees incurred in maintaining an appeal. In making the award, the court must balance the needs of the one party against the other party's ability to pay. *In re the Marriage of Young*, 44 Wn. App. 533, 538, 723 P.2d 12 (1986). The party requesting the attorney's fees under RCW 26.09.140 must make a present showing of need to support the award

Ms. Salcedo has the need for attorney fees. Ms. Salcedo will file and serve her affidavit of financial need no later than 10 days prior to the date the case is set for oral argument or consideration on the merits, as required by RAP 18.1(c). As expected, her employment options are limited without further education. She currently works as a classroom

aide three hours a week making minimum wage. She receives public assistance to help with food.

She also has added expenses above the ordinary bills she struggles to pay. Dr. Salcedo has not contributed his share of day care or medical expenses for the children. Ms. Salcedo pays \$650 a month for daycare and has outstanding medical bills for the children. She is also paying for education. She is taking classes to become a sign language interpreter in order to increase her income and employment chances in the interim. She needs money to complete her Master's and become a licensed psychologist in Washington. Ms. Salcedo is entitled to costs and fees on appeal under RAP 18.1 and RCW 26.09.140.

#### D. CONCLUSION

The trial court erred by not granting Ms. Salcedo a continuance in the dissolution action. The trial had not been pending for the length of time stated by the court, and discovery was needed for the court to properly fulfill its duty to make a fair and equitable division of the couple's property under RCW 26.09.080. Furthermore, the court division of property was a manifest abuse of discretion, where Mr. Salcedo had much greater earning potential than Ms. Salcedo during the 17 years of marriage. Remand for a new trial is warranted.

Respectfully submitted this 5<sup>th</sup> day of March, 2018.

/s/ Cathy M. Helman  
Cathy M. Helman, WSBA # 43731  
Attorney for Appellant  
Burke Law Group, PLLC  
221 N. Wall St. Ste. 624  
Spokane, WA 99201  
Telephone: (509) 466-7770  
Fax: (509) 464-0463  
Email: Cathy@BurkeLG.com

CERTIFICATE OF SERVICE

The undersigned states the following under penalty of perjury under the laws of the State of Washington. On the date below, I personally e-filed and emailed and/or placed in the United States Mail the foregoing Appellant's Opening Brief with postage paid to the indicated parties:

1. Kenneth H. Kato, WSBA # 6400  
Attorney for Respondent  
1020 N. Washington St.  
Spokane, WA 99201  
[khkato@comcast.net](mailto:khkato@comcast.net)
  
2. Dayra Salcedo  
PO Box 10096  
Spokane, WA 99209

Signed at Spokane WA, Washington on Monday, March 5, 2018.

/s/Cathy M. Helman  
Cathy M. Helman  
Counsel for Appellant  
Burke Law Group, PLLC  
221 N. Wall St. Ste. 624  
Spokane, WA 99201  
Telephone: (509) 466-7770  
Fax: (509) 464-0463  
Email: [Cathy@BurkeLG.com](mailto:Cathy@BurkeLG.com)

**BURKE LAW GROUP, PLLC**

**March 06, 2018 - 10:02 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35317-6  
**Appellate Court Case Title:** In re Marriage of Dayra R. Salcedo and Jorge Salcedo  
**Superior Court Case Number:** 15-3-02770-9

**The following documents have been uploaded:**

- 353176\_Briefs\_Plus\_20180306095858D3970958\_3176.pdf  
This File Contains:  
Affidavit/Declaration - Service  
Briefs - Appellants  
*The Original File Name was Appellants brief Salcedo final.pdf*

**A copy of the uploaded files will be sent to:**

- khkato@comcast.net

**Comments:**

Attempted to file brief 3/5/18 around 11:18 pm, but .pdf name had apostrophe which prevented it from processing. Error not caught/corrected until 3/6/18.

---

Sender Name: Stephanie Burke - Email: stephanie@burkelg.com

**Filing on Behalf of:** Cathy Madere Helman - Email: cathy@burkelg.com (Alternate Email: stephanie@burkelg.com)

Address:  
221 N Wall St  
Suite 624  
Spokane, WA, 99201  
Phone: (509) 466-7770 EXT 107

**Note: The Filing Id is 20180306095858D3970958**