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Division III
State of Washington
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NO. 358321

COURT OF APPEALS, DIVISION THREE
OF THE STATE OF WASHINGTON

In re the marriage of:

JOHN ARTHUR LODWIG,

Respondent,

and

MELANIE ISHA LODWIG N/K/A/
MELANIE ISHA SUMMERS,

Appellant.

ON APPEAL FROM CHELAN COUNTY SUPERIOR COURT
Cause No. 16-3-00294-1
Honorable T.W. Small, ret.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Aye, aye! It was that accursed white whale that ... made a poor pegging lubber of me forever and a day!... And I'll chase him round Good Hope, and round the Horn, and round the Norway Malestrom, and round perdition's flames before I give him up.

--Captain Ahab, *Moby Dick*

After almost 15 years of marriage, Ms. Summers and Mr. Lodwig divorced via dissolution decree filed November 9, 2017. The trial court entered its decree after a trial on the merits where both parties were represented by counsel and had full and fair opportunity to testify and cross-examine.

During trial, the parties presented evidence of the value of their community assets and liabilities as well as Ms. Summers's ability to support herself after the marriage ended. Testimony regarding Ms. Summers's financial autonomy came from Ms. Summers herself. After considering all evidence presented by both parties, the court properly exercised its broad discretion and divided the community assets in a manner equitable to both parties.

The trial court made three determinations relevant to Ms. Summers's appeal: the court (1) divided ownership of a public storage business equally between Ms. Summers and Mr. Lodwig, (2) valued a construction business

at \$77,000, and (3) awarded Ms. Summers \$48,000 in spousal maintenance to be paid over 24 months.

Evidence presented at trial provided ample basis for each of these determinations. This matter is on appeal for no other reason than Ms. Summers, like Captain Ahab, wants vengeance: she wants to extract more from Mr. Lodwig than what the Court awarded her in its discretion—a reason insufficient to justify her appeal.

In her haste to play Ahab to Mr. Lodwig’s white whale, Ms. Summers submits a brief presenting no valid basis for reversal. Ms. Summers’s Appellate Brief lacks citation to the record, offers demonstrably false statements to this Court, and raises arguments unsupported by either law or fact. A reasonable investigation into the Rules of Appellate Procedure and the standards of appellate review for the errors alleged by Ms. Summers would have revealed the frivolous nature of this appeal. Rather than engage in an investigation, Ms. Summers seeks to chase Mr. Lodwig “round perdition’s flames,” wasting this Court’s time and increasing the costs of this litigation. The Court should affirm the trial court’s final dissolution decree and its order on reconsideration. The Court should also award Mr. Lodwig his fees and costs on appeal.

II. RESTATEMENT OF ISSUES

1. Did the trial court exercise proper discretion when it divided ownership of a public storage business equally between divorcing parties who at all times were equal owners of the business and the division did not affect the business's ownership interest in real property?

2. Did the trial court exercise proper discretion in valuing a construction company business at \$77,000 when that value was within the range of valuations offered at trial?

3. Did the trial court exercise proper discretion when it awarded a divorcing spouse \$48,000 in additional spousal maintenance over two years after considering the statutory factors listed in RCW 26.09.090?

4. Should the Court award Mr. Lodwig his attorneys' fees and costs when Ms. Summers's appeal is frivolous under RAP 18.9 and RCW 26.09.140 provides the statutory basis for the award?

III. RESTATEMENT OF THE CASE¹

A. Ms. Summers, Mr. Ludwig, and the Assets at Issue

Ms. Summers and Mr. Ludwig were married for almost 15 years before they divorced in 2017. RP at 147:22–24. At the time of their divorce, Ms. Summers was 44, Mr. Ludwig, 56. CP 10. The marriage produced two children, ages 10 and 15.² RP at 7:12–19.

The marriage also produced a business: a public storage facility called Baker Flats Recreational Self Storage, Inc. RP at 25:1–12. Baker Flats and Mr. Ludwig’s construction business, Clearwater Custom Homes, Inc. (RP 49:13–17), served as the primary source of the couple’s income.

Baker Flats is a Washington corporation, which conducts business on property owned by Cinco Properties, LLC—a limited liability company also owned by Ms. Summers and Mr. Ludwig. *See* Supplemental CPs, Ex. 8 (Cinco Properties 2015 Tax Returns, including land depreciation detail); Ex. 13 (Baker Flats 2015 Tax Returns). At the time of their divorce (and all times prior), Ms. Summers and Mr. Ludwig were equal owners of the

¹ Ms. Summers’s entire “Statement of the Case” lacks citation to the appellate record in violation of RAP 10.3(a)(5). *See* App. Brief at 3–4. “The failure to cite to the record is not a formality. It places an unacceptable burden on opposing counsel and on this court.” *Lawson v. Boeing Co.*, 58 Wn. App. 261, 271, 792 P.2d 545 (1990). Sanctions are appropriate. *Rhinevault v. Rhinevault*, 91 Wn. App. 688, 692, 959 P.2d 687 (1998).

² Mr. Summers and Mr. Ludwig agreed to a parenting plan for their two children, which is not at issue in this appeal. RP at 11:22–12:2.

Baker Flats and Cinco Properties entities. *See* Supplemental CPs, Ex. 8 at 7–8; Ex. 13 at 7–8 (parties listed as 50-percent owners of each entity).

Clearwater was founded in the early 2000’s. RP at 49:16–17. It is essentially a one-man operation (Mr. Lodwig) with no employees and few assets, which include a used truck and some hand tools. RP at 59:10–12. Clearwater struggled at times, but found some success constructing commercial buildings for companies such as Washington Mutual, Sleep Country, and 7-11, as well as public works projects for school districts. RP at 40:12–22, 52:1–54:18.

Mr. Lodwig, now in his mid-fifties, can longer work the long hours that kept Clearwater afloat. After putting in six hours of labor, he finds he is so stiff that he has to quit for the day. RP at 63:1–64:7. He now works smaller jobs for smaller profit on an individual basis. RP at 61:20–62:21. As a life-long builder, construction is what he knows best: “If I want to make money, I have to go get a job, and Clearwater is my job.” RP at 61:12–13.

Ms. Summers is 12 years younger than Mr. Lodwig and, with three years of college and a certification in graphic design, has a more robust educational and business background. RP at 149:18–149:8. Her education and training have allowed Ms. Summers to work in marketing, build websites, and design logos for multiple businesses, including Baker Flats.

RP at 149:10–151:18, 184:25–185:1. Ms. Summers describes herself as “a 45-year-old entrepreneur, business owner, senior executive officer, educated, and intelligent woman, a devoted community member and mother.” CP 56.

Ms. Summers has plans to apply her education, business skills, and entrepreneurial spirit to a new “Float Spa” business that she believes will provide her with an income of \$10,000 per month. RP at 167:3–172:5. Ms. Summers describes the business as a type of therapeutic sensory deprivation service located in the Chelan-Manson area. *Id.*

B. Trial and the Court’s Final Dissolution Order

Mr. Ludwig filed for divorce on July 19, 2016, and a dissolution trial was held on May 12, 2017. RP at 1:1–12. At trial, both parties were represented by counsel and counsel stipulated to all exhibits. RP at 1:18–23, 5:13–21. Both parties testified and were cross examined. RP at 2:12–25. Counsel offered few objections. *See* RP at 166:1–7, 181:22–24. At the conclusion of the trial, the trial court entered its November 9, 2017 “Final Divorce Order (Dissolution Decree),” which divided the couple’s assets and liabilities, including their respective ownership of the Baker Flats/Cinco and Clearwater businesses. CP 35, 42–44.

The Court awarded equal, 50-percent ownership of the Baker Flats/Cinco business to Ms. Summers and Mr. Ludwig, and awarded 100-

percent ownership of Clearwater to Mr. Ludwig, valuing the company at \$77,000:

Assets	(CP or SP)	Value	To Wife	To Husband
Baker Flats Storage/Cinco	CP	\$1,850,000.00	\$925,000.00	\$925,000.00
Clearwater Construction	CP	\$77,000.00		\$77,000.00

CP 42.

The Court also awarded Ms. Summers the family home (CP 42), a cash payout of \$136,000 (CP 39), and \$48,000 in additional spousal maintenance to be paid over 24 months at \$2,000 per month (CP 38). Unhappy with the trial court’s distribution and award, Ms. Summers sought reconsideration (CP 45), which the trial court denied “in all respects” (CP 76–80).

Ms. Summers now appeals, assigning error to the trial court’s discretionary decisions to (1) divide the Baker Flats/Cinco business equally between the parties; (2) value Clearwater at \$77,000; and (3) award her \$48,000 in spousal maintenance. App. Brief at 1–2 (Assignments of Error 1, 2, and 3).

IV. STANDARD OF REVIEW

Distributions of property and liabilities by a trial court are reviewed for abuse of discretion. *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985). Spousal maintenance awards are reviewed under the same abuse of discretion standard. *In re Marriage of Zahm*, 138 Wn.2d 213, 227, 978 P.2d 498 (1999). “The spouse who challenges such decisions bears the **heavy burden** of showing a manifest abuse of discretion on the part of the trial court.” *Landry*, 103 Wn.2d at 809. (emphasis added). Manifest abuse of discretion exists only in rare instances where “no reasonable judge would have reached the same conclusion.” *Id.* at 809–10.

Under RCW 26.09.080, trial courts have “broad discretion” in the distribution of property and liabilities in marriage dissolution proceedings. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). “[T]rial court decisions in a dissolution action will seldom be changed upon appeal.” *Landry*, 103 Wn.2d at 809. The trial court “is in the best position” to assess the assets and liabilities of the parties and determine what is “fair, just, and equitable under all the circumstances.” *Brewer*, 137 Wn.2d at 769. Therefore, “[a]ppellate courts should not encourage appeals by tinkering with [dissolution decisions]. The emotional and

financial interests affected by such decisions are best served by finality.”

Landry, 103 Wn.2d at 809.

Here, the trial court did not abuse its discretion when it (1) divided ownership in the Baker Flats/Cinco entities equally between Ms. Summers and Mr. Ludwig, (2) valued Clearwater at \$77,000, or (3) awarded Ms. Summer \$48,000 in additional spousal maintenance. Based on the ample evidence present in the appellate record and the unpersuasive arguments presented in Ms. Summers’s Appellate Brief, “no reasonable judge” (*Landry*, 103 Wn.2d at 809–10) could reach a different conclusion. The trial court considered the testimonial evidence from both parties regarding the value of the storage and construction businesses as well as Ms. Summers’s financial autonomy, exercised its discretion, equitably divided the assets, and granted spousal maintenance. Nothing more was required. The trial court’s final dissolution order and order on reconsideration should be affirmed.

V. ARGUMENT

A. **The trial court’s equal division of ownership of the Baker Flats and Cinco Properties entities did not affect the entities’ real property interests and therefore was not an abuse of discretion.**

The trial court’s Dissolution Order divided ownership of the Baker Flats/Cinco entities equally between Ms. Summers and Mr. Ludwig. CP

42. The Court also equally distributed the income earned from the storage

business: 40% to Ms. Summers, 40% to Mr. Ludwig, and 20% to the business's reserve account. CP 39–40. The court divided the entities and profits in this way after hearing testimony from Mr. Ludwig and Ms. Summers that they both intended to rely on the storage business and its income in the future. *E.g.*, RP at 33:12–21, 164:11–17.

Dividing ownership of community property shares of closely-held entities equally between divorcing parties is well within the discretion of the trial court. The Division III case, *In re Marriage of Zier*, 136 Wn. App. 40, 147 P.3d 624 (2006), *review denied*, 162 Wn.2d 1008 (2007), is instructive. In *Zeir*, a married couple were gifted stock in a closely-held corporation as their separate property. *Id.* at 43–44. The wife purchased additional stock in the corporation, again as her separate property. *Id.* at 44. Later, for tax purposes, the couple executed an agreement expressly converting their separate stock ownership in the corporation to community property ownership. *Id.* at 44–45. When the couple later divorced, the court relied on the agreement, characterized the stock as community property, and divided it equally between the wife and husband. *Id.* at 44. On appeal, the wife challenged the characterization of the stock as community property. *Id.*

In affirming the trial court's characterization of the stock as community property, Division III expressly stated that the trial court's

decision to divide ownership of the corporation equally between the parties was not an abuse of discretion:

Here, the court divided the community shares in a manner that each party received an equal share of the Telect stock. The court expressed its intent in its conclusions of law to divide the community estate equally. Given all, the court's treatment of the Telect stock does not warrant reversal of the court's property distribution. The court made a fair and equitable disposition based upon consideration of all the circumstances of the marriage.

Id. at 46.

Here the court's exercise of discretion was equally proper. After "consideration of all the circumstances of the marriage" offered at trial, and in an effort to make an "equitable disposition" of the community assets, the Court awarded equal, 50-percent ownership of the Baker Flats and Cinco entities to Ms. Summers and Mr. Ludwig.

Ms. Summers challenges the trial court's division of Baker Flats/Cinco not on (in)equitable grounds, but rather on grounds that equal division leaves the parties as "tenants in common" of Baker Flats/Cinco. App. Brief at 7–9. Ms. Summers's argument is unpersuasive for at least two reasons.

First, Ms. Summers raises this argument for the first time on appeal. Nowhere in her Trial Brief (CP 1–9), her trial testimony (*See, generally*, RP at 147–224), or her "Motion and Subjoined Memorandum

Seeking Reconsideration” (CP 46–55), does Ms. Summers request or argue that the court award 100-percent ownership of Baker Flats/Cinco to one party so as to avoid a tenancy-in-common. Ms. Summers’s Trial Brief generically references Baker Flats/Cinco (CP 1), and her Reconsideration Motion argues only that equal division of property is *per se* inequitable (CP 52–53)—an argument the trial court properly rejected “in all respects” (CP 80). “Generally, appellate courts will not entertain issues raised for the first time on appeal. The rule reflects a policy encouraging efficient use of judicial resources and refusing to sanction a party’s failure to point out an error that the trial court, if given the opportunity, might have been able to correct to avoid an appeal.” *In re Guardianship of Cornelius*, 181 Wn. App. 513, 533, 326 P.3d 718 (2014).

Second, even if Ms. Summers’s argument was properly before this Court, it sounds in real property, not corporate stewardship. A tenancy-in-common is a concurrent interest in real property wherein the property owners (cotenants) have “unity” of possession, that is, each cotenant “has an undivided interest in the whole of the property” and an “equal share in the property.” John Weaver, *Concurrent Interests in Land*, WASHINGTON REAL ESTATE DESKBOOK SERIES: REAL ESTATE ESSENTIALS (2009), Vol. 1, Ch. 3, § 3.2(1) (citing *Iredell v. Iredell*, 49 Wn.2d 627, 305 P.2d 805 (1957)).

And although Ms. Summers is correct that courts have a “duty to not award property to parties as tenants in common” (App. Brief at 7), the purpose of this duty sounds in real property: to avoid “future forced sale and partitions actions.” *Stokes v. Polley*, 145 Wn.2d 341, 347–48, 37 P.2d 1211 (2001); *also id.* at 347–351 (holding that a trial court’s award of one-half of the “equity” in real property in a dissolution action did not create concurrent interests in the real property itself). Similar cases limit application of a court’s “duty” to avoid tenancies-in-common in dissolution actions to divisions of real property. *See, e.g., Bernier v. Bernier*, 44 Wn.2d 447, 449–50, 267 P.2d 1066 (1954) (trial court’s distribution of ownership of community home to divorcing couple as tenants-in-common improper).

Here, Baker Flats is not real property; it is an artificial entity formed under the Washington business corporation act, RCW Title 23B. Likewise, Cinco Properties is a limited liability company formed under the Washington limited liability company act, RCW ch. 25.15. Neither the Corporation Act nor the LLC Act contemplates ‘covenant’ ownership of artificial entities. Under both Acts, owners of artificial entities own percentages of the whole entity, not “undivided interests in the whole.” For example, LLC members are entitled to distributions based on their proportional ownership contribution, or “allocation,” to the LLC. RCW

25.15.206 (“Allocation of Distributions”). And corporation shareholders are entitled to vote based on their proportional shares of ownership. RCW 23B.07.210 (“Voting Entitlement of Shares”).

Here, it is Cinco Properties, LLC that owns the real property underlying the Baker Flats/Cinco storage business, not Mr. Ludwig or Ms. Summers. The court’s equal allocation of percentage ownership of the entities did not change this. The court’s dissolution order did not create a tenancy-in-common. Ms. Summers’s argument to the contrary fails.

B. The trial court’s \$77,000 valuation of Clearwater was within the range of values offered at trial and therefore not an abuse of discretion. Ms. Summers’s argument to the contrary is based on a demonstrably false statement.

A court abuses its discretion in valuing property when it assigns a value “not within the scope of any of the evidence in the case.” *In re Marriage of Soriano*, 31 Wn. App. 432, 435, 643 P.2d 450 (1982). But where “the value placed upon the property was greater than that given by one witness and less than that presented by another witness, the court had substantial evidence to support its findings.” *Id.* Here, the trial court’s valuation of Clearwater was within the values presented at trial and therefore supported by substantial evidence.

Rick Linder, a third-party evaluator hired by Ms. Summers and Mr. Ludwig in anticipation of trial, estimated the value of Clearwater to be

between \$94,000 and \$127,000. RP at 60:4–11. Mr. Ludwig valued the business in his trial brief at \$50,000 (CP 14), and testified that if offered that amount, he would accept it: “If somebody paid me 50,000 or a hundred, they can take it.” (RP at 59:16–17). Ms. Summers did not testify as to her opinion of the company’s value in either her trial brief (CP 1–9) or at trial. After considering the evidence, the court valued the business at \$77,000—an amount well within the range of values presented at trial. CP 42.

Ms. Summers assigns error to the trial court’s valuation, arguing that the business should be valued at \$127,000—the top of Mr. Linder’s estimate. App. Brief at 9–12. Ms. Summers’s preferred valuation is erroneous for at least two reasons. First, when a trial court is presented with differing, credible valuations, its wholesale adoption of one valuation over the other likely constitutes reversible error. *See In re Marriage of Sedlock*, 69 Wn. App. 484, 491, 849 P.2d 1243, *review denied*, 122 Wn.2d 1014 (1993) (“If the trial court had wholly adopted the approach of *either* [of two experts], **this court would be constrained to affirm**. Both are wholly credible experts. As their respective testimony indicates, reasonable minds can differ regarding the approach to business valuation issues.”) (italics original, boldface added).

Second, Ms. Summers’s assignment of error is based on a demonstrably false statement to this Court. Ms. Summers states that she and Mr. Ludwig “stipulated to a joint property matrix which placed the value of the business at \$127,000.” App. Brief at 11. This statement is false and Ms. Summers knows it to be false. The only stipulation made regarding Mr. Linder’s valuation was that it would be admissible at trial. RP at 5:8–21 (stipulating to admissibility of all 29 trial exhibits).

Ms. Summers offered the same false statement to the trial court on reconsideration. CP 51 (“The parties stipulated in their respective trial admissions pre-trial and at trial that the valuation of the business is \$127,000.”). The trial court confirmed that no such stipulation exists in the record and that the parties’ trial briefs contradicted Ms. Summers’s false claim:

No Evidence of a Stipulation as to Value of Clearwater

The court could not find **any** written stipulation that the parties had agreed to a value for Clearwater Construction. **Indeed, Petitioner’s Trial Brief lists the value at \$50,000.**

The court does recall the parties stipulated to **the admissibility** of one expert’s opinion of the value. **There was no stipulation as to the value of that asset.** Had there been the court would reconsider its decision on this issue.

CP 78 (italics original, boldface added).

Just as Ms. Summers did not identify the alleged stipulation's location in the record on reconsideration (*see* CP 51–52), she does not identify where in the appellate record the alleged stipulation can be found (App. Brief at 9–12). This is because no such stipulation exists or existed.³

The trial court's \$77,000 valuation of Clearwater was within the range of values presented at trial and therefore proper as a matter of law. Where the trial court has weighed the evidence, the reviewing court “will not substitute [its] 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).

C. The trial court's award of \$48,000 in additional spousal maintenance to Ms. Summers was properly made after consideration of the appropriate statutory factors and therefore not an abuse of discretion.

An award of maintenance is within the broad discretion of the trial court. *In re Marriage of Terry*, 79 Wn. App. 866, 869, 905 P.2d 935 (1995) (citing *In re Mathews*, 70 Wn. App. 116, 123, 853 P.2d 462, *review denied*, 122 Wn.2d 1021 (1993)). The Court of Appeals will find an abuse of discretion “only if the trial court bases its award or denial of spousal

³ Because Ms. Summers's counsel signed Ms. Summers's “Brief of Appellant” (App. Brief at 18), the false statement identified above likely violates RPC 3.3(a)(1): “A lawyer shall not knowingly: make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

maintenance on untenable grounds or for untenable reasons.” *Terry*, 79 Wn. App. at 869.

RCW 26.09.090 provides the courts with a non-exclusive list of “factors” to consider when determining whether to award spousal maintenance:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage or domestic partnership;
- (d) The duration of the marriage or domestic partnership;
- (e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and
- (f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

RCW 26.09.090(1)(a)–(f).

Here, after considering the above statutory factors, the trial court awarded Ms. Summers \$48,000 of maintenance in addition to the maintenance she had been receiving since “early on in this dissolution”:

Maintenance payments began early on in this dissolution. Respondent was advised to find employment early on in this dissolution.

...

Two additional years of maintenance, considering the economic circumstances of the parties, their ages, education and experience, and the duration of the marriage is what the court determined to be reasonable. The court still does.

CP 79.

Ample evidence supports the court's award. For example, the Court considered testimony from Ms. Summers that she was a "45-year-old entrepreneur, business owner, senior executive officer, educated and intelligent woman." CP 56, 79. Ms. Summers also testified that she has a new \$10,000-per-month "Float Spa" business planned out and ready to implement. RP 169:16–174:9. Ms. Summers's testimony convinced the court that she was "young, intelligent and ambitious" and that her Float Spa business was set up for success:

The court was presented with a young, intelligent and ambitious Respondent who wanted to start her own business after accumulating years of experience in the operation of the parties' storage business.

...

The respondent convinced the court that her business plan was well thought out and would probably result in her owning a business well suited to the Chelan/Manson area and the well-to-do tourists and part-time residents.

CP 78–79.

Considering the above and the fact that the trial court awarded Ms. Summers the family home (CP 42), a cash payout of \$136,000 (CP 39), and 50% of Baker Flats/Cinco (and 40% of its profits) (CP 39–40, 42), the award of additional maintenance was proper and well within the trial court’s broad discretion. No “untenable grounds” or “untenable reasons” underlie the additional maintenance award. *Terry*, 79 Wn. App. at 869.

In assigning error to the trial court’s maintenance award, Ms. Summers offers a material misrepresentation to this Court: Ms. Summers misrepresents the length of her marriage. Ms. Summers testified at trial that she and Mr. Ludwig were married for less than 15 years:

Q: Ms. Ludwig, how long have you been married to your husband?

A: Coming up on 15 years.

RP at 147:22–24.

In her Brief to this Court, Ms. Summers repeatedly states that her marriage was one of 17 years. *E.g.*, App. Brief at 3, 16, 17, 18. Ms. Summers even argues, without citation to authority, that “there is no material difference between a marriage of 17 years and a marriage of 25 years.” App. Brief at 17. Ms. Summers presents no valid basis to warrant reversal of the trial court’s additional maintenance award.

VI. RAP 18.1 FEE REQUEST

Mr. Ludwig requests an award of his fees and costs on appeal under RCW 26.09.140 and RAP 18.9. “Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys’ fees in addition to statutory costs.” RCW 26.09.140. An award of fees is proper when a party “files a frivolous appeal.” RAP 18.9(a). An appeal is “frivolous” when “there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there is no reasonable possibility of reversal.” *Streater v. White*, 26 Wn. App. 430, 434–35, 613 P.2d 197 (1980).

Here, Ms. Summers’s appeal is frivolous. The Appellate Brief lacks citation to the record, contains material misrepresentations, and presents no facts or arguments that could create a debatable issue. Each trial court decision from which Ms. Summers complains was based on ample evidence in the record and therefore well within the trial court’s broad discretion to “assess the assets and liabilities of the parties and determine what is fair, just, and equitable under all the circumstances.” *Brewer*, 137 Wn.2d at 679. No reasonable minds could differ.

VII. CONCLUSION

The Court should affirm the trial court's November 9, 2017 Final Divorce Order (CP 35-44) and January 4, 2018 Order on Motion for Reconsideration (CP 81-82). Mr. Ludwig should also be awarded his attorneys' fees for this appeal.

Respectfully submitted the 14th day of August, 2018.

JEFFERS, DANIELSON, SONN AND AYLWARD, P.S.

By  _____
H. Lee Lewis, WSBA No. 46478
Attorneys for Respondent

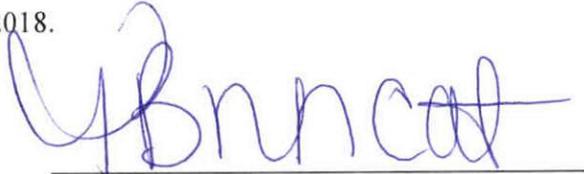
CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2018, I electronically filed the foregoing with the Clerk of the Court using the Washington State Appellate Court's Portal electronic filing System. Notice of this filing will be sent to the parties listed below by operation of the Court's e-filing system. Parties may access this filing through the Court's system.

Scott A. Volyn, WSBA # 21829
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Attorneys for Appellant

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED and DATED at Wenatchee, Chelan County, Washington,
this 14th day of August, 2018.



TEISHA R. BRINCAT

JEFFERS, DANIELSON, SONN, & AYLWARD P.S.

August 14, 2018 - 11:47 AM

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