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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In re the Marriage of
ERIC B. EDWARDS,
Appellant/Cross-Respondent,
v.
JUDITH L. EDWARDS,
Respondent/Cross-Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR YAKIMA COUNTY
THE HONORABLE GAYLE HARTHCOCK

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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TABLE OF CONTENTS

I. CROSS-REPLY ARGUMENT1
II. CONCLUSION 4

TABLE OF AUTHORITIES

	Page(s)
STATE CASES	
<i>GTE Commc'n Sys. Corp. v. State of Wash., Dep't of Revenue, 49 Wn. App. 532, 744 P.2d 638 (1987)</i>	2
<i>Lindsay v. Pac. Topsoils, Inc., 129 Wn. App. 672, 120 P.3d 102 (2005), rev. denied, 157 Wn.2d 1011 (2006)</i>	1
<i>Marriage of Barnett, 63 Wn. App. 385, 818 P.2d 1382 (1991)</i>	1
<i>Marriage of Foley, 84 Wn. App. 839, 930 P.2d 929 (1997)</i>	2
<i>Marriage of Harrington, 85 Wn. App. 613, 935 P.2d 1357 (1997)</i>	1
<i>Marriage of Knight, 75 Wn. App. 721, 880 P.2d 71 (1994), rev. denied, 126 Wn.2d 1011 (1995)</i>	1
<i>Rufer v. Abbot Laboratories, 154 Wn.2d 530, 114 P.3d 1182 (2005)</i>	2
STATUTES	
RCW 19.52.020	2
RCW 26.09.090	3

I. CROSS-REPLY ARGUMENT

The husband does not dispute that the trial court provided no reason for awarding interest at less than the statutory rate on the wife's judgment, which represents 93% of her award of the community property. In failing to do so, the trial court abused its discretion. *Marriage of Harrington*, 85 Wn. App. 613, 631, 935 P.2d 1357 (1997) (a trial court abuses its discretion in awarding less than statutory interest on a judgment, absent stating adequate reasons for doing so); *see also Marriage of Knight*, 75 Wn. App. 721, 731, 880 P.2d 71 (1994), *rev. denied*, 126 Wn.2d 1011 (1995). By awarding her less than the statutory rate of interest, the trial court deprives the wife of adequate compensation for the husband's use of her share of the marital estate, and gives the husband little "financial incentive" to timely pay the judgment. *See Lindsay v. Pac. Topsoils, Inc.*, 129 Wn. App. 672, 678, ¶ 13, 120 P.3d 102 (2005), *rev. denied*, 157 Wn.2d 1011 (2006); *Marriage of Barnett*, 63 Wn. App. 385, 387, 818 P.2d 1382 (1991).

In defending the trial court's decision, the husband argues that if statutory interest of 12% had been imposed on the judgment, his monthly payment amortized over 20 years would be \$21,608.04. (Cross-Resp. Br. 13) But that is the point of awarding the maximum

rate permitted under RCW 19.52.020 – to encourage the judgment debtor to pay off the judgment. *See e.g. Rufer v. Abbot Laboratories*, 154 Wn.2d 530, 553, ¶ 40, 114 P.3d 1182 (2005) (a judgment debtor who wishes to avoid the accrual of post-judgment interest need only pay the judgment promptly). Statutory interest is intended to, and would, encourage the husband to pay the judgment sooner rather than later. “One faced with a high interest rate . . . is given incentive not to be delinquent in the first place and, if delinquent, to abbreviate the period of interest by prompt payment.” *GTE Commc'n Sys. Corp. v. State of Wash., Dep't of Revenue*, 49 Wn. App. 532, 536, 744 P.2d 638 (1987).

The trial court's decision instead places the wife in the position of a “soft money” lender to the husband, leaving her without the vast majority of her property award and undermining the policy that “spouses are entitled to receive their share of the community property within a reasonable time.” *Marriage of Foley*, 84 Wn. App. 839, 844, 930 P.2d 929 (1997). The trial court's decision fails to provide any incentive to the husband to promptly pay at least some portion of the equalizing judgment to the wife. For instance, if the husband receives a windfall, such as the six-figure tax refunds that the parties had routinely received in the past (RP 76), the husband

has no incentive to use those funds to pay any more than the minimum monthly amount towards the wife's judgment, exacerbating the inequity of the reduced interest rate.

The husband argues that the wife was not entitled to statutory interest because the trial court "imposed the 'maintenance penalty' of \$3,500 for every month that Mr. Edwards was unable to pay the monthly judgment payment." (Cross-Resp. Br. 13) But the trial court's award of \$2,500 monthly spousal maintenance to the wife was separate and apart from her property award, and was based on the trial court's consideration of RCW 26.09.090, in particular the length of the marriage (32 years) and the fact that the wife has less than half the income of the husband. (See Response/Cross-Appeal. Br. § V. Argument C) The \$1,000 monthly "penalty," which is the equivalent of .06% annual interest on the judgment – less than 1/15th of one percent – does nothing to serve the dual purpose of statutory interest, which is to compensate the wife for the loss of use of her money and incentivize the husband to timely pay off the judgment. Thus, the purported "maintenance penalty" does not correct the trial court's error in awarding the wife less than the statutory rate of interest on her judgment.

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 28, 2019, I arranged for service of the foregoing Reply Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

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Sarah N. Eaton

SMITH GOODFRIEND, PS

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