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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

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In re the Marriage of

ERIC B. EDWARDS,

Appellant/Cross-Respondent,

v.

JUDITH L. EDWARDS,

Respondent/Cross-Appellant.

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

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# BRIEF OF RESPONDENT/CROSS-APPELLANT

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## TABLE OF CONTENTS


I. INTRODUCTION ..... 1

II. CROSS-APPEAL ASSIGNMENT OF ERROR ..... 1

III. CROSS-APPEAL STATEMENT OF ISSUE ..... 2

IV. RESTATEMENT OF FACTS ..... 2

A. The parties were married for 32 years, and raised three children, supported by the family business. ..... 2

B. The wife worked part-time as a nurse while raising the parties' three children; back issues later prevented her from working more than part-time. The wife now earns $4,750 gross a month. ..... 3

C. Along with the husband's two brothers, the parties own a one-third interest in Chief Orchards, which owns a one-third interest in Frosty Packing, ..... 4

1. The husband received nearly $15,000 each month from Chief and Frosty, and Chief paid many of the parties' expenses. By the time of trial, the husband was receiving $10,000 per month from Chief alone. ..... 6

2. The wife's expert valued the parties' interest in Chief, including Chief's interest in Frosty, at $4 million. The husband did not present expert testimony. ..... 8

a. Frosty valuation. ..... 8

b. Chief valuation. ..... 12

D. After a three-day trial, the trial court divided the marital estate equally, with an equalizing judgment to effect the property division, and awarded the wife maintenance and fees..... 14

V. RESPONSE ARGUMENT .....17

A. The trial court's valuation of the community's interest in Chief and Frosty is supported by substantial evidence. (Response to App. Br. 18-24) .....17

B. The trial court was not required to keep the parties co-owners in Chief based on the husband's request on reconsideration. (Response to App. Br. 24-26) ..... 23

C. The trial court's maintenance award was well within its discretion. .....28

1. Substantial evidence supports the trial court's finding that the wife, who works part-time and has half the husband's income, is in need of maintenance. (Response to App. Br. 28-29) ..... 29

2. The trial court did not abuse its discretion in awarding the wife both maintenance and an equalizing judgment. (Response to App. Br. 30-32, 34-36).....30

a. Substantial evidence supports the trial court's finding that the husband had the ability to pay the wife maintenance..... 31

b. An award of property to the wife is not "income" that she is required to exhaust to support herself. .....32

c. Maintenance is not an improper "double dip" of the property award.....36

D. The trial court did not abuse its discretion in awarding fees to the wife. (Response to App. Br. 36-39).....37

E. The trial court erred in awarding less than the statutory interest rate on the fee and equalizing judgments. (Cross-Appeal, and Response to App. Br. 32-34).....38

1. The trial court's order encourages the husband to delay paying the wife her share of the community property within a reasonable time.....38

2. After failing to award statutory interest on the wife's equalizing judgment, it was wholly proper for the trial court to order the husband to pay an additional $1,000 in spousal maintenance during those months he fails to pay towards the judgment.....43

F. This Court should award fees to the wife on appeal.....44

VI. CONCLUSION.....45

## TABLE OF AUTHORITIES

**Page(s)**

**STATE CASES**

*Berol v. Berol*,
37 Wn.2d 380, 223 P.2d 1055 (1950).....39

*Brewster v. Brewster*,
113 Wash. 551, 194 P. 542 (1920) ..... 24-26

*Burrill v. Burrill*,
113 Wn. App. 863, 56 P.3d 993 (2002),
*rev. denied*, 149 Wn.2d 1007 (2003) ..... 18

*Dependency of K.R.*,
128 Wn.2d 129, 904 P.2d 1132 (1995).....20

*Green v. McAllister*,
103 Wn. App. 452, 14 P.3d 795 (2000),
*as amended on clarification* (Nov. 22, 2000) .....40

*GTE Commc'n Sys. Corp. v.*
*State of Wash., Dep't of Revenue*,
49 Wn. App. 532, 744 P.2d 638 (1987) .....40

*Koher v. Morgan*,
93 Wn. App. 398, 968 P.2d 920 (1998) ..... 19

*Leslie v. Verhey*,
90 Wn. App. 796, 954 P.2d 330 (1998),
*rev. denied*, 137 Wn.2d 1003 (1999) .....44

*Lindsay v. Pac. Topsoils, Inc.*,
129 Wn. App. 672, 120 P.3d 102 (2005),
*rev. denied*, 157 Wn.2d 1011 (2006).....40

*Lucker v. Lucker,*
71 Wn.2d 165, 426 P.2d 981 (1967) .....20

*Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.,*
123 Wn.2d 678, 871 P.2d 146 (1994).....22

*Marriage of Akon*,
160 Wn. App. 48, 248 P.3d 94 (2011) ..... 18

*Marriage of Barnett*,
63 Wn. App. 385, 818 P.2d 1382 (1991)..... 33, 36-37, 40

*Marriage of Estes,*
84 Wn. App. 586, 929 P.2d 500 (1997)..... 27

*Marriage of Foley,*
84 Wn. App. 839, 930 P.2d 929 (1997)..... 41

*Marriage of Gillespie*,
89 Wn. App. 390, 948 P.2d 1338 (1997).....17

*Marriage of Harrington*,
85 Wn. App. 613, 935 P.2d 1357 (1997) ..... 38-39

*Marriage of Knight*,
75 Wn. App. 721, 880 P.2d 71 (1994), *rev. denied,*
126 Wn.2d 1011 (1995).....39

*Marriage of Manry*,
60 Wn. App. 146, 803 P.2d 8 (1991) ..... 19

*Marriage of Mathews*,
70 Wn. App. 116, 853 P.2d 462, *rev. denied*,
122 Wn.2d 1021 (1993)..... 19

*Marriage of Morrow*,
53 Wn. App. 579, 770 P.2d 197 (1989) .....29

*Marriage of Sedlock*,
69 Wn. App. 484, 849 P.2d 1243, *rev. denied*,
122 Wn.2d 1014 (1993)..... 18-19

*Marriage of Soriano*,
31 Wn. App. 432, 643 P.2d 450 (1982) ..... 18

*Marriage of Stenshoel*,
72 Wn. App. 800, 866 P.2d 635 (1993)..... 35

*Marriage of Washburn*,
101 Wn.2d 168, 677 P.2d 152 (1984) ..... 28-29

*Marriage of Wright*,
179 Wn. App. 257, 319 P.3d 45 (2013), *rev. denied*,
180 Wn.2d 1016 (2014) ..... 29, 34-35

*Marriage of Zier,*
136 Wn. App. 40, 147 P.3d 624 (2006),
*rev. denied*, 162 Wn.2d 1008 (2007) .....26-27

*Mason v. Mason,*
40 Wn. App. 450, 698 P.2d 1104, *rev. denied*,
104 Wn.2d 1017 (1985).....38

*Northwick v. Long*,
192 Wn. App. 256, 364 P.3d 1067 (2015).....20

*Pier 67, Inc. v. King County,*
89 Wn.2d 379, 573 P.2d 2 (1977) .....22

*Riverhouse Development,*
167 Wn. App. 221, 272 P.3d 289 (2012).....23

*Shaffer v. Shaffer*,
43 Wn.2d 629, 262 P.2d 763 (1953)..... 23-24, 28

*Thompson v. Thompson*,
82 Wn.2d 352, 510 P.2d 827 (1973) ..... 33-34

*Walsh v. Reynolds*,
183 Wn. App. 830, 335 P.3d 984 (2014),
*rev. denied*, 182 Wn.2d 1017 (2015).....38

**STATUTES**

RCW 4.56.110 ..... 2, 38-39

RCW 19.52.020 ..... 2, 38

RCW 26.09.080 ..... 26

RCW 26.09.090 ..... 28-29

RCW 26.09.140 ..... 37, 44

**OTHER AUTHORITIES**

RAP 18.1 ..... 17, 44

## I. INTRODUCTION

This Court should affirm on the husband's appeal of the trial court's decisions valuing the parties' property and awarding the wife maintenance and fees in dissolving the parties' 32-year marriage. The trial court's valuation of the parties' interest in the husband's family business and the trial court's award of maintenance and fees to the wife, whose income is half the husband's, was well within its discretion and supported by findings based on substantial evidence. If the trial court committed any error, it was in providing for less than statutory interest on the fee award and on the equalizing judgment, to the wife, which the trial court allowed the husband to pay over 20 years – and towards which, to date, he has made no payments at all. On this ground, and this ground alone, this Court should reverse and direct the trial court on remand to impose 12 percent interest, to encourage prompt payment of the judgments. This Court also should award the wife fees on appeal.

## II. CROSS-APPEAL ASSIGNMENT OF ERROR

The trial court erred in allowing interest at 4 percent, rather than the statutory rate of 12 percent, on the wife's fee award and equalizing property judgment. (CP 51, 52-53)

## III. CROSS-APPEAL STATEMENT OF ISSUE

A judgment must comply with RCW 4.56.110, which requires that interest on judgments accrue at the maximum rate permitted under RCW 19.52.020, which is 12 percent. Did the trial court err in imposing interest of only 4 percent without providing any reason for its decision to impose less than the statutory rate?

## IV. RESTATEMENT OF FACTS

### A. The parties were married for 32 years, and raised three children, supported by the family business.

Respondent Judith Edwards and appellant Eric Edwards, both age 57, were married on August 13, 1983. (RP 29; CP 3-4) They had three children: a son born in 1985, a daughter born in 1987, and a son born in 1989. (RP 341) Their older son died in a car accident several years prior to trial. (RP 30, 438)

After more than 32 years of marriage, Eric filed a petition to dissolve the parties' marriage on August 31, 2015. (CP 3) Trial was held before Yakima County Superior Court Judge Gayle Harthcock ("the trial court"), beginning February 5, 2018. (RP 1) The decree dissolving the parties' marriage was entered on June 15, 2018. (CP 51-66)

Delay in resolution of the matter was due in part to issues related to the valuation of the parties' one-third interest in Chief

Orchards Packing & Storage, LLC ("Chief"), which in turn owns a one-third interest in Frosty Packing & Storage ("Frosty"). The parties own Chief with Eric's two brothers, who also each own a third of Chief. (RP 32) The parties' interest in Chief was their most significant asset, and the income derived from Chief supported the parties' lifestyle and retirement planning during the marriage. (*See* RP 363-64)

**B. The wife worked part-time as a nurse while raising the parties' three children; back issues later prevented her from working more than part-time. The wife now earns $4,750 gross a month.**

Judith, a registered nurse, was not involved in the daily management and operation of Chief, which was left to Eric and his brothers. (RP 31, 350-51) Except for before the parties' older son was born (in 1985), and for two to three years shortly after the birth of their younger son (in 1989), Judith has never worked more than part-time (RP 342-43); Eric's income alone was more than ample to support the family and their lifestyle and Judith was raising the parties' three children. (*See* RP 31; CP 41-42) In the later years of the marriage, Judith could not work more than part-time because of back issues that limit her ability to stand for long periods of time or do heavy lifting (RP 343-45) In January 2012, Judith had surgery for a spinal fusion to repair "facet joint fractures." (RP 343-44)

At the time of trial, Judith was working 24 hours per week at a clinic for patients with chronic pain issues. (RP 343, 345) Her hourly rate was $45.60 and at 24 hours per week, she earned gross monthly income of $4,750, or approximately $3,400 net per month. (*See* RP 429; Ex. 2.2; CP 42) The majority of the patients at the clinic where Judith works are obese. (RP 345) Judith must assist these patients on and off the procedure table, which further aggravates her back issues. (RP 345) Judith, age 56 at the time of trial, testified that she would like to retire at age 65. (RP 364)

In considering whether to award Judith maintenance, the trial court found that "the parties agreed during their marriage that [Judith] could work 24 hours a week because they did not need the money. And given, her physical restraints, this is what she is currently capable of working." (CP 43) After considering the income that she earns working part-time (CP 42), the trial court found Judith "is in need of spousal maintenance." (CP 43)

### C. Along with the husband's two brothers, the parties own a one-third interest in Chief Orchards, which owns a one-third interest in Frosty Packing,

The parties formed Chief with Eric's two brothers in 1990. (RP 32) The brothers and their wives each own a one-third equity

interest in Chief. (RP 32) Eric and his brothers manage and control Chief. (RP 32, 179, 350)

When Chief was first formed, it owned a single apple orchard and packed its own fruit and fruit for other growers. (RP 32, 80-82) By the time of trial, Chief owned three apple orchards – a total of 250 acres. (RP 32; *see* Ex. 4.1) The second orchard, which Eric referred to as a "gold mine," was purchased in 2012. (RP 32, 351; *see* Ex. 4.1) The purchase of the third orchard was completed after the parties separated. (RP 184-85; *see also* Ex. 4.1) According to Eric, Chief "committed" to the orchard in 2015, and used the 2016 proceeds from the 2015 crop to pay the $1 million purchase price. (RP 184)

Independent of Chief, after the parties' separated, Eric purchased another orchard, under the name "Washington Gold," with the parties' surviving son for $600,000. (RP 77, 185) Judith stipulated that the community owned no interest in this orchard. (RP 77; Ex. 1.21) The Washington Gold orchard and business entity was awarded to Eric but not valued in the dissolution action. (*See* CP 64)[1]

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[1] After separation, Judith purchased a townhome, using some money from an inheritance she received from her mother and tax refunds. (RP 394) At the time of trial, she owed more than $262,500 on the mortgage. (RP 414) Similar to the Washington Gold asset, the townhome was awarded to Judith but not valued in the dissolution action.

Chief partnered with Frosty, which has its own packing operation and 1,700 acres of orchards, in 2010. (RP 33, 35, 83; Ex. 4.1) Chief owns a third interest in Frosty; the other two-thirds interest is owned by the Martinez family, who own Martinez Fruit. (RP 33; Ex. 4.1) Once Chief acquired its interest in Frosty, it transferred its packing operation to Frosty. (RP 80-82; Ex. 4.1)

**1. The husband received nearly $15,000 each month from Chief and Frosty, and Chief paid many of the parties' expenses. By the time of trial, the husband was receiving $10,000 per month from Chief alone.**

During the marriage, Eric managed the approximately 250 acres of orchards owned by Chief as well as the 1,700 acres of orchards owned by Frosty. (RP 32, 35) Frosty paid Eric approximately $7,833 and Chief paid Eric $7,000 each month. (RP 34-35) In addition, Chief paid many of the parties' expenses, including cell phones, health insurance, car insurance, and Eric's gas. (RP 358) With the exception of the retirement savings Judith made through her employment as a nurse, the parties did not save for retirement, based on the understanding that their interest in Chief would fund the parties' retirement. (RP 361, 363-64, 441-42)

By the time of trial in February 2018, Eric was no longer receiving a management fee from Frosty, which had terminated his

management role on November 2, 2017. (RP 75, 105) That same day, Frosty and Martinez Fruit sued Chief seeking dissolution of the partnership (RP 106); the lawsuit was ongoing at the start of trial. (RP 121-22) To make up for the loss of his management fee from Frosty, Eric's monthly draw from Chief was increased to $10,000. (RP 135)

Due to the volatile nature of the fruit grower industry, in addition to the draws from Chief, the parties often received tax refunds if there were tax losses in previous years. During the parties' 2.5-year separation, for instance they received a total of $598,000 in refunds. (RP 76) Eric loaned $345,000 of the community tax refund to Chief during separation, and lead Judith to believe it would be repaid "fairly soon." (RP 76, 390) Judith was never repaid for her half of the tax refund loaned to Chief (RP 390), and the trial court awarded Judith a "claim" against Chief for $172,500. (CP 87)

In deciding whether Eric had the ability to pay the maintenance that the trial court found Judith needed, the trial court considered Eric's "history of spending, tax returns, and access to funds through Chief (it is not clear what access to funds he has from Washington Gold or other entities if any) as well as Chief's ability to

acquire $1.6 million in additional acreages, it is clear to the Court that he has the ability to pay maintenance." (CP 43)

**2. The wife's expert valued the parties' interest in Chief, including Chief's interest in Frosty, at $4 million. The husband did not present expert testimony.**

After Eric filed for dissolution in August 2015, Judith sought to retain an expert to value the parties' interest in Chief, including Chief's interest in Frosty. After the original expert retained by Judith decided he was incapable of performing the necessary valuation (RP 457), Judith retained CPA Kevin Grambush in October 2016. (RP 237) After some delay (due in part to a lack of funds to retain him, and then in not getting all of the necessary financial documentation from Eric) (RP 468-70, 476-78; Supp. CP 125, 127-35), Grambush completed his valuation on April 13, 2017. (Ex. 4.1)

As part of his valuation, Grambush reviewed financial documents obtained through discovery, interviewed Eric, and toured the facilities. (RP 239) Grambush valued Chief and its interest in Frosty as of December 31, 2015 – the end of the year the parties separated. (RP 241)

**a. Frosty valuation.**

After considering other approaches to value Frosty, Grambush chose the income approach, using the capitalized

earnings method.[2] (RP 241; Ex. 4.1) Grambush acknowledged that business cycles for fruit packing operations tend to be long and volatile. (RP 238) Grambush noted there was significant volatility between 2010 and 2015, with "a couple of years on either end with income between 1 and 2 million dollars. And in the middle, we've got income over 14 million dollars." (RP 246) Grambush determined that between 2010 and 2015, Frosty had an "average normalized net income"[3] of $7.311 million. (*See* RP 247-48; Ex. 4.1) Because apple prices and crop volume were higher than usual during this period, Grambush discounted the income for that period by 14 percent even though "growers all over are replacing trees with more efficient trees that will increase the crop volume" in the future. (RP 247)

After applying the 14% discount, Grambush concluded that Frosty had "expected future earnings" of $6.3 million annually. (RP 248; Ex. 4.1) After further adjustments to account for federal income taxes, depreciation, capital costs, and inflation, Grambush

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[2] The "capitalized earnings method is mathematically a shortcut to determine the present value of the cash flows generated by the company in each year in the [future]." (RP 252)

[3] "Normalized net income is the amount of income that was available to the owner after adjusting for unusual items which are nonrecurring or for items that the owner can control." (RP 247)

determined that Frosty had an annual "expected net cash flow" of $4.332 million. (RP 249, 252; Ex. 4.1)

Grambush then used a 20 percent rate of return for Frosty, "which is pretty typical for agricultural companies," taking into account its competitive position in the marketplace, the inadequate supply of laborers, the anticipated increase in apple crop, and current economic conditions. (RP 251) Grambush assumed a small, inflation-based growth rate of 2.25 percent, and after deducting that percentage from the rate of return, used 17.75 percent as the capitalization rate.[4] (RP 252)

Applying the capitalization rate of 17.75 percent to the expected cash of flow of $4.332 million, and assuming that all cash comes in on the last day of the year, Grambush calculated the present value of Frosty's cash flow at $24.405 million. (RP 252) Since cash comes in throughout the year, however, Grambush made another adjustment to recognize that the cash comes in sooner rather than later, and calculated a present value of $26.733 million (RP 252-53); and Chief's one-third interest at $8.910 million. (RP 253; Ex. 4.1)

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[4] Capitalization rate is used to determine the present value of the cash flows generated by the company (RP 252); it is the "discount rate less the growth rate." (RP 251)

Because Chief has a minority interest in Frosty, Grambush then used a "lack of control" discount to value Chief's interest in Frosty. (RP 249) In determining the amount of the discount, Grambush looked at the historical "economic disadvantage" to the minority interest holder. (RP 253) Between 2010 and 2015, Grambush saw "virtually no economic disadvantage" to being a minority shareholder. (RP 254) "However, just because it happened in the past doesn't mean it's always going to happen in the future," so Grambush used a lack of control discount of 5 percent. (RP 254) Accordingly, Grambush valued Chief's interest in Frosty at $8.465 million as of December 31, 2015. (RP 257; Ex. 4.1)

As part of his valuation of Chief's interest in Frosty, Grambush also considered the "buy/sell provisions" of the Frosty operating agreement (RP 254), which gives Frosty the option to buy out Chief at fair market value, with all tangible assets discounted by 10 percent. (RP 254; Ex. 1.18) In that scenario, Grambush testified "the worst [Chief] could do would be 10 percent of the net tangible asset value." (RP 254) At the end of 2015, one-third of 90 percent of the net book value was approximately $8.7 million. (*See* RP 256) This amount to be paid to Chief if Frosty exercised the option to buy out Chief (*see*

Ex. 4.1; RP 257), is slightly higher than the $8.465 million value determined by Grambush under the income approach. (RP 257)

**b. Chief valuation.**

In valuing Chief, Grambush initially took a similar approach to Frosty, and used the income approach. (RP 259) However, Grambush ultimately rejected the income approach to value Chief because, even after adjustments, the resulting value was less than the value of Chief's tangible assets. (RP 263) Therefore, Grambush determined that the value of Chief should be limited to its tangible assets. (RP 263) Including Chief's one-third interest in Frosty, Grambush determined the total value of Chief was $12,021,345 (Ex. 4.1), and the parties' one-third interest in Chief is $4,006,714. (RP 263; Ex. 4.1)

Grambush acknowledged that since he completed his valuation, Frosty and Martinez had sued Chief to dissolve their partnership in Frosty. (RP 257) Grambush testified that the litigation had no impact on the valuation of either Chief or Frosty as of the valuation date of December 31, 2015. (RP 258) Grambush acknowledged that the litigation might have some impact on the current value of Chief and Frosty, however, noting that if the result of the lawsuit was that Frosty exercises the option to buy out Chief's

interest in Frosty, Chief would receive a third of 90 percent of the net book value of Frosty under the terms of the buy/sell provision in the Frosty operating agreement, which as of December 31, 2015 was $8.7 million – more than Grambush's valuation of Chief's interest in Frosty. (RP 256, 258)

The only evidence presented by Eric on the value of the parties' interests in Chief and Frosty was his own testimony. Eric testified that the value of the parties' interest in Frosty was $750,000, which he said took into account the pending lawsuit and the current state of the market (RP 120) – although Eric himself presented no evidence of the potential consequences of the Frosty litigation. Eric testified that the value of the parties' interest in Chief, not including Chief's interest in Frosty, was $313,174. (RP 118) Eric presented no expert testimony to rebut Grambush's valuation or to support Eric's claims of the value Chief or Frosty. Eric had apparently consulted with a business valuator out of Spokane prior to trial, but he declined to present him as an expert witness at trial. (*See* RP 265)

While Eric complains on appeal that Grambush valued the business as of December 31, 2015, rather than a later date (*See* App. Br. 1), the value Eric proposed for Chief also was based on

Grambush's income approach as of December 31, 2015, which Grambush ultimately rejected in favor of the asset approach. (*See* RP 119, 263) Grambush could not in any event have provided an updated valuation, because Eric failed to provide any updated financial records for Chief or Frosty through discovery, even though the requests were continuing in nature. (*See* RP 89-92)

The trial court considered the different approaches used by Grambush to value Chief's interest in Frosty and the parties' interest in Chief. (*See* CP 43-44) The trial court also considered Eric's specific objections to Grambush's valuation, and the values he proffered. (*See* CP 43-44) The trial adopted Grambush's valuation, finding that "his testimony was well-reasoned and credible, based upon the prevailing business valuation standards for similar agricultural businesses." (CP 44)

**D. After a three-day trial, the trial court divided the marital estate equally, with an equalizing judgment to effect the property division, and awarded the wife maintenance and fees.**

The dissolution action was tried over three days, beginning February 5, 2018. After determining the value of the parties' interest in Chief, including Frosty, as well as other assets, the trial court divided the parties' marital estate equally. (CP 62-66) As both parties requested at trial (Exs. 1.1, 2.1), the trial court awarded the

parties' interest in Chief and Frosty to Eric. (CP 64) The trial court also awarded Eric the family residence, a vacation cabin, a time share in Cabo, personal property, and vehicles. (CP 64-65) Judith's property award consisted almost entirely of her $144,000 retirement through her employer, plus her personal property and vehicles. (CP 64-65) Judith was also awarded a "claim" again Chief for her half of the $345,000 community tax refund loaned to Chief, but no specific means to collect it, as the trial court acknowledged it lacked jurisdiction over Chief. (CP 55, 66)

This property division initially left Judith with $144,878.09 in property and Eric with $4,069,736.92. (CP 35) To equalize the property division, the trial court awarded Judith an equalizing judgment of $1,962,429.41. (CP 35) Rather than require Eric to immediately pay the equalizing judgment, the trial court allowed Eric to pay the judgment in monthly installments over 20 years, setting interest at 4 percent, rather than statutory interest of 12 percent. (CP 66)

After finding that Judith had the need for spousal maintenance, and Eric had the ability to pay, the trial court awarded Judith monthly maintenance of $2,500 until she reached age 65, on October 16, 2026. (CP 43, 54) The trial court also ordered that in

any month Eric fails to pay towards the equalizing judgment, he should be required to pay an additional $1,000, or a total of $3,500, to Judith as maintenance. (CP 54)

The trial court also considered Judith's request for reimbursement of fees, based on her need and Eric's ability to pay. (CP 44) By the time of trial, Judith had already paid fees of approximately $31,200 to her attorney, and approximately $36,500 to Grambush for his valuation report. (CP 44) The trial court found that Judith used her share of community tax refunds, and an inheritance from her mother, to pay these fees and costs. (CP 44) According to Eric, he had paid over $100,000 for his own attorney fees and costs, and had also paid between $3,000 and $5,000 to Grambush, pursuant to temporary orders. (CP 44)

The trial court found that Judith would likely incur an additional $15,000 in attorney fees through trial, owe more to Grambush for his trial preparation and testimony, and that her total fees and expenses would exceed $80,000. (CP 44) After finding that Judith had the need for a portion of her fees to be paid, and Eric has the ability to pay a portion of those fees (CP 44-45), the trial court ordered Eric to pay $25,000 towards Judith's attorney fees, costs, and expert fees. (CP 45, 51, 53) The trial court entered a judgment

against Eric for attorney fees and costs awarded to Judith, also with interest at 4 percent. (CP 51, 53)

Eric moved for reconsideration, asking for the first time that the trial court divide the community's interest in Chief between the parties, rather than award it to him alone. (CP 78-79) The trial court denied reconsideration (CP 80), and Eric appeals. (CP 81) To date, as will be addressed in Judith's RAP 18.1 financial declaration, Eric has not paid any portion of the judgments awarded to Judith.

## V. RESPONSE ARGUMENT

### A. The trial court's valuation of the community's interest in Chief and Frosty is supported by substantial evidence. (Response to App. Br. 18-24)

This Court should affirm the trial court's valuation of the community's interest in Chief, including Chief's interest in Frosty, as it was well within the trial court's discretion to adopt the valuation by the wife's expert over the husband's own self-serving testimony proffering a lower value. *Marriage of Gillespie*, 89 Wn. App. 390, 403, 948 P.2d 1338 (1997) (a challenge to a trial court's decision is viewed for abuse of discretion). When the value of an asset as found by the trial court is supported by evidence, appellate courts are "constrained to affirm" whether the trial court wholly adopts the value proffered by one party over the other, or chooses a

"compromise value" between the two. *Marriage of Sedlock*, 69 Wn. App. 484, 491, 849 P.2d 1243, *rev. denied*, 122 Wn.2d 1014 (1993); *see also Marriage of Soriano*, 31 Wn. App. 432, 435, 643 P.2d 450 (1982). Here, the trial court's valuation of the community's interest in Chief is supported by the evidence because it adopted the valuation by the wife's expert witness, whose testimony it found "well-reasoned and credible." (CP 43)

The husband complains that the trial court should have adopted his own testimony as to the value of the parties' "actual, current interest" in Chief. (App. Br. 18) But when a trial court's finding is supported by substantial evidence, "it does not matter that other evidence may contradict it." *Burrill v. Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003). "Substantial evidence is the quantum of evidence sufficient to persuade a rational, fair-minded person the premise is true. In determining the sufficiency of evidence, an appellate court need only consider evidence favorable to the prevailing party." *Marriage of Akon*, 160 Wn. App. 48, 57, ¶ 26, 248 P.3d 94 (2011). "While the court may have assigned values to property different from those suggested by [appellant], the court's valuation of the items was within the scope of the evidence and will not be disturbed."

*Marriage of Mathews*, 70 Wn. App. 116, 122, 853 P.2d 462, *rev. denied*, 122 Wn.2d 1021 (1993).

On a granular level, the husband also criticizes, among other things, the discount rates used by Grambush in valuing the community's interest in Chief and Frosty. (App. Br. 19-21) But trial courts are given "wide latitude" in the weight given expert opinions in valuing assets in a marriage dissolution action. *Sedlock,* 69 Wn. App. at 491. Even if this Court were to "disagree with [the trial court's] reasoning," it should affirm because "[t]o rule otherwise would be to place the appellate courts in the position of *weighing* expert testimony, a position we decline to take." *Sedlock,* 69 Wn. App. at 491 (emphasis in original).

The husband also complains that the valuation adopted by the trial court was "dated," because it was premised on Chief's value near the date of separation, rather than near the date of trial. (App. Br. 20) But the date on which the trial court values an asset is also a matter that will not be disturbed "absent a manifest abuse of discretion." *See Marriage of Manry*, 60 Wn. App. 146, 148, 803 P.2d 8 (1991). "Our Supreme Court has held that the dissolution statutes give courts in divorce proceedings broad discretion to pick an evaluation date that is equitable." *Koher v. Morgan*, 93 Wn. App.

398, 404, 968 P.2d 920 (1998) (citing *Lucker v. Lucker,* 71 Wn.2d 165, 167–68, 426 P.2d 981 (1967)), *rev. denied*, 137 Wn.2d 1035 (1999). Further, the husband should not be heard to complain of the valuation date when his failure to disclose more recent financial data was a large part of the reason a later valuation date could not be provided. *See Dependency of K.R.,* 128 Wn.2d 129, 147, 904 P.2d 1132 (1995) ("Under the doctrine of invited error, counsel cannot set up an error at trial and then complain of it on appeal"); *Northwick v. Long*, 192 Wn. App. 256, 264, ¶ 18, 364 P.3d 1067 (2015) (trial court may draw a negative inference when a party fails to produce relevant evidence within its control).

Finally, the husband complains that the trial court should have considered the impact of the Frosty litigation on the value of Chief's interest in Frosty. (App. Br. 19) But the trial court *did* consider the litigation in valuing Chief's interest. The trial court considered testimony by Grambush that if the Frosty/Chief relationship were to be dissolved (which was the point of the litigation), under the buy/sell agreement Chief could receive *more* than the amount Grambush valued Chief's interest in Frosty. (*See* RP 257-58) While Frosty was not required to exercise that option in the buy/sell agreement, the husband presented no credible evidence

that Frosty would not. As Grambush testified, "there are probably other possibilities" than the option in the buy/sell agreement, but he did not know (RP 258), and the husband did not present any "other possibilities" to the court.

In fact, the husband presented no credible evidence to support his self-serving testimony that the valuation of Chief and Frosty should be less than that determined by Grambush, which the trial court adopted. For instance, while the husband testified that he was willing to accept the value of the parties' interest in Chief, excluding its investment in Frosty, using the income approach rejected by Grambush (RP 118-19), he provided no reason for the trial court to adopt a value for Chief that was significantly less than the value of its tangible assets.[5] Nor did he provide any explanation how he determined the value of the parties' one-third interest in Chief's interest in Frosty at $750,000. (*See* RP 120)

Presumably there were other witnesses who could have testified to the value of Chief and Frosty, the impact of the Frosty litigation, and the future prospects for Chief if the relationship

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[5] The husband asserted the value of the parties' one-third interest in Chief (excluding Frosty) was $313,174.67. (RP 118) However, a one-third interest in Chief's net tangible assets (excluding Frosty) alone was worth $1,185,448.30. (*See* Ex. 4.1; RP 262-63)

between Chief and Frosty were to be dissolved. The husband could have had testimony from the expert witness he hired to review the Grambush valuation to support the husband's criticisms of the discount rates adopted by Grambush, testimony from Chief and Frosty's accountants as to the current financial status of the companies, or testimony from Chief's legal counsel as to the potential consequences and possible outcomes of the Frosty litigation. But the husband chose not to call any witnesses other than himself. "When a party fails to produce relevant evidence within its control, without satisfactory explanation, the inference is that such evidence would be unfavorable to the nonproducing party." *See Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.,* 123 Wn.2d 678, 689, 871 P.2d 146 (1994) (*citing Pier 67, Inc. v. King County,* 89 Wn.2d 379, 385-86, 573 P.2d 2 (1977)).

The trial court was free to adopt Grambush's valuation in its entirety as the more "credible and reasonable" value (CP 44), especially in light of the lack of evidence presented by the husband to support *his* claimed value of Frosty and Chief. This Court should affirm.

**B. The trial court was not required to keep the parties co-owners in Chief based on the husband's request on reconsideration.** (Response to App. Br. 24-26)

Unable to convince the trial court to adopt his own low-ball valuation of Chief and its interest in Frosty and award it to him (*See* Ex. 1.1), the husband argues that the trial court should have awarded each party an interest in Chief. The husband essentially argues that the trial court should have left the parties co-owners in a business in which the wife has never been involved and that is controlled by the husband and his brothers, all based on a request first made on reconsideration. It was well within the trial court's discretion to "refuse to consider an argument that is raised for the first time on reconsideration absent a good excuse," *See Riverhouse Development,* 167 Wn. App. 221, 231, ¶ 23, 272 P.3d 289 (2012), particularly when the feasibility of leaving the wife as co-owner in Chief was never addressed at trial, nor any evidence presented that the husband's brothers, who are also co-owners in Chief, would agree to such an arrangement.

Even had this proposal been timely made, a property distribution cannot leave ex-spouses as co-owners of property without any means of controlling their individual interests. *See Shaffer v. Shaffer*, 43 Wn.2d 629, 262 P.2d 763 (1953). In *Shaffer*,

for instance, the Supreme Court reversed an order awarding the principal community asset, an apartment house, to the parties as tenants in common:

> [T]he result of the decree in the case at bar is to leave the Aloha Street property the same as if it were community property of the parties which had not been before the court for disposition.

43 Wn.2d at 630.

In this case, the wife would be left in a situation even more untenable than the parties in *Shaffer*, who were left as "tenants in common" in real property. The wife would be without any control over her interest in Chief, which is managed by the husband and his brothers. Under the circumstances, the trial court properly declined to place the wife in a situation where she would be deprived of control over a large portion of her property award by leaving the parties as co-owners in Chief.

*Brewster v. Brewster*, 113 Wash. 551, 194 P. 542 (1920) (App. Br. 26) does not support the husband's contention that the trial court abused its discretion in not dividing the community's interest in Chief between them, rather than awarding it to the husband alone as he initially requested. In *Brewster,* the wife appealed a property division that awarded all the community stock in three separate businesses to the husband, and the wife half the book value of the

stock to be paid in nine equal installments. On appeal, the wife argued that the value of the businesses was more than the book value of the stock, and that the true value was in the income received by the parties from the stock.

Consistent with the trial court's reasoning that "it was better for the parties that they have nothing in common, but that their property interests, as near as possible, should be so divided that neither would be required to have dealing with the other," the Supreme Court in *Brewster* affirmed the award to the husband of all the stock in the two businesses over which the husband had full control and management. 113 Wash. at 553-54. However, the Court disagreed that this reasoning supported awarding the husband all of the stock in the third business, over which the husband had no management control, and in which he was only a minority shareholder. The Supreme Court held that the trial court could have awarded the wife half the community stock in that business. *Brewster,* 113 Wash. at 554.

Here, unlike the business considered in *Brewster,* the business at issue here is controlled and managed by the husband. While husband asserts that he is a minority shareholder in Chief, substantial evidence supports the trial court's finding that the

husband and his brothers equally manage and control Chief, as "historically the Edwards brother[s] has worked by consensus together." (CP 44; *see* RP 261, 306-07) Thus, under the rationale of *Brewster,* it was well within the trial court's discretion to award the community interest in Chief to the husband, and to award the wife half its value.

*Marriage of Zier,* 136 Wn. App. 40, 147 P.3d 624 (2006) (App. Br. 24), *rev. denied*, 162 Wn.2d 1008 (2007) also does not support the husband's contention that the trial court was required to divide the community interest in Chief between the parties. *Zier* does not address the proposition the husband makes here – whether the trial court *must*, upon dissolution of their marriage, leave the parties as co-owners in a business controlled by only one spouse. Instead, the issue in *Zier* was whether the trial court erred in awarding the husband shares held by the wife in a closely-held corporation founded by her parents, who were the majority shareholders. In affirming the trial court's decision, which was "a fair and equitable disposition based upon consideration of all the circumstances of the marriage" 136 Wn. App. at 46, ¶ 16, this Court recognized the "broad discretion" of the trial court in awarding property under RCW 26.09.080, and that it will "reverse only upon the appellant's

showing of a manifest abuse of discretion." *Zier,* 136 Wn. App. at 45, ¶ 10.

Thus, under *Zier,* even if the trial court in this case could have left the parties co-owners in Chief, it was not required to do so. It was wholly within the trial court's discretion to award the community's interest in Chief entirely to the husband, as he initially requested.

Because the trial court could value Chief, and its interest in Frosty (and did in fact value it), this case also is nothing like *Marriage of Estes,* 84 Wn. App. 586, 929 P.2d 500 (1997) (App. Br. 25). In *Estes,* the trial court considered the division of contingency fees that might be earned in the husband's legal practice. Rather than attempt to value the cases, the trial court valued the asset at zero and awarded it to the husband. This Court reversed, acknowledging that "while the value of the contingent fees would be difficult if not impossible to ascertain, they had some value," 84 Wn. App. at 590, and held this difficulty could be remedied by awarding the contingency fees "to both parties and divid[ing] [the fees] between them when received." *Estes,* 84 Wn. App. at 591.

Here, the value of Chief and its interest in Frosty was not, like the contingency fee cases in *Estes,* "difficult if not impossible to

ascertain." To the contrary, while both parties acknowledged the uncertainty of the actual impact of the Frosty litigation on Chief's interest in Frosty, *both* parties presented values for Chief and Frosty. The husband's complaint here is that the trial court adopted the wife's value. In any event, there was evidence that to the extent that the Frosty litigation had an impact on the value of Chief's interest in Frosty, it was to the advantage of Chief, because it was possible, if not likely, that Chief would receive even more than its interest was valued if Frosty bought out Chief. (*See* RP 258)

Since it was feasible to value Chief and its interest in Frosty, and in light of the policy that parties not be left co-owners in property upon dissolution of their marriage, *Shaffer,* 43 Wn.2d at 630, the trial court properly awarded Chief and its interest in Frosty to the husband. This Court should affirm.

### C. The trial court's maintenance award was well within its discretion.

An award of spousal maintenance is discretionary, and will not be disturbed on appeal absent a showing that the trial court abused its discretion. *Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). The trial court's discretion in awarding maintenance is "broad," *Washburn,* 101 Wn.2d at 179; "[t]he only limitation on the amount and duration of maintenance under RCW

26.09.090 is that the award must be 'just.'" *Marriage of Wright*, 179 Wn. App. 257, 269, ¶ 23, 319 P.3d 45 (2013), *rev. denied*, 180 Wn.2d 1016 (2014); *Washburn*, 101 Wn.2d at 182 ("RCW 26.09.090 places emphasis on the justness of an award, not its method of calculation"). The "economic condition in which a dissolution decree leaves the parties is a paramount concern in determining issues of property division and maintenance." *Marriage of Morrow*, 53 Wn. App. 579, 586, 770 P.2d 197 (1989) (*quoting Washburn*, 101 Wn.2d at 181).

**1. Substantial evidence supports the trial court's finding that the wife, who works part-time and has half the husband's income, is in need of maintenance.** (Response to App. Br. 28-29)

The trial court properly awarded the wife, whose income is half the husband's income, spousal maintenance for nine years, until she reached age 65, after a 32-year marriage. The husband's challenge to the trial court's finding that the wife "is in need of maintenance" (CP 43) is based entirely on his wholly unsupported claim that the wife's income is greater than found by the trial court because she works full-time, and not part-time as found by the trial court. (App. Br. 28-29)

The wife's undisputed testimony was she works part-time at 24 hours per week. (RP 429) The husband's claims that the wife's paystubs (Ex. 1.17, 2.4) prove she works more than 40 hours per week

(App. Br. 28) is belied by the cited evidence. These paystubs each cover a two-week period. Exhibit 2.4 shows that from December 31, 2017 to January 15, 2018, the wife worked 40.75 hours *total,* or an average of 20.4 hours per week. Exhibit 1.7 shows that from April 9, 2017 to April 22, 2017, the wife worked 52.25 hours *total,* or an average of 26.1 hours per week. These paystubs are thus consistent with the wife's testimony and the trial court's finding that the wife works part-time. (CP 42-43)

Substantial evidence supports the trial court's finding that the wife "is in need of maintenance." (CP 43) The wife earns monthly net income of approximately $3,400, even considering her recent raise, and she has monthly expenses of $5,874. (Ex. 2.2) In awarding the wife monthly maintenance of $2,500, the trial court properly considered the "economic situations of the parties" (App. Br. 28), and found that the wife has the need for maintenance, and the husband, whose monthly draws from Chief are at least $10,000, has the ability to pay.

**2. The trial court did not abuse its discretion in awarding the wife both maintenance and an equalizing judgment.** (Response to App. Br. 30-32, 34-36)

The trial court did not abuse its discretion in ordering the husband to pay both monthly maintenance and an equalizing

judgment to the wife. (App. Br. 30) Nor was the maintenance award an "improper placeholder" in the event the husband failed to pay the wife her share of the community property (App. Br. 34-35) – although, of course, he *has,* to date, utterly failed to pay her share of the marital estate. The husband's arguments otherwise ignores the substantial evidence that supports the trial court's findings that the husband has resources beyond his monthly draws from Chief, and confuses the difference between maintenance and property awards.

**a. Substantial evidence supports the trial court's finding that the husband had the ability to pay the wife maintenance.**

The husband argues that because his currently monthly draw of $10,000 from Chief is insufficient to cover both his monthly maintenance obligation of $2,500 and the monthly payment of $11,892 toward the equalizing judgment, the trial court necessarily abused its discretion in awarding maintenance. (App. Br. 30-31) First, the husband's argument ignores the fact that, as the trial court found, the husband has resources other than his draws from which to pay his obligations. (*See* CP 42) In addition to his monthly draws from Chief of at least $10,000, Chief also pays for many of the husband's personal expenses – a benefit no longer available to the wife. It is also expected that the husband will continue to receive

substantial tax refunds due to his interest in Chief. The trial court also found that the husband had additional "access to funds through Chief," and may also have additional access to funds from the business entity formed after separation through which he purchased an orchard with the parties' son. (CP 42)

That the husband has resources beyond his monthly draws is also evident from his "history of spending," as the trial court recognized. (CP 43) For instance, after the parties separated, and despite the husband's claims that he was under a period of "financial stress" (RP 183), the husband continued to spend money extravagantly. The husband bought a new time share in Mexico, obligating himself to a monthly payment of $1,830. (RP 189-91) In one month alone, he charged nearly $21,000 for a trip with his girlfriend, her daughter, and her daughter's friend. (RP 200-02; Ex. 3.2) And in June 2017, when the husband claimed that he and his brothers agreed that Chief could not pay salaries, the husband spent over $9,400, mostly at casinos. (RP 196-97; Ex. 3.3)

**b. An award of property to the wife is not "income" that she is required to exhaust to support herself.**

The husband's argument that the trial court abused its discretion in finding he had the ability to pay maintenance when it

apparently recognized that he did not have the resources to immediately pay the equalizing judgment is specious. Equalizing judgments are awarded when one party receives the bulk of the assets and the community lacks sufficient cash to immediately accomplish the overall property distribution the court finds just and equitable. In such instances, "an asset may be awarded to one with an offsetting monetary obligation to pay the other." *Marriage of Barnett*, 63 Wn. App. 385, 388, 818 P.2d 1382 (1991). When a property division cannot "be conveniently effected by a present allocation of property to each party," then the property may be awarded to one party, who then is left with "a duty to make compensating payments to the other." *Thompson v. Thompson*, 82 Wn.2d 352, 357–58, 510 P.2d 827 (1973).

That an equalizing judgment is imposed on one party presumes that there is no readily available liquid asset from which the equalization judgment could be paid. If it were otherwise, then the party being awarded the equalizing judgment could instead be awarded the readily available liquid asset as part of the property division. Therefore, that the spouse who is awarded the vast majority of the parties' assets is required to pay the other party compensating

payments from unidentified funds does not negate a finding that he has the ability to pay maintenance.

Absent the equalizing judgment in this case, the wife would leave the marriage after 32 years with $144,878, almost all of which is her own retirement savings. (CP 50) Meanwhile, the husband leaves the marriage with assets worth over $4 million – essentially all of the assets acquired by the parties during their long-term marriage - and more than twice the income as the wife. Given these facts, the trial court properly determined that regardless of the husband's obligation to pay the equalizing judgment, he had the ability to pay maintenance to the wife, who had the need.

The husband's argument conflates spousal maintenance and property division. Maintenance "is an obligation which is paid out of the earnings or estate of the party responsible for it. A property division, on the other hand, simply disposes of the property of the parties, both community and separate, presumably upon an equitable basis." *Thompson,* 82 Wn.2d at 357. The goal of a property award is to make a just and equitable distribution of the marital property already owned by the parties, in light of the nature and extent of the property, the duration of the marriage, and each spouse's economic circumstances at the time of distribution. *Wright,*

179 Wn. App. at 261, ¶ 5. Maintenance, on the other hand, is not a division of property, but a "flexible tool for equalizing the parties' standard of living for an 'appropriate period of time.'" *Wright,* 179 Wn. App. at 269, ¶ 23.

Monthly property payments are not income *per se* to the wife, which she should be required to use to meet her living expenses, because "they represent property [the wife] already owns, *i.e.,* they represent [the wife]'s share of the community property." *Marriage of Stenshoel*, 72 Wn. App. 800, 804–05, 866 P.2d 635 (1993) (holding that monthly payments to wife for her share of the community property was neither "income" nor "contract-related benefits" for purposes of child support). Here, the husband has twice the income as the wife, in addition to the property awarded to him. Having less income than the husband, the wife should not be forced to use her property award to meet her living expenses and maintain the standard of living established during the marriage, while the husband retains his property award and income for his benefit alone. *See e.g. Stenshoel,* 72 Wn. App. at 805 ("it is inequitable to require Peggy to unilaterally exhaust her share of the community business to support the children").

### c. Maintenance is not an improper "double dip" of the property award.

The trial court did not abuse its discretion in awarding the wife both spousal maintenance and an equalizing judgment, nor was the maintenance an improper "double dip" of the property award. *Barnett,* 63 Wn. App. at 385 (App. Br. 35-36), on which the husband principally relies, does not support the husband's contention that by awarding the wife spousal maintenance, the trial court "double dipped."

In *Barnett,* the parties' major asset was a salvage business, and the income earned from the business was in selling off the scrap that the business already owned and had paid for. The trial court awarded the wife a $100,000 lien for half the value of the salvage business, plus maintenance. The husband appealed the maintenance award, asserting that it was based on speculation that he would earn substantial income from the business.

In reversing, this Court recognized that the value on the business was premised in part on the scrap owned by the business, and that each time scrap was sold, it reduced the value of the business as found by the trial court. Therefore, by awarding the wife maintenance from the income the husband earned selling the scrap,

this Court held that "[i]n effect, the same property was distributed twice. This was error." *Barnett,* 63 Wn. App. at 389.

This is not the situation here. While Chief was valued in part on the tangible assets it owned, the income earned by the husband was not from liquidation of those tangible assets, but from the business as a going concern. Therefore, unlike in *Barnett,* the wife's maintenance award from the income earned by husband in owning and managing Chief does not duplicate her award of half the value of Chief.

The trial court's award of monthly maintenance to the wife and half the value of the community property in the form of an equalizing judgment was well within its broad discretion to make, and supported by substantial evidence. This Court should affirm.

**D. The trial court did not abuse its discretion in awarding fees to the wife.** (Response to App. Br. 36-39)

The trial court did not abuse its discretion in awarding the wife $25,000 for fees and expenses – a fraction of the amount the trial court estimated that she incurred – based on her need and the husband's ability to pay under RCW 26.09.140. The husband's argument is premised entirely on his claim that he lacks the ability to pay the wife's fees – a premise that the trial court rejected. The husband cannot meet the "high burden of showing abuse of trial

court discretion in its attorney fee award." *Walsh v. Reynolds*, 183 Wn. App. 830, 857, ¶ 57, 335 P.3d 984, (2014), *rev. denied*, 182 Wn.2d 1017 (2015).

*Mason v. Mason,* 40 Wn. App. 450, 698 P.2d 1104 (App. Br. 37-38), *rev. denied*, 104 Wn.2d 1017 (1985) does not help the husband because there the trial court made no finding that the husband had the ability to pay the wife's attorney fees. 40 Wn. App. at 458. Here, the trial court did find the husband the ability to pay a portion of the wife's attorney fees and expenses, after considering the financial resources available to him. (CP 44-45) This Court should affirm.

**E. The trial court erred in awarding less than the statutory interest rate on the fee and equalizing judgments.** (Cross-Appeal, and Response to App. Br. 32-34)

**1. The trial court's order encourages the husband to delay paying the wife her share of the community property within a reasonable time.**

To the extent the trial court made any error, it was in awarding judgments for fees and property to the wife that bear interest at only 4 percent instead of the statutory rate of 12 percent, under RCW 19.52.020. A trial court's judgment must comply with RCW 4.56.110, which requires that interest on judgments accrue at the maximum rate permitted under RCW 19.52.020. *Marriage of Harrington*, 85

Wn. App. 613, 630-32, 935 P.2d 1357 (1997). The failure to enter a judgment in compliance with RCW 4.56.110 "constitutes error meriting remand for correction of the judgment's interest rate to the statutory rate." *Harrington*, 85 Wn. App. at 631 (quoting *Marriage of Knight*, 75 Wn. App. 721, 731, 880 P.2d 71 (1994), *rev. denied,* 126 Wn.2d 1011 (1995)).

An exception to the general rule requiring judgment interest at the judgment rate can arise in dissolution cases, where the trial court has discretion to reduce the interest rate on deferred payments in the decree of dissolution. *Harrington*, 85 Wn. App. at 631; *Knight*, 75 Wn. App. at 731. However, the trial court abuses its discretion if it reduces the interest rate without "setting forth adequate reasons for the reduction." *Harrington*, 85 Wn. App. at 631; *see also Knight*, 75 Wn. App. at 731 ("a trial court abuses this discretion if it provides for an interest rate below the statutory rate without setting forth adequate reasons for doing so"). Here, the trial court gave no reason for reducing the rate on either the equalizing or fee judgments to 4 percent – one-third the statutory rate.

"There should be some apparent reason for giving one spouse the use, for business purposes, of the money of the other without interest or at less than the statutory rate." *Berol v. Berol*, 37 Wn.2d

380, 383, 223 P.2d 1055 (1950) (reversing when the trial court failed to award any interest on the judgment awarded to the wife). "The purpose of awarding interest on a judgment is to compensate a party having the right to use money when it has been denied use of that money." *Lindsay v. Pac. Topsoils, Inc.*, 129 Wn. App. 672, 678, ¶ 13, 120 P.3d 102 (2005), *rev. denied*, 157 Wn.2d 1011 (2006).

Another purpose of imposing statutory interest on judgments is to encourage the party obligated to pay the judgment to pay it quickly to avoid further interest accruing. *See Marriage of Barnett*, 63 Wn. App. 385, 386, 818 P.2d 1382 (1991) (ordering interest after a one-year deferral period to serve as a "financial incentive to encourage" the husband to sell property within a year of the decree to pay off the wife's judgment before interest began to accrue); *see also e.g. GTE Commc'n Sys. Corp. v. State of Wash., Dep't of Revenue*, 49 Wn. App. 532, 536, 744 P.2d 638 (1987) ("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."); *Green v. McAllister*, 103 Wn. App. 452, 470, 14 P.3d 795 (2000), *as amended on clarification* (Nov. 22, 2000) ("The idea [of prejudgment interest] is to encourage the disgorgement of converted funds early in the litigation.").

Here, the trial court's decision imposing less than the statutory interest rate on the fee and equalizing property judgments *and* allowing the husband 20 years in which to pay the equalizing property judgment has already defeated the dual purpose of interest on judgments. It also undermines 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 equalizing property judgment is 93% of the wife's share of the community property, yet the husband has been allowed to retain that portion of the wife's award, plus 100% of his own share, while only accruing a fraction of the statutory interest as compensation. The result is expectable – the husband to date has utterly ignored his obligations to pay anything on the fee or equalizing judgments, and instead pays a paltry $1000 a month in maintenance. Rather than provide an incentive to the husband to quickly pay off the judgment, the trial court's order encourages the husband to delay payment.

The trial court's order allowing this use of the wife's property award by the husband is even more inexplicable, and wrong, because it can continue for 20 years, regardless of whether the husband receives cash for his interests in the family business earlier. For

instance, if Chief were to be bought out of Frosty under the terms of the buy/sell provision of the operating agreement, the husband would immediately have cash in hand, but no incentive to pay the wife her share of the community property. Instead, he can hold on to her share of the community property, knowing that he had years to pay on the judgment, while incurring less than statutory interest.

The same is true if the husband were to receive another more than a half million tax refund. There is no reason for him to pay those funds to the wife if he can simply pay the smaller monthly maintenance payment. The husband may well receive a greater rate of return if he were to keep the funds for himself than the 4 percent interest he will have to pay to the wife – he certainly appears to believe he can, having gone on a "buying spree" acquiring orchard properties, both through Chief and on his own, since the parties separated. If statutory interest were accruing, the husband would have the incentive to pay down the judgment sooner rather than later, and allow the wife access to her share of the community property within a reasonable time. As is, the trial court's decision encourages the husband to pay the bare minimum, without significant penalty.

**2. After failing to award statutory interest on the wife's equalizing judgment, it was wholly proper for the trial court to order the husband to pay an additional $1,000 in spousal maintenance during those months he fails to pay towards the judgment.**

It is for this reason that the husband's argument challenging the trial court's order requiring him to pay additional maintenance of $1,000 for each month that he fails to pay towards the equalizing judgment is meritless. (Response to App. Br. 32-34) Although the trial court made no specific finding to support its decision to impose interest at less than the statutory rate, presumably it was granted based on the condition that the husband would make the required monthly payments to satisfy the judgment. Requiring the husband to pay additional spousal maintenance of $1,000 during those months that he fails to pay the monthly property payment was well within the trial court's discretion to order, particularly considering that had the trial court imposed the statutory interest rate on the equalizing judgment, the per diem interest would be $645.18 – making a $1,000 monthly "penalty" more than reasonable under the circumstances.

A greater incentive, however, and one that would fulfill the policies underlying the imposition of statutory interest on judgments, and ensuring that both parties have access to their share

of community property within a reasonable time, would have been for the husband to be required to pay monthly interest on the $1,962,429 judgment until paid. In that case, it is likely the husband would come up with the same resources that allowed him to invest $1.6 million to purchase additional orchards after separation – during a period of supposed "financial stress" - and pay over $20,000 in a single for a vacation with his girlfriend, rather than to pay down, if not completely satisfy, the judgment owed to the wife.

**F. This Court should award fees to the wife on appeal.**

This Court should award the wife her attorney fees on appeal. She and her appellate attorneys should not be required to finance the husband's appeal of discretionary fact-based decisions, supported by substantial evidence, and she is entitled to fees based on her need and the husband's ability to pay. RCW 26.09.140; RAP 18.1(a). This Court has discretion to award attorney fees after considering the relative resources of the parties and the merits of the appeal. RCW 26.09.140; *Leslie v. Verhey*, 90 Wn. App. 796, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003 (1999).

As will be shown in the wife's RAP 18.1(c) declaration, her need for her fees has only increased since the decree was entered, due to the husband's noncompliance with the decree. With the exception

of the equalizing judgment, the only assets awarded to the wife were her retirement savings. The wife's maintenance award and the limited property over which she has control is not sufficient to allow her to pay her attorney fees on appeal. Meanwhile, the husband has retained full control over the property awarded to him, including his interest in Chief, plus the vast majority of the wife's share of the community property. He has the ability to pay the wife her attorney fees.

## VI. CONCLUSION

This Court should affirm on the husband's appeal, and reverse on the wife's cross-appeal. This Court should award attorney fees to the wife on appeal, and direct the trial court on remand to impose statutory interest on the judgments by the husband.

Dated this 31st day of May, 2019.

HAZEL & HAZEL

By:_____
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## 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 May 31, 2019, I arranged for service of the foregoing Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

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**DATED** at Seattle, Washington this 31st day of May, 2019.

Sarah N. Eaton

## SMITH GOODFRIEND, PS

## May 31, 2019 - 5:00 PM

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