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No. 36393-7-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

BEVERLY SEVIGNY,

Petitioner,

v.

MICHAEL G. SEVIGNY,

Respondent.

ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT

MIKE SEVIGNEY'S OPENING BRIEF

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Mike Sevigny appeals the trial court's mischaracterization of post-separation property -- the 16th Avenue Properties, LLC's ("16th Avenue Properties") post-separation purchases -- as community property, then awarding half of that after-acquired, separate property to Respondent Beverly Sevigny based on that mis-characterization.

Even assuming the 16th Avenue Properties was community property after the date of separation, *Marriage of Griswold* and equitable principles require that Appellant Mike Sevigny get the financial credit for its post-separation financial increase, as only Mike was working on that high-risk matter and, per statute, Mike assumes all the risk if the investment does not pay off.

Since before statehood our statutes have provided that property or gains acquired after separation are separate property and also that neither spouse shall be responsible for the separate debts of, or injuries caused by, the other. By definition, only property acquired before or during the marriage is part of the marital estate. Under Washington statutes, the only property before the dissolution court for division is the property of the parties' marital estate, *i.e.*,

their community and separate property as it existed when the marriage became defunct, at the time of separation and when the separate and apart statute (RCW 26.16.140) applies. The trial court exceeded its authority and thus abused its discretion by including after-acquired, non-marital separate property in the property division which, by statute, was not available for division.

This error requires vacation of the property division and remand with instructions to re-divide the property without awarding any after-acquired property to the other party, along with correction of other errors, including as to calculation of maintenance.

II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL

A. Assignments of Error.

1. The trial court erred in entering paragraphs 8, 9, 10, and 13 of the Findings and Conclusions About a Marriage, set out in the appendix.
2. The trial court erred in entering paragraphs 7, 8, 9, 13, and 20 of the Amended Final Divorce Order, set out in the appendix.
3. The trial court erred by characterizing post-separation property acquired by the 16th Avenue Properties as community property.
4. The trial court erred by awarding Respondent part of Appellant's post-separation acquisitions, including half of the post-separation, newly-acquired real property owned by the 16th Avenue Properties, a business operated by Appellant.

5. The trial court erred in making its award of maintenance.

B. Issues on Appeal.

1. Assuming *arguendo* that the 16th Avenue Properties is deemed community property, must the property division be vacated because the trial court failed to give Appellant the credit for its increase in value during the separation period due to his management and operation of that asset?
2. Did the trial court err by failing to value the 16th Avenue Properties on the date of separation for any property division purposes, since it was managed and operated only by Appellant thereafter, such that under RCW 26.16.140 and *In re Marriage of Griswold* he is entitled to the gains attributable to his separate labor as well as all associated risk?
3. Community property statutes provide that once the parties to a marriage separate, any newly-acquired property is separate property and thus is not part of the marital estate, and that neither spouse is responsible for the debts or injuries of the other. Where high-risk property was acquired by the 16th Avenue Properties after separation, and thus after the marital community was defunct, did the trial court err in ruling that after-acquired property was community property?
4. Must the trial court decision be vacated because it failed to give effect to RCW 26.16.140 and so mischaracterized newly-acquired post-separation income and property as community property?
5. Must the property division be vacated because the trial court purported to distribute post-separation, non-marital estate, separate property as part of dividing the property of the marital estate?

6. Must the maintenance award be vacated in light of the large, disproportionate property award to Respondent and her established ability to work?
7. Must the maintenance award be vacated because, while it may permit Respondent to maintain the lifestyle she enjoyed at the time of separation, it necessarily will not “equalize the post-dissolution standard of living of the parties for an appropriate period of time” because, in the context of the property division and transfer payment, it materially *reduces* Appellant’s standard of living for the foreseeable future far below that of Respondent, frustrating one fundamental purpose of maintenance of equalizing living circumstances?

III. STATEMENT OF THE CASE

A. Procedural History: Separation in 2013, filing in 2015, trial April 30-May 1, 2018.

Mike and Beverly Sevigny separated in February, 2013 after 33 and a half years of marriage (*see* CP 13), at which time the trial court found that they “stopped acquiring community property and incurring community debt on this date.” CP 13, ¶ 5. The petition for dissolution was filed April 20, 2015 (CP 3-4), and the response was filed April 30, 2015. CP 5-6. Trial was held on April 30-May 1, 2018. CP 49. Judge Harthcock issued her written letter decision on May 2, 2018, (CP 7-11), and findings and conclusions were filed July 6, 2018, incorporating the letter ruling. CP 12-31. Mike filed for reconsideration later on July 6. CP 32-33. Reconsideration was

argued on August 31, 2018 (RP 227-234), and a final amended divorce order was entered on September 14, 2018 (CP 38-53) which granted Mike some of his requested relief. Mike appealed on October 12, CP 54-76, specifying the mischaracterization of post-separation property as community property and miscalculation of maintenance, issues not pressed on reconsideration. Beverly filed a notice of cross appeal on October 24.

B. Substantive Facts.

1. Mike's construction background, the construction company partnership he started with his son Matt in 2007, and the real estate company Mike and Matt jointly started in late 2012.

Mike was born in Moses Lake and lived in Yakima County virtually all his life by the time of trial in late April, 2018, when he was 60. RP 99. Shortly after graduating from high school in 1976 and attending some community college, Mike went to work for his father's commercial industrial construction company, Sevigny Construction, Inc. In 2007 Mike opened his own construction company, M. Sevigny Construction, Inc., with his son Matt as a 50 per cent partner (RP 99, 101) when Mike's father was not willing to

sell his business to Mike and Matt. RP 14.¹ Mike never had an ownership interest in his father's construction business, RP 101, in contrast to the equal partnerships Mike has with his son Matt.

The M. Sevigny Construction, Inc., owned jointly between Mike and Matt, lists Beverly on Schedule G with 100 percent direct or indirect ownership in voting stock, the same as Mike and Matt, *see* Ex. PE 1.22, p. 7. The next page, Schedule 1125, shows "compensation of officers" for the construction company with percent of time devoted to the business, implying that Beverly was an officer of the company. Both Mike and Matt devoted 100 per cent of their time, while Beverly gave 10% of her time, and they were compensated accordingly.

Beverly testified that Mike's hourly wage from the construction company was basically the same from the time he started the company with Matt in 2007 through 2012, when they separated. RP 74.

¹ Beverly testified she believes Mike's father had dementia and that played a part in Mike and Matt starting their own company. RP 73.

2. The 16th Avenue Properties, LLC, jointly owned solely by Mike and Matt.

In late 2012, Mike began a real estate business as 50-50 partners with Matt, the 16th Avenue Properties, LLC (RP 102), about four months before the parties separated. RP 113.² The documentation for the 16th Avenue Properties shows only Mike and Matt as owners, and not Beverly. *See* the following exhibits:³

- RE 2.9, **2012** taxes 16th Ave, p. 7 (Schedule B-1 listing Matt and Mike as 50-50 owners), pp. 10, 12, K-1 Schedules for Mike and Matt;
- RE 2.21, **2013** taxes 16th Ave, pp.16 & 19, K-1 Schedules for Matt and Mike;
- PE 1.23, p. 7, **2015** Schedule B-1 16th Ave, listing only Matt and Mike as owners, each owning 50%, and pp. 8, 10, **2015** K-1 issued only in Matt's and Mike's names;
- PE 1.4, p. 1, **2016** K-1, 16th Ave naming Mike and PE 1.24, **2016** taxes, pp. 12, partner listing showing only Matt and Mike as partners at 50% each and pp. 12 and 15, the K-1's for Matt and Mike.

² Mike and Matt also jointly own a 20 per cent share in a building on 61st. RP 102.

³ Exhibits are designated as either "PE 1.x" or "RE 1.x" for Petitioner's Exhibit and Respondent's Exhibit, respectively and will be referred to that way.

The exhibits show that Beverly is not named as an owner of the 16th Avenue Properties and only received income from it as an employee. Thus, Beverly's interest in the 16th Avenue Properties at the time of trial was through her community interest in Mike's share of that business up to the time of separation, much like any spouse has a community interest in the professional services corporation partly owned by the other spouse, rather than in a formal voting or operational interest. It was a purely financial interest through her marriage with Mike. It ended when they separated.

3. Beverly Sevigny's background, the marriage, separation in January, 2013, and Mike's continual financial support of Beverly.

Mike first met Beverly in high school in the spring of 1976 at a wrestling meet, and they later dated from about April until August 1976, when she went off to college. RP 99-100; RP 10. Two and a half years later in February 1979, Mike and Beverly got engaged and married that August, RP 100; RP 10, after Mike gave her the engagement ring on the Fourth of July. RP 175. Beverly was working at J.C. Penny's when they married, then stopped while the couple had their five children, then resumed work part time in 1995 when the youngest was in kindergarten for the school district (RP

11), then full time in 2004, as a secretary and parapro for the Zillah School District, where she also had an emergency teacher's certificate that she still has. RP 100-101; RP 13, 72. She does not work for the District in the summers, but has not done other work in recent years. RP 73.

Mike and Beverly had "a big blowup" on New Year's Eve 2012, after which Mike left the house and never returned to live there, sleeping for the first year on the couch at his office. RP 103. Mike testified that he took "the clothes on my back" the night he left, returned for more clothes, and never took anything else from the family home or the cabin, including furniture. RP 176. Even so, they kept the pre-arranged and paid plans to travel together for a trip to visit one of their sons in North Dakota in January, 2013, which was the basis for Beverly to claim the date of separation was a month later, February 1, 2013, RP 103; 21, and that she "believed" he last slept a night in the family home on Lucy Lane in January 2013.

Despite the "blowup", from the very beginning of separation, Mike voluntarily supported Beverly, "from the day I moved out" in 2013 as he testified, paying her \$950/week at first then \$750/week,

or \$3,000/month. RP 103. This was at a time when he was taking home between \$4,000-\$4,200 month from his construction company, leaving Mike with no money to get an apartment. RP 104. There was no significant income from the newly-formed the 16th Avenue Properties business in the beginning of 2013. Hence Mike's residing on the office couch for the first year of the separation.

He explained that while his hourly earned income from his construction company did not change, his net income increased only in 2016 with distributions from 16th Avenue Properties, as Matt needed a distribution to build his own home. RP 104-06, describing figures from tax returns. Mike asked the trial court to continue spousal support for another five years (a total of ten years of support after the five years since separation to trial), but at a lower rate of \$2,500/month. RP 104.

4. Beverly's requested property division: the home and cabin, one million dollars, plus half of Mike's income forever, plus half their averaged income.

Beverly stated her requested property division in her first exhibit, and gave her rationale at trial: she wanted "to be compensated in the manner that we lived as a couple for the rest of my life." RP 86. That translated to "half of [Mike's] income plus

our two incomes added together divided by 2.” RP 86. In fact, Beverly asked for \$1 million cash off the top, plus half of Mike’s income indefinitely to reach her goal, RP 87, ignoring the fact that granting that combination of factors would mean that Mike could not live “equally” with her. *See id.*, 87:16-21; PE 1. Not surprisingly, Beverly had no answer to the question of how Mike would be able “to live equally if he’s giving you almost half his income and a million dollars”, saying only that “he will still own the business which will derive him income.” RP 87:12-21.

Beverly thus expressly asked for an award that would let her live “the life that she and Mike had built as a couple” and to which she had become accustomed, even though it necessarily meant that he could not afford to live at the same level, thus ignoring the fact that two households could not be maintained at that level.

As part of her request, Beverly sought a property distribution of after-acquired, non-marital property under the guise it was “community” property, notwithstanding the provisions of RCW 26.16.140 (which dates to 1881) that property acquired after separation is separate in character, and notwithstanding that she had no ownership interest in the 16th Ave. LLC, which was owned

entirely by Mike and Matt, as noted above. Yet in his closing argument rebuttal, Beverly's counsel falsely asserted, to rebut Mike's argument that he was taking on risky assets with substantial debt, that Beverly also was "on the hook" for that debt,⁴ an assertion that is incorrect.

5. Mike's proposal: 60-40 split of community property, in favor of Beverly with maintenance of \$2,500 for five years.

Mike's proposal was generous in terms of what he and Beverly owned at the time of separation and their income streams at the time of the trial. It was fair to both and thus was consistent with the law that an award be fair, just and equitable to *both* parties and be feasible under the economic circumstances presented to the trial

⁴ Counsel contended at RP 219:17-20 (emphasis added):

There's no debt[.] [T]hat he coming in here saying I'm on the hook personally for this debt[.] [o]h, my God, this is all I – it's not. It's a debt that is owed by 16th avenue Properties **of which she is a member. She will continue to be on the hook for this.** It would be grossly unfair to now turn that all over to him.

As pointed out *supra* p.7, Mike's exhibits, RE 2.9 & 2.21, and *Beverly's* exhibits PE 1.23 and 1.4 show that Beverly is *not* a member of the LLC, and thus would have no obligation for its debts other than by statutory community property liability. Rather, for the work done after separation she would bear no potential liability under RCW 26.16.140 for any debts Mike incurred individually or through the LLC, and thus was perfectly shielded from any risk. *See* RCW 26.16.200 (spouse not liable for debt incurred for post-separation debts.) Indeed, that was the original purpose of that statute when passed in 1881, by helping to put women and wives on more even footing with men than they were under the common law system.

court. Mike's proposal was in his first exhibit, RE 1. It called for transfer of all the community real property to Beverly, all retirement accounts in either party's names transferred to Beverly, all life insurance policies, and equal division of the Hawaii condominium ownership interest acquired during the marriage, and equal division of the net value of 16th Avenue Properties as of the date of separation, for her community share.

Mike's counsel argued application of both RCW 26.16.140 and *In re Marriage of Griswold* for why the post-separation property acquired by 16th Avenue Properties that Mike owned and operated should be allocated to him, because where the post-separation business increases in value or loss due primarily to the efforts of the managing spouse, that spouse bears the gain or the loss. RP 217-18. That also is consistent with RCW 26.16.190, which protects the non-involved spouse from injurious acts of the other spouse including post-separation, and RCW 26.16.200, which protects a spouse from the separate debts of the other spouse. As a high-risk venture, Beverly was protected from the losses that could occur to 16th Avenue Properties should there be a failure in the real estate market, as there was in 2008-2012. Thus he summarized that:

Again, under our proposal, she gets \$786,855.00 of virtually zero risk, properties and investment. Almost \$250,000 of that is liquid. He gets [\$]523,000 of business related assets so he can continue to try to make a living and under our proposal there are five more years of maintenance at [\$]2,500 and hopefully someday retire.

RP 218. The proposal, 60/40 in favor of Beverly, did not require a transfer payment. As can be seen, the trial court disregarded the law on post-separation acquisitions and, by including that property in the property division, created a transfer payment of over \$700,000 that is both impractical and impossible for Mike to make on top of more than doubling his maintenance payments, also constituting double-dipping in the property division.

C. Trial Court Rulings.

1. May 2, 2018 letter ruling.

The trial court issued its letter ruling quickly, on May 2, 2018. CP 7-11. It specified the date of separation as December 31, 2012, and that it was a 33-year marriage. CP 7.

Relevant to the property division, it decided that “the Sevigny community owns a ½ interest in two corporations: M. Sevigny, Inc. (formed in 2007) and 16th Avenue Properties, LLC (formed in 2012).” CP 7. No further analysis was given as to how the Court

reached the characterization for the post-separation acquisitions of 16th Avenue Properties. However, the accompanying spreadsheet stated the Construction Company was valued as of 12/31/15, and 16th Avenue Properties were each valued as of 2/23/17. CP 10. The net community share of the Construction Company was listed as \$775,000 and the net value for 16th Avenue Properties as \$341,332, both of which were awarded to Mike. CP 10. The letter ruling listed the properties that 16th Avenue Properties owned and the appraised values in 2017, and determined the community interest (before debt) was \$2,355,250, and debt of \$2,013,918. CP 8, 10. All the listed properties were acquired after the February, 2013 date of separation. The net result was a property split of 60/40 in favor of Beverly after a transfer payment from Mike of \$759,885. *See* CP 11.

Judge Harthcock's letter also provided for maintenance of \$6,500/month for ten years until Beverly reaches age 70, "at which point the court will re-evaluate the parties' incomes, needs and abilities to pay maintenance into the future." CP 9. It also provided for only a portion of Beverly's attorney's fees at trial, on the purported basis of her need and Mike's ability to pay, but no fees for her experts. CP 9.

Final orders were prepared by Beverly's counsel and entered on July 6, 2018, after a hearing. CP 12-31; RP 221-226. It provided for immediate payment of the equalization amount in the form of a judgment for \$759,885 with interest at 12%. CP 18; RP 221-223.

One material difference from the letter ruling in the order prepared by Beverly's counsel is the date of separation. That date changed from December 31, 2012, which was based on Mike's testimony, to February, 2013, which was based on Beverly's testimony. The written order signed by Judge Harthcock also added specific language as to what was the effect of separation:

The marital community ended on February 2013. **The parties stopped acquiring community property and incurring community debt on this date.**

CP 13, ¶5 (emphasis added).⁵

⁵ The other material changes made to the final orders prepared by Beverly's counsel were to reduce the interest rate from 12 percent to four percent, *see* RP 221-223; CP 16, 18, and 20, and the new maintenance amount of \$6,500 to start July 1 instead of May 1.

2. Reconsideration.

Mike moved for reconsideration on three issues,⁶ but not on the major issue of the characterization of the 16th Ave. LLC's post-separation properties, or the allocation of their values. *See* CP 32-34 (motion); CP 35 (order for reply); Supp. CP __ - __ (Beverly's Reply); and Supp. CP __ - __ (Mike's Reply). Reconsideration was argued on August 31, 2018, and Mike was granted some relief on the property division, but not on maintenance. The trial court maintained the 60/40 ratio, but with different values, Beverly was awarded \$1,280,396. Mike was awarded \$853,597 and ordered to make a transfer payment of \$707,485, "instead of the 750 some thousand" transfer payment in the original decree. RP 233. *See* CP 38, 42, 53. Nowhere do the trial court's written findings or letter, or colloquy, indicate how it is reasonable for Mike to make the huge

⁶ Mike raised the fact the court used current values for all real estate awarded to him, but an old, 2015 value of \$335,000 for the family home awarded to Beverly, a 10-15 per cent difference according to the expert testimony at trial. CP 32-33. He also raised the fact that the initial spreadsheet awarded Mike \$300,000 based on distributions he received in 2016 and 2017, but did not make a 1/3 deduction to allow for taxes. CP 33. Finally, Mike requested an adjustment on the net income used to calculate his ability to pay maintenance which was artificially high because it did not take into account all the taxes for his income. CP 33.

transfer payment, nor what the source of such payment can possibly be, given the property division.

An Amended Final Divorce Order was filed on September 14, 2018. CP 38-53. This appeal followed. CP 54-98.

IV. ARGUMENT

A. Standard of Review.

Rulings on the characterization of property in a marriage are questions of law reviewed de novo. *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002), citing *In re Marriage of Skarbek*, 100 Wn.App. 444, 447, 997 P.2d 447 (2000). The property division itself under the factors of RCW 26.09.080 is reviewed for an abuse of discretion, *Griswold*, 112 Wn.App. at 339, but when applying those factors, the trial court “first must characterize the marital property as either separate or community.” *Id.*, citing *In re Marriage of Olivares*, 69 Wn.App. 324, 329, 848 P.2d 1281, review denied, 122 Wn.2d 1009 (1993). Reversal and remand is required where the property division “was dictated by a mischaracterization of the separate or community nature of the property.” *Marriage of Skarbek*, 100 Wn. App. at 450.

“A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons,” which include failing to apply the correct legal standard,⁷ or entering an order where the facts do not meet the legal standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46–47, 940 P.2d 1362 (1997) (reversing trial court). *Littlefield* explains the three-part test to analyze abuse of discretion, reversing because the test was not met:

A court’s decision is manifestly unreasonable if it is **[1]** outside the range of acceptable choices, given the facts and the applicable legal standard; **[2]** it is based on untenable grounds if the factual findings are unsupported by the record; **[or 3]** it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Littlefield, 133 Wn.2d at 47 (emphasized numbers added). *Accord*, *In re Marriage of Chandola*, 180 Wn.2d 632, 642, 653-56, 327 P.3d 644 (2014) (trial court’s discretion is “cabined” by applicable statutory provisions, reversing trial court). Finally, a court abuses its discretion if it distributes the parties' property without considering factors that are material to the determination of the value of the

⁷ It has long been the rule that application of the incorrect legal rule is an abuse of discretion requiring reversal. *Physicians Ins. Exc. v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (“Fisons”) (a “trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law,” and thus fails to apply the correct legal rule, vacating the trial court ruling).

property. *In re Marriage of Landauer*, 95 Wn.App. 579, 591, 975 P.2d 577 (1999) (expert valuation reversed for failure to take into account restraint on alienation of native American land the transfer of which required federal agency approval).

B. Basic Principles of Community Property Law.

1. Statutory principles for property division.

RCW 26.09.080 governs the disposition of both separate and community property and is reviewed for an abuse of discretion. The statute requires the court to:

In a proceeding for dissolution of the marriage . . . the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

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

RCW 26.09.080. The trial court thus must order a “just and equitable” distribution of the parties' assets and liabilities, whether

community or separate, and all property is before the court for distribution. *In re Marriage of Schwartz*, 192 Wn.App. 180, 188-189, 368 P.3d 173 (2016) (reversing incorrect characterization and remanding). However, property acquired after separation is the separate party of the person who earns or obtains it. RCW 26.16.140. *Accord, Marriage of Schwartz*, 192 Wn.App. 188-189, quoting *In re Marriage of White*, 105 Wn.App. 545, 550, 20 P.3d 481 (2001) (reversing and remanding based on trial court’s use of incorrect reasoning in property division). Finally, the court may take into account the “source and surrounding circumstances” of the acquisition of the property at issue in its distribution. *In re Marriage of Glorfield*, 27 Wn.App. 358, 361, 617 P.2d 1050 (1980).

2. The law provides for fair distribution, not equal distribution, nor a right to maintain the prior lifestyle of the marriage.

The statute provides, and a legion of cases hold, that the parties are entitled under law to a property distribution that is fair and equitable under the circumstances. But the principle of fairness is entirely different from what many litigants seek, which is to get an exactly even distribution of assets after a long-term marriage, or be placed in “equal” financial circumstances with the ex-spouse for the

rest of their lives,⁸ or to maintain the lifestyle to which one of the spouses became accustomed during the marriage. None of these please which are made regularly by parties is required by the governing statutes. Nor are they required by case law, including case law pre-dating the 1972 Marriage Act. It is axiomatic that in the normal divorce case the standard of living of both parties will suffer due to keeping two households on the former income. Thus the equalization of post-dissolution standard of livings will in most cases be a *lesser* standard than was enjoyed during the marriage. The Supreme Court recognized this in the context of considering alimony in conjunction with property division:

We recognize, of course, that, unless the parties have independent means, **a divorce decree will undoubtedly reduce the standards of living of both parties**, but the disparity between them ought not be so great as the instant decree engenders.

Stacy v. Stacy, 68 Wn.2d 573, 576, 414 P.2d 791 (1966). A spouse “is not ‘entitled to maintain her former standard of living as a matter of right.’ *Cleaver v. Cleaver*, 10 Wn.App. 14, 20, 516 P.2d 508

⁸ *E.g.*, *In re Marriage of Rockwell*, 141 Wn.App. 235, 243, 170 P.3d 572 (2007).

(1973).” *In re Marriage of Kaplan*, 4 Wn.App.2d 466, 474, 421 P.3d 1046 (2018).

This point made in *Stacy* and restated in *Kaplan* underlies the recent clarifications of the so-called “*Rockwell*⁹ rule” of seeking to “place the parties in in roughly equal financial positions for the rest of their lives” by this Court and Division I.

Rockwell was harmonized with the underlying statutes and case law two years ago by this Court. *In re Marriage of Doneen*, 197 Wn.App. 941, 391 P.3d 594 (2017), *review denied*, 188 Wn.2d 1018 (2017). Judge Lawrence-Berry explained that the principles stated in *Rockwell* do not constitute a hard and fast rule; rather, they embody a principle that was permissive, not mandatory, and thus did not permit over reliance on one section of the statute, but needed to be consistent with the entire statute as well as the body of Washington law dating to the early 1900’s. *See Marriage of Doneen*, 197 Wn.App. at 950, ¶¶ 32-33.¹⁰ Division I recently

⁹ *In re Marriage of Rockwell*, 141 Wn.App. 235, 243, 170 P.3d 572 (2007).

¹⁰ Those paragraphs in *Doneen* state:

followed suit by agreeing with and relying on *Doneen* in recognizing that *Rockwell* did not state a mandate of lifetime equal financial circumstances for ex-spouses of long-term marriage:

¶ 16 We agree with the analysis in *Doneen*. An objective of placing the parties to a long-term marriage in “roughly equal” financial positions, is not a mandate for trial courts to predict the future, divide assets with mathematical precision, or guarantee future equality. The trial court must still exercise its discretion to consider all of the statutory factors set out in RCW 26.09.080 and RCW 26.09.090(1)(c) and reach a just and equitable distribution. We decline Heidi’s request to hold that failure to place the parties in roughly the equivalent financial position for the rest of their lives constitutes an error of law. The objective stated in *Rockwell*, is just that, an objective, which is to be considered as the trial court determines the “fair, just, and equitable division of the property.”

¶32 Ellen’s reliance on *Rockwell* is misplaced. The *Rockwell* court affirmed the trial court; its holding was permissive in nature, not mandatory. *See also Sullivan v. Sullivan*, 52 Wash. 160, 162-64, 100 P. 321 (1909) (affirming trial court’s award of \$92,500 to wife and \$129,000 to husband). *Rockwell* does not support Ellen’s contention that trial courts are required to divide all the property equally in a long-term marriage and ignore the property’s character.

¶33 In making this argument, Ellen focuses almost entirely on the third factor in RCW 26.09.080: the duration of the marriage. Her argument suggests that the trial court should have relied on this factor to the exclusion of the others. But the *Konzen* court explicitly rejected any approach that focused on one factor and excluded all others. *Konzen*, 103 Wn.2d [470,] 478, 693 P.2d 97 [1985]. Ellen ignores that RCW 26.09.080 also directs trial courts to consider the nature and extent of the separate and community property.

Marriage of Doneen, 197 Wn.App. at 950.

In re Marriage of Kaplan, supra, 4 Wn.App.2d at 475-476

(emphasis added).

As can be seen by the results of the property division and maintenance award, there is nothing fair or just or equitable to *Mike* after the trial court failed to apply, or misapplied, the law on post-separation acquisitions to create a transfer payment of over \$700,000. That payment, due immediately as a judgment amount, is both impractical and impossible for Mike given what assets he was given. Moreover, it is doubly unfair when placed on top of more than doubling his maintenance payments to \$6,500 per month, giving Beverly over \$8,200/month *net*, while having few expenses as she continues her work at the school district with health insurance, pension, and salary, while having expenses of about \$3,900/month,¹¹ including the mortgage on the family home taken to buy the cabin.

¹¹ See PE 1.2, p. 4 (expenses) as corrected by trial testimony indicating the total health care expenses were annual, not monthly figures. RP 84-86.

C. Even Assuming *Arguendo* That The Post-Separation Property Acquired By 16th Avenue Properties Is Community Property, The Trial Court Erred Under *Marriage of Griswold* and RCW 26.16.140 By Failing To Credit Mike With The Post-Separation Increase In Value Of That Asset Which Was Solely Under His Operation And Control And The Increase Was Due Solely To His And His Business Partner’s Efforts.

RCW 26.16.140 says when spouses or domestic partners are living separate and apart their respective earnings and accumulation shall be the separate property of each. In *In re Marriage of Griswold, supra*, this Court applied the statute to, among other things, require that the post-separation earnings and accumulations of the husband be properly characterized in any property division, relying on *In re Marriage of Short*, 125 Wn.2d 865, 873, 890 P.2d 12 (1995). *Marriage of Short* restated what is now the touchstone summary of a defunct marriage, drawing on statutes and Prof. Cross, to give meaning to when that separate and apart statute applies to determine when the parties have a permanent separation, a “defunct” marriage. *Short*, 125 Wn.2d at 870-871. In this case the matter is simplified by the finding proposed by Beverly’s counsel in the final orders in July, 2018, that was incorporated into and adopted by the trial court in the final orders, that

The marital community ended on February 2013. **The parties stopped acquiring community property and incurring community debt on this date.**

CP 13, ¶5, emphasis added.

This finding conclusively shows the trial court's error in its characterization of the 16th Avenue Properties' post-separation acquisitions as community property. Under this ruling, such acquisitions necessarily had to be separate property of the spouse who was operating and managing that company, as described in Section D., *infra*. But even if the 16th Avenue Properties arguably were community property because Beverly continued to own it, which she did not as the records *supra* demonstrate, under the law and equity Mike is still entitled to the gains and acquisitions of that business because he was managing that asset and, per RCW 26.09.200, was responsible for all the risk of debt that might come from that business. Basic fairness requires that if he is subject to the risk, he should also benefit from any gain.

Griswold relied on *Short* for what has become the seminal rule, in that case in the context of the vesting of stock options: when the marriage is defunct and spouses are living separate and apart under RCW 26.16.140, as Mike and Beverly were here no later than

February 1, 2013, assets which are vested or otherwise acquired are presumed to be separate property, and not subject to division as community property. *Marriage of Griswold*, 112 Wn.App. at 340. Any community property therefore should be valued as of the date of separation.

In *Griswold*, the husband earned some of his bonus after separation. This Court correctly held that the portion of the bonus and settlement proceeds earned pre-separation, during the period a viable marriage still existed, was community property and Ms. Griswold had a proper claim to it. *Id.*, 112 Wn.App. at 342-346. As this Court held, where the trial court awarded a specified amount of community property to each party, (there half; here, 60/40), “then the court’s initial property division was influenced by the mischaracterizations.” *Id.*, at 346. In this case the trial court made adjustments to some values on reconsideration, but did not change its overall 60/40 split, so reversal is required per *Schwartz* and *Skarbek*.

Similarly, in the latest edition of Horenstein, 20
WASHINGTON PRACTICE, FAMILY AND COMMUNITY PROPERTY
LAW. Practice, Mr. Horenstein reiterates Professor Webber’s

conclusion that in a business where there are post-separation increases in value or loss, and value is due primarily to the efforts of the managing spouse, the valuation date should be the date of separation:

When the increase or decrease in the value of a community asset is due, at least in part, to the efforts of one spouse, the extent to which the other spouse should enjoy the increase in value, or suffer the decrease in value, is a question of fairness under the circumstances. For example, if a spouse continues to occupy the family home after separation, and from postseparation earnings and/or postseparation labor makes improvements to the home which increase the home's value, the spouse who paid the funds or provided the labor should be allocated the increase in value. In this instance, the valuation date may be as close as possible to the date of trial, but the separate property portion of any increase in value may be established using the *Elam* formula.

20 Scott J. Horenstein, WASHINGTON PRACTICE, FAMILY AND COMMUNITY PROPERTY LAW § 32:7 (2nd ed., 2015) (hereafter “HORENSTEIN”).

D. The Trial Court Erred In Characterizing Post-Separation Property As Community Property.

One of the original community property statutes codified in 1881 provides that property acquired after the separation of the

marital parties is separate property. RCW 26.16.140.¹² And the Supreme Court settled in 1982 that any increase in the post-separation property belongs to the person holding the separate property, here Mike. *In re Marriage of Elam*, 97 Wn.2d 811, 650 P.2d (1982). The Court settled conflicting decisions in the divisions of the Court of Appeals for how community contributions to separate property – including a business – would be treated. Very simply, the marital community could share in the increase in value of the separate property or business, but only to the extent of the community contributions which were not otherwise compensated. In this case, after the date of separation, there was no community contribution. All the contributions which went into the increase in value were separate. The Court held:

. . . any *increase in the value of separate property* is presumed to be separate property. This presumption may be rebutted by *direct and positive evidence* that the increase is attributable to community funds or labors. This rule entitles each spouse to the increase in value during the marriage of his or her separately owned property, *except to the extent to which the other spouse can show* that the increase was attributable to community contributions.

¹² See HORENSTEIN, 21 WASHINGTON PRACTICE FAMILY AND COMMUNITY PROPERTY LAW § 47:7, fn. 9, tracing the lineage of RCW 26.16.140 to its original enactment in 1881.

Elam, 97 Wn.2d at 816-17 (emphasis added). *Accord*, *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210 (1993) (if the separate property increase is rebutted, the “community receives that portion of the increase attributable to community contributions,” citing to Prof. Cross). Here, of course, Mike’s post-separation efforts were his own, separate efforts. No community efforts went into increasing the value.

In fact, the trial court’s error was even more fundamental because the LLC was *never* community property, even at its formation in the fall of 2012 before separation, a point that even Beverly’s counsel argued at length in closing argument.

There’s only two pieces of real estate owned by this marital community, the house and the cabin. . . . but other than that, the assets are M. Seigny Construction and 16th Avenue Properties. And for Mr. Seigny to come in and say, well, this is my separate property. It isn’t. The asset being valued in 16th Avenue Properties. . . . When you look at the trajectory of 16th Avenue Properties, they are leveraging other properties. That is a corporate asset. It doesn’t belong to either of them individually.^[13] The interest in the corporation does. And there’s nothing here to suggest that either of them did anything other than simply attach their names to the operating agreement of 16th Avenue Properties.¹⁴

¹³ In fact, as the exhibits of both parties show, 16th Avenue Properties belongs to Mike individually as a 50% owner with Matt.

¹⁴ No such operating agreement with Beverly’s name is in evidence.

RP 208:15-209:3.

Although Beverly’s counsel asserted that the LLC was “a community business” (*e.g.*, RP 219:9), in fact that is not the case. It was not owned by Mike and Beverly. The documents show that Beverly had *no* ownership interest in the LLC – she was not a member or owner in any sense of having control or ownership rights, while her husband Mike and her son Matt both did. The LLC was therefore *not* a “community business” nor was it “community property”. Beverly had, at most, an undivided share of Mike’s *financial* interest in the LLC during the marriage as her community property interest in that asset. But it was not an ownership interest. It was a financial interest which was extinguished on separation by the separate and apart statute, RCW 26.16.140. The legal status of property is a question of law, reviewed *de novo* by the court.

The documents in evidence do not establish any ownership interest by Beverly. Rather, they show ownership split between Mike and Matt. She cannot claim to be a part owner of 16th Avenue Properties after the date of separation. Nor can she claim that any properties it acquired after February 1 could possibly be community property, given the finding on date of separation that Beverly’s

counsel inserted into the final orders states clearly that, after separation in February 2013, “**The parties stopped acquiring community property and incurring community debt on [that] date.** CP 13 ¶5 (emphasis added).

E. Washington Statutes Prohibit Award Of Post- Separation Property And Acquisitions.

Washington’s statutory structure for community property law since 1881 makes it inconsistent for the divorce court to “divide and award” post-separation property. Such an award is properly seen as beyond the dissolution court’s authority in the jurisdictional sense. Three statutes primarily come into play in this analysis, which must be measured against and harmonized with the basic property award statute, RCW 26.09.080 so that they have genuine meaning. Those statutes are the “separate and apart statute”, RCW 26.16.140; the separate liability statute, RCW 26.16.190, and the separate debts statute, RCW 26.16.200.

Each of those statutes was intended to make sure that neither spouse was held responsible for the separate injuries caused by their spouse for which they were not responsible, nor held responsible for their spouse’s separate debts, and that once the married couple was

separate, the acquisition of community property and community debts – and indeed, any new responsibilities towards their soon to be ex-spouse -- were in the rear-view mirror. That is part of the genius of community property law, which was to give women more independence from their husbands, particularly after the 1972 amendments. *See Keene v. Edie*, 131 Wn.2d 822, 935 P.2d 588 (1997), and the authorities cited therein, discussing the history of community property law in Washington state, its debt to Spanish law, and the use of Spanish principles once translations of Spanish commentaries became available in the 1940's to overrule earlier Washington cases which failed to fully understand the underlying precepts of the Spanish law which had been adopted. For instance, early cases believed the marital community was an “entity”, a concept that generated the requirement for suing both spouses to impose tort liability. *See Keene*, 131 Wn.2d at 831-835. However, once the lineage of the law and its underlying principles was sorted out, the more equitable results obtained, including in *Keene* overruling one of the earliest decisions of the Supreme Court decided in 1890, *Brotten v. Langert*, 1 Wash. 73, 23 Pac. 688 (1890), *overruled*, 131 Wn.2d 822 (1997). *Keene*, 131 Wn.2d at 834-835.

Similarly here, to give effect to all the statutes, and the underlying principles and purposes of the community property law as adopted in Washington, post-separation earnings and acquisitions cannot be subject to *division* by the dissolution court. At most, they can be taken into account for purposes of maintenance or child support, but not in such a manner that such payments become a stealth method for distributing that post-separation property to the ex-spouse. Otherwise, there is no end-point to the marriage, and there is no genuine meaning to the three statutes cited above, if the non-acquiring spouse has a claim to the post-separation earnings and acquisitions and, thus, is still at risk for the debts of or injuries caused by the ex-spouse.

Because the trial court here purported to “divide” the post-separation earnings and acquisitions of Mike, the property division must be vacated and the matter remanded with proper instructions to not make such division expressly, nor in the guise of maintenance.

F. The Property Division Must Be Vacated.

Because the trial court mischaracterized the post-separation real properties acquired by 16th Avenue Properties, which was being operated solely by Mike who also assumed all the risk, and because

the trial court purported to include all that value as marital community property that it divided, the division must be vacated. *Marriage of Schwartz* (reversing and remanding); *Marriage of Skarbek* (reversing and remanding).

Although prefaced with the *faux* disclaimer (“wink, wink, nod, nod”) that marital misconduct may not be considered, Beverly’s counsel argued pointedly about the fact Mike was now living with another woman, the mother of one of their daughter’s high school friends (*see, e.g.*, RP 212-213), one of several tactics meant to improperly smear Mike and obtain more money for Beverly as a result.¹⁵ The mistake in characterizing the post-separation property by 16th Avenue Properties and community property and then dividing the community property “evenly” appears to have been

¹⁵ Another example is Beverly’s counsel’s repeated and incorrect statement that Mike had withheld financial information on taxes, when in fact the parties had filed joint taxes through 2016, as Mike’s counsel pointed out, and disclosed the \$150,000 distributions to Mike which her counsel was claiming was hidden. *See, e.g.*, Ex. P 1.25, 2016 joint tax returns. As Mike’s counsel argued in closing:

I'm rather amazed on this argument about hiding assets. It's all here, it's all in the notebooks. Nothing in it has been hidden. All the properties have been disclosed, all of the income has been disclosed. We have the taxes that show all the disbursements through 2016 are these filed joint personal taxes. You can't claim she doesn't know what he makes. Her son is a 50 percent owner of these companies. To claim this hiding the ball and somehow that justifies a 75/25 split, that's just -- it's ludicrous because nothing has been shown to be hidden.

RP 216.

influenced at least in part by this improper argument below. In dividing marital property, the trial court may not consider marital misconduct, such as “ ‘immoral or physically abusive conduct within the marital relationship.’ ” *Urbana v. Urbana*, 147 Wn. App. 1, 14, 195 P.3d 959 (2008) (quoting *In re Marriage of Steadman*, 63 Wn. App. 523, 528, 821 P.2d 59 (1991)). This court should evaluate the record to determine whether it believes the improper arguments affected the trial court’s property division. If so, the Court should either provide appropriate cautionary language in the remand order to the court (and to counsel), or provide for remand to a different judge.

G. The Trial Court Improperly Divided Property In The Guise Of The High Maintenance.

An award of maintenance is governed by RCW 26.09.090, which sets out specific factors to be applied:

The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(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 (emphasis added).

Thus, per section (a) of the statute, trial courts must consider the property division when determining maintenance and may consider maintenance in making an equitable division of the property, *In re Marriage of Rink*, 18 Wn. App. 549, 552–53, 571 P.2d 210 (1977), and the award must be just in light of ***all*** the relevant statutory factors, including the spouse's ability for self-support. *In re Marriage of Bulicek*, 59 Wn. App. 630, 633, 800 P.2d 394 (1990). Here the nature of the property division is a critical consideration. The trial court made a disproportionate 60/40 split in favor of Beverly of the property it considered available for distribution, or \$1,280,396 from a total estate of \$2,133,993. CP 76.

Most fundamentally, it is reversible error to fail to consider, or to reasonably take into account, the ability of the obligated spouse to meet his own needs, or if the record does not show the obligated spouse has the ability to meet his needs and the obligations imposed by the trial court. *In re Marriage of Mathews*, 70 Wn. App. 116, 123-125, 853 P.2d 462 (1993) (maintenance award reversed; trial court failed to accurately take into account obligor’s future income stream). As explained by Mr. Horenstein:

This is not only a matter of fairness to the obligor spouse, but it is also a matter of judicial economy because if the decreed maintenance is not paid, the court will be burdened with repeated attempts to coerce the performance of an act that cannot be performed.

HORENSTEIN, *supra*, § 34:9.1, citing to the line of cases holding that the “obligor cannot be held to be [in] contempt when there is a pecuniary inability to pay the maintenance” and noting that the “principle is similar to the equitable rule that a court will not enter an injunction which cannot be enforced.” *Id.*, at fn. 2. *Accord, Bowers v. Bowers*, 192 Wash. 676, 678, 74 P.2d 229 (1937).¹⁶

¹⁶ In *Bowers* the Supreme Court was firm in drawing a very practical line in what could be paid by the obligor spouse for a multitude of reasons, including judicial economy:

The purpose of spousal maintenance is to support a spouse until he or she has become self-supporting. *In re Marriage of Irwin*, 64 Wn. App. 38, 55, 822 P.2d 797 (1992). It also can help “equalize the post dissolution standard of living of the parties, where the marriage is long term and the superior earning capacity of one spouse is one of the few assets of the community.” *In re Marriage of Scheffer*, 60 Wn. App. 51, 57, 802 P.2d 817 (1990). This principle is entirely different than seeking to maintain a lifestyle to which one of the spouses has been accustomed, since it is axiomatic that in the normal divorce case the standard of living of both parties will suffer due to keeping two households on the former income. *Stacy v. Stacy*, *supra*.

There also is generally no need to award maintenance to a spouse who, as here, receives significant property. *See Irwin*, 64 Wn. App. at 55. It also is an abuse of discretion to order

. . . it is the policy of the law to require fathers to adequately provide for their families, **it is not the policy of the law to impose upon them obligations which they cannot perform**. *Holcomb v. Holcomb*, 53 Wash. 611, 102 Pac. 653 [1909]; *Bungay v. Bungay*, 179 Wash. 219, 36 P.2d 1058 [1934]. The interests of the family are much better served by an allowance that can and will be paid than one which will inevitably result, from time to time, in show cause orders which must be dismissed upon showing of inability to pay. *Holcomb v. Holcomb*, *supra*.

Bowers, 192 Wash. at 678 (emphasis added).

maintenance that a spouse is not able to pay. *Bungay v. Bungay*, 179 Wash. 219, 223-224, 36 P.2d 1058 (1934). *Accord*, HORENSTEIN Scott Horenstein, § 34:9.1 (citing *Bungay*). To be lawful, the maintenance award must take into account the obligor's ability to meet his needs and financial obligations. *In re Marriage of Mathews*, 70 Wn. App. 116, 123, 853 P.2d 462 (1993); *Bungay*, 179 Wash. at 223. A maintenance obligation maintenance must be based on actual, current income rather than potential income. *Mathews*, 70 Wn. App. at 123.

The high maintenance amount awarded is more accurately characterized as part of the property division, and more specifically, the future division of later-acquired separate property in the 16th Ave Properties. This vehicle created an inequitable property division in which Beverly received far in excess of 60% of the actual community property and, in fact, got a stake in Mike's future-acquired separate property. Properly characterized, Beverly got a huge percentage of the actual community property as well as a substantial part of his separate property, and is in fact in the nature of a "double dip" on awarding that property. This is not correctly justified as a fair, just, and equitable property division absent

genuine necessity for the wife, such as where the wife was entirely disabled and helpless. No such necessity can be justified here given Beverly's work history, her receipt of *all* the couple's pension and retirement accounts in addition to her own retirement rights from her public school district work, and the huge transfer payment, where Mike is left with the construction company for his normal income, and the high-risk, post-separation 16th Avenue Properties.

Finally, it must be kept in mind that, notwithstanding Bev's trial counsel's pleas, there is neither an obligation nor good reason to attempt to insure either party in the divorce maintains the lifestyle to which they had become accustomed. The Supreme Court recognized this common sense truth about the reality of divorce long ago when considering alimony in conjunction with property division:

We recognize, of course, that, unless the parties have independent means, **a divorce decree will undoubtedly reduce the standards of living of both parties**, but the disparity between them ought not be so great as the instant decree engenders.

Stacy v. Stacy, 68 Wn.2d at 576.

Mike does not contend that Beverly should not receive a fair share of the community property they built up together. Nor that she

should have an impoverished time in her “golden years”. But neither should he. He is just as entitled under our statutes to a fair and equitable property division and maintenance obligation as is Beverly. But as *Stacy* recognizes, there is less to support two separate such golden eras. And as a legion of cases also recognize, “equal division” is not always equitable. Simply dividing the imputed joint income and providing for Mike to pay Beverly half of that income is simply not equitable under the circumstances of the property division, especially in light of the transfer payment which he cannot readily pay in the first place.

V. CONCLUSION

Appellant Mike Sevigny asks the Court to vacate the property division and maintenance award for a fair and equitable property division under the correct characterization, for the reasons given above. Mike asks the Court to remand with specific instructions when re-dividing the property to not divide the post-separation earnings and accumulations of either party, which are and shall remain their post-marital separate property per RCW 26.16.140, and to not effectively transfer that separate property to the other spouse by the vehicle of maintenance, since that undoes the purpose and effect of the statute.

Respectfully submitted this 6th day of May, 2019.

CARNEY BADLEY SPELLMAN, P.S.

By 

Gregory M. Miller, WSBA No. 14459
*Attorneys for Respondent Michael G.
Sevigny*

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Attorneys for Petitioner/Respondent Beverly Seigny Catherine Wright Smith Valerie A. Villacin SMITH GOODFRIEND, PS 1619 8th Ave N Seattle WA 98109-3007 Tel: (206) 624-0974 Fax: (206) 624-0809 cate@washingtonappeals.com; valerie@washingtonappeals.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> email <input checked="" type="checkbox"/> Other – via Portal
Attorneys for Petitioner/Respondent Beverly Seigny David Hazel HAZEL & HAZEL INC., PS 1420 Summitview Ave Yakima WA 98902-2941 Tel: (509) 453-9181 Fax: (509) 457-3756 daveh@davidhazel.com; frontdesk@davidhazel.com; debbieb@davidhazel.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> email <input checked="" type="checkbox"/> Other – via Portal
Attorneys for Appellant/Respondent Michael Seigny Howard N. Schwartz Law Office of Howard N. Schwartz 413 N 2nd St Yakima WA 98901-2336 Tel: (509) 248-1100 Fax: (509) 248-2519 howard@rbhslaw.com; shannon@rbhslaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> email <input checked="" type="checkbox"/> Other – via Portal

DATED this 6th day of May, 2019.



Elizabeth C. Fuhrmann, PLS, Legal
 Assistant/Paralegal to Gregory M. Miller

APPENDIX

	<u>Page(s)</u>
Appendix: Findings and Conclusions About A Marriage, ¶¶ 8, 9, 10, and 13, CP 13-14	A-1 to A-2
Amended Final Divorce Order, ¶¶ 7, 8, 9, 13, and 20, CP 40-42	A-3 to A-5
Trial Court’s Revised Property Distribution After Consideration on August 31, 2018, (CP 75-76) (Portrait View)	A-6 to A-7
Trial Court’s Revised Property Distribution after Consideration on August 31, 2018, CP 75-76 (Landscape View).....	A-6 to A-7

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3. Jurisdiction over the marriage and the spouses

At the time the *Petition* was filed,

The Petitioner lived in Washington State.

The Respondent lived in Washington State.

The Petitioner and Respondent lived in this state while they were married, and the Petitioner still lives in this state or is stationed here as a member of the armed forces.

The Petitioner and Respondent may have conceived a child together in this state.

Conclusion: The court has jurisdiction over the marriage.

The court has jurisdiction over the Respondent.

4. Information about the marriage

The spouses were married on August 18, 1979 at Yakima, WA.

5. Separation Date

The marital community ended on February 2013. The parties stopped acquiring community property and incurring community debt on this date.

6. Status of the marriage

Divorce - This marriage is irretrievably broken, and it has been 90 days or longer since the *Petition* was filed and the *Summons* was served or the Respondent joined the *Petition*.

Conclusion: The Petition for divorce should be approved.

7. Separation Contract

There is no separation contract.

8. Real Property

The spouses' real property is listed in Exhibits A & B. These Exhibits are attached to the Final Divorce Order and made part of these Findings.

Conclusion: The division of real property described in the final order is fair (just and equitable).

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9. Community Personal Property

The spouses' community personal property is listed in Exhibits A & B. These Exhibits are attached and made part of these Findings.

Conclusion: The division of community personal property described in the final order is fair (just and equitable).

10. Separate Personal Property

Neither spouse has separate personal property.

Conclusion: The division of separate personal property described in the final order is fair (just and equitable).

11. Community Debt

The spouses' community debt is listed in Exhibits C & D. These Exhibits are attached and made part of these Findings.

Conclusion: The division of community debt described in the final order is fair (just and equitable).

12. Separate Debt

Neither spouse has separate debt.

Conclusion: The division of separate debt described in the final order is fair (just and equitable).

13. Spousal Support

Spousal support was requested.

Conclusion: Spousal support should be ordered because: the wife has a need for spousal support and the husband has the ability to pay.

14. Lawyer Fees and Costs

The Petitioner incurred fees and costs, and needs help to pay those fees and costs. The other spouse has the ability to help pay fees and costs and should be ordered to pay the amount as listed in the final order. The court finds that the amount ordered is reasonable.

15. Protection Order

No one requested an *Order for Protection* in this case.

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4. Name Changes

Neither spouse asked to change his/her name.

5. Separation Contract

There is no enforceable separation contract.

6. Money Judgment (summarized in section 1 above)

The Respondent must pay the other party \$707,485. The court grants a judgment for this amount.

The interest rate is 4% per annum commencing July 6, 2018.

7. Real Property (summarized in section 2 above)

The real property is divided as explained below:

Real Property Address	Tax Parcel Number	Given to which spouse as his/her separate property?
1251 Lucy Lane Zillah, WA 98953	211129-33407	Petitioner
6431 North Fork Road Yakima, WA 98903	151208-41401	Respondent

The spouse giving up ownership must sign a Quit Claim Deed and Real Estate Excise Tax Affidavit to transfer the real property to the other spouse.

The court does have jurisdiction to divide real property.

8. Petitioner's Personal Property

The personal property listed in Exhibit B is given to Petitioner as his/her separate property. This Exhibit is attached and made part of this Order.

9. Respondent's Personal Property

The personal property listed in Exhibit A is given to Respondent as his/her separate property. This Exhibit is attached and made part of this Order.

10. Petitioner's Debt

The Petitioner must pay all debts s/he has incurred (made) since the date of separation, unless the court makes a different order about a specific debt below.

1 The Petitioner must pay the debts listed in Exhibit D. This Exhibit is attached and made part
2 of this Order.

3 **11. Respondent's Debt**

4 The Respondent must pay all debts s/he has incurred (made) since the date of separation,
5 unless the court makes a different order about a specific debt below.

6 The Respondent must pay the debts listed in Exhibit C. This Exhibit is attached and made
7 part of this Order.

8 **12. Debt Collection**

9 If one spouse fails to pay a debt as ordered above and the creditor tries to collect the debt
10 from the other spouse, the spouse who was ordered to pay the debt must hold the other
11 spouse harmless from any collection action about the debt. This includes reimbursing the
12 other spouse for any of the debt he/she paid and for attorney fees or costs related to
13 defending against the collection action.

14 **13. Spousal Support**

15 The Respondent must pay spousal support as follows:

Amount: \$6,500 each month	Start date: July 1, 2018 Date 1 st payment is due	Payment schedule: the first of each and every month Day(s) of the month each payment is due (for example, "the 5 th ," "weekly," or "half on the 1 st and half on the 15 th ")
Termination: In no event sooner than November 2027 to coincide with Petitioner's 70th birthday which occurs on November 4, 2027 at which time the court will re-evaluate the parties' incomes, needs and abilities to pay maintenance into the future. Spousal support will end when either spouse dies, or the spouse receiving support gets married or registers a new domestic partnership		
Make all payments to the other spouse directly by mail to: PO Box 1846 Zillah WA 98953 Street address or PO box City State Zip The receiving party must notify the paying party of any address or account change.		

1 **14. Fees and Costs** (Summarize any money judgment in section 1 above)

2 The court orders a money judgment for fees and costs as follows:

3

Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
4 lawyer fees	5 Michael Sevigny	Beverly Sevigny	\$10,000	\$

6 The interest rate is 4% per annum.

7 **15. Protection Order**

8 No one requested an *Order for Protection*.

9 **16. Restraining Order**

10 No one requested a Restraining Order.

11 **17. Children**

12 There are no dependent children of this marriage.

13 **18. Parenting Plan**

14 There are no dependent children of this marriage or the court does not have jurisdiction
15 over the children.

16 **19. Child Support**

17 There are no dependent children of this marriage or the court does not have jurisdiction
18 over child support.

19 **20. Other orders**

20 The Judge's written decision dated May 2, 2018 is attached and hereby incorporated as if
21 fully set forth with the revised spreadsheet of 8/30/18.

22 **Ordered,**

23 Date

9/14/18

nunc pro tunc
to July 6, 2018

24 
Judge of Commissioner

In re the Marriage of Sevigny - Revised as of 8/30/18
 Yakima County Superior Court Cause No. 15-3-00413-4

		Date of value	Asset Value	Debt	Net	To Husband	To Wife
COMMUNITY PROPERTY							
Asset	Description of community asset						
	Real Property						
CA-1	1251 Lucy Lane	3/7/2018	376,000	\$127,467	\$248,533		\$248,533
CA-2	6431 Fork Road	3/8/2018	\$200,000		\$200,000	\$200,000.00	
CA-3	Hawaii Timeshare		\$5,000		\$5,000		\$5,000
	Total Real Property		\$581,000	\$127,467.00	\$453,533	\$200,000	\$253,533
	Businesses						
CA-4	1/2 M Sevigny Construction	12/31/2015	\$775,000		\$775,000	\$775,000	
CA-5	1/2 - 16th Avenue LLC (10% MBM land)*	2/23/2017	\$2,355,250	\$2,013,918	\$341,332.00	\$341,332	
	Total Businesses		\$3,130,250	\$2,013,918	\$1,116,332	\$1,116,332	0
	Accounts						
CA-6	H's Solarity IRA #18670	9/30/2015	\$40,956		\$40,956		\$40,956
CA-7	W's Solarity IRA	12/31/2014	\$9,568		\$9,568		\$9,568
CA-8	H's State Street Goldman Ed J #5006-1-2	3/27/2015	\$21,767		\$21,767		\$21,767
CA-9	H's NYL IRA #53305	12/31/2016	\$74,966		\$74,966		\$74,966
CA-10	W's American Funds #4-416	9/30/2015	\$2,665		\$2,665		\$2,665
CA-11	W's SERS3	3/31/2016	\$32,645		\$32,645		\$32,645
CA-12	W's Deferred Comp	9/30/2015	\$30,728		\$30,728		\$30,728
CA-13	W's VEBA	12/31/2014	\$3,607		\$3,607		\$3,607
CA-14	Bank of A CD #9377	9/23/2014	\$2,286		\$2,286		\$2,286
	Total Accounts		\$219,188		\$219,188		\$219,188
	Life Insurance						
CA-15	H'S NY Life #928	6/20/2014	\$39,418		\$39,418		\$39,418
CA-16	H's Lafayette Life	5/28/2015	\$10,299		\$10,299		\$10,299
CA-17	W's Lafayette Life	5/28/2015	\$12,473		\$12,473		\$12,473
	Total Life Insurance		\$62,190		\$62,190		\$62,190

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In re the Marriage of Sevigny - Revised as of 8/30/18
 Yakima County Superior Court Cause No. 15-3-00413-4

	Vehicles							
CA-16	2012 Buick Enclave		5/1/2018	\$23,000		\$23,000		\$23,000
CA-17	2000 Blazer		5/1/2018	\$500		\$500	\$500	
CA-18	3 snowmobiles/trailer		5/1/2018	\$3,000		\$3,000	\$3,000	
CA-19	utility trailer		5/1/2018	\$750		\$750	\$750	
	Total Vehicles			\$27,250		\$27,250	\$4,250	\$23,000
	Personal Property/Other							
CA-20	Household goods/sewing machine			\$15,500		\$15,500	\$500	\$15,000
CA-21	2016-17 distributions from 16th Ave LLC	2016-17		\$240,000		\$240,000	\$240,000	
	Total Person Prop/Other			\$255,500		\$255,500	\$240,500	\$15,000
TOTALS				\$4,275,378	\$2,141,385	\$2,133,993	\$1,561,082.00	\$572,911
	TRANSFER PAYMENT						(\$707,485)	\$707,485
	FINAL COMMUNITY DISTRIBUTIONS 40H/60W						\$853,597	\$1,280,396
	*Value of 10% community interest in MBM Land LLC is not accounted for otherwise							

36393-7 000053

In re the Marriage of Sevigny - Revised as of 8/30/18
 Yakima County Superior Court Cause No. 15-3-00413-4

		Date of value	Asset Value	Debt	Net	To Husband	To Wife
COMMUNITY PROPERTY							
Asset	Description of community asset						
	Real Property						
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	*Value of 10% community interest in MBM Land LLC is not accounted for otherwise							

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CARNEY BADLEY SPELLMAN

May 06, 2019 - 2:12 PM

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