

COURT OF APPEALS, DIVISION III
IN AND FOR THE STATE OF WASHINGTON
No. 365093 III

BENJAMIN, JONES

Petitioner/Appellee

v.

LISA JONES

Respondent/Appellant

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

PETITIONER/APPELLEE'S RESPONSE BRIEF

Michael R. Grover, WSBA #44270
RANDALL | DANSKIN, P.S.
601 West Riverside Avenue,
Suite 1500
Spokane, WA 99201
Telephone: (509) 747-2052
Facsimile: (509) 624-2528
Attorneys for Petitioner

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A. The Trial Court’s final distribution of property does not represent a manifest abuse of discretion base upon the facts of this case and the substantial evidence in support of said distribution in the trial record.

1. The trial court’s final distribution of property is supported by well-established law articulated by the Supreme Court of Washington in *In re Marriage of Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984) for analysis of professional degrees in conjunction with the statutory factors of RCW 26.09.080.

2. The final distribution is supported by the trial court’s careful consideration of the factors under RCW 26.09.080.

3. The cases cited by the Wife are distinguishable to the matter before this court.

B. The Trial Court’s final ruling regarding spousal maintenance in supported by Washington Law and substantial evidence; to the extent wife had a need for support, it was fulfilled by a combined twenty-nine months of court-ordered maintenance.

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal arises out of the dissolution of the twenty-year marriage of Benjamin E. Jones (“Mr. Jones or Husband”) and Lisa A.M. Jones (“Ms. McCrea-Jones or Wife”). The parties got married young, at a time when both were still in college. At the time of trial, the parties were both forty-three (43) years old and healthy. The parties adopted three (3) daughters during marriage: Tara (24 years old and financially independent), Lonnece (23 years old and financially independent), and Grace (11 years old).

Due to the youth of the parties at the time of marriage, the trial court was primarily tasked with dividing community assets and debts, with some exceptions for separate property accumulations during the twenty-two (22) month period between the date of separation (November 13, 2016) and the dates of trial (August 21st, 22nd, 24th, 27th, 29th of 2018). In order to fairly and accurately distribute the assets and debts, the trial court conducted a four-day bench trial. The trial court heard the testimony of six witnesses, including lengthy testimony from both parties. Over one hundred (100) exhibits were admitted into the record and examined by the trier of fact.

On appeal, despite substantial evidence at trial to support the court's ruling, the Wife challenges the court's findings of fact and conclusions of law, citing errors related to the court's distribution of assets/debts, spousal maintenance, and attorney fees. The Wife's opening brief emphasizes a misleading description of the distribution of assets as 95% net community worth awarded to Husband and 5% community net worth awarded to Wife, without any discussion of the equitable considerations concerning Wife's extraordinary student loan debt incurred during marriage and her subsequent failure to utilize the professional career associated therewith for any financial gain. These issues were the primary focus of the Husband's presentation at trial and emphasized by the court in its explanation of its findings and conclusions.

Support for the court's decisions included, but were not limited to:

- 1) the substantial amount of time, money, and effort sacrificed by the Husband to facilitate the Wife's ability to obtain a doctorate in clinical psychology, which required the entire family to relocate from Alaska to Oregon;
- 2) the Wife's subsequent decision not to take the licensing exam required to become a gainfully employed clinical psychologist, despite the Wife's repeatedly assurances she would do so over the course of the past

decade; 3) the Wife's request at temporary orders for access to community funds to pay for the cost of preparing for the aforementioned licensing exam, and her subsequent decision to misappropriate those funds for an unrelated purpose; and 4) the lack of financial benefit derived by the marital community as a result of the Wife incurring substantial student loans and obtaining a potentially lucrative degree that she never put to use during marriage.

The fundamental question the court was faced with was whether Mr. Jones should be ordered to continue to contribute to his Wife's student loan debt by equalization on the balance sheet or with additional spousal maintenance, or should Ms. McCrea-Jones be assigned this debt without a dollar-for-dollar equalization of her student loan balance in the final distribution of property?

Ultimately, the court determined that Ms. McCrea-Jones should have to pay the remaining balance of those loans without a dollar-for-dollar equalization since she is the only party who will ever benefit from that professional degree. The evidence presented at trial showed that Mr. Jones had already made sufficient financial contributions (many years of installments of direct repayment of the Wife's student

loans from his earnings, as well as seventeen months of spousal maintenance payments during the pendency of the dissolution proceedings) and personal sacrifices facilitating the Wife's ability to obtain said degree.

The court did not err in its determination of what was fair and equitable under the totality of the circumstances in this case. This Court should affirm the trial court.¹

II. RESTATEMENT OF THE ISSUES

The appellant, Lisa Jones, assigns error to the trial court as follows:

1) Did the Court err by ordering a final distribution of assets and debts which technically resulted in a disproportionate net award in favor of the Husband, as a result of assigning the Wife her student loan debt incurred for a professional degree that only the Wife will derive any benefit from?

2) Did the Court err by not ordering Husband to pay Wife more than twelve (12) additional months of spousal maintenance—in addition to the previous seventeen (17) months Husband paid to

¹ For simplicity, this Brief follows the general structure of the Wife's Opening Brief. The Statement of the Case will cite to the record. In the argument section, this Brief will only cite to the record where it was not previously cited in the Statement of the Case.

Wife under temporary orders—in light of the court’s finding that it should take the Wife no more than nine (9) additional months after trial to become a gainfully employed clinical psychologist?

3) Did the Court err in various determinations of asset valuation and characterization as follows:

a. Was it err to find that Wife received a pre-distribution of \$40,000 of community funds held in STCU bank accounts?

b. Was it err to find the Wife’s 2017 Chrysler Pacifica and loan were community in nature?

c. Was it err to find that the \$3,000 down payment on the Chrysler Pacifica was with community funds and to also find that the \$40,000 held with STCU bank accounts was a pre-distribution of community funds?

4) Did the Court err by ordering the parties to each pay for their own attorney fees, in light of the Court’s disproportionate award of liquid, unencumbered cash assets in favor of the Wife, and in consideration of the inability of Mr. Jones to pay Ms. Jones’ attorney fees?

5) Did the Court err by ordering the Wife to refinance the former

family home within one year, in light of the Court's efforts to facilitate such effort by awarding the Wife a disproportionate award of the liquid, unencumbered cash assets in its final distribution and the Court's finding that Wife should be gainfully employed as a professional clinical psychologist within 9 months of trial?

III. STATEMENT OF THE CASE

Mr. Jones and Ms. McCrea-Jones were married in Fairbanks, Alaska on May 17, 1996. RP 34. The parties separated on November 13, 2016. RP 34-35.

In 1998, the parties welcomed two adopted daughters, Tara and Lonnece, into their home while the parties were both still in college at the University of Alaska-Fairbanks. RP 44-45. Contrary to Appellant's Brief stating that the arrival of Tara and Lonnece delayed Wife's college graduation by a year and a half (citing RP 497), both parties graduated from college in 1998. RP 45; Exhibit P-20 (Page 1 of Wife's CV).

After graduating with bachelor's degrees in 1998, both parties worked full-time while balancing their parenting duties with two young children in the household. Ms. McCrea Jones worked full-time as a

chemical dependency counselor for The Women and Children's Center for Inner Healing in Fairbanks from October 1998 – August 2000. RP 617-618; Exhibit P-20 (Page 7 of Wife's CV). She continued to work full-time from August 2000 – June 2004 as a Secondary Drug Prevention Specialist for the Fairbanks North Star Borough School District. RP 618; Exhibit P-20 (Page 7 of Wife's CV). During this period of time, Ms. Jones' earnings averaged between \$30,000 to \$31,000 annually. RP 607-608. Mr. Jones worked full-time in customer service at Alaska Airlines. RP 45-46. Eventually in 2001, Mr. Jones began pilot training with the Air National Guard. RP 46.

In 2004, Ms. McCrea Jones was accepted to a doctoral program in Clinical Psychology at George Fox University in Newberg, Oregon. RP 50-53. At great sacrifice to the entire family, the decision was made to relocate from Alaska to Oregon for the benefit of Ms. McCrea-Jones' career aspirations, despite the fact that Mr. Jones did not have a job waiting for him in Oregon and the children would need to get used to unfamiliar surroundings. RP 50-51. The parties agreed this was a great opportunity for Ms. McCrea-Jones to pursue a field she was passionate about and to obtain a professional degree/license that would dramatically

increase her earning capacity, thus benefitting the family's financial position. RP 52-53. Both parties had a mutual expectation of financial benefits to the community as a result of Ms. McCrea-Jones' efforts to obtain her doctorate and become a licensed clinical psychologist. RP 97.

In the summer of 2004, Mr. Jones drove with Lonnece and Tara in a U-Haul down to Newberg with all of the family's belongings. RP 51. Ms. McCrea-Jones later met up with the rest of the family down in Oregon and began attending the program in the fall of 2004. RP 51-53.

In 2008, the parties adopted their third daughter, Grace, and welcomed her into their home. RP 54. During this period of time, Ms. McCrea-Jones was a full-time student and working upwards of fifty-five (55) hours per week. RP 54, 609.

Ms. McCrea-Jones conceded at trial that she was not a stay-at-home mother from the period of time between 1999-2009 due to the responsibilities she had working full-time and going to school, except during the summers. RP 609-610.

Ms. McCrea-Jones completed all of her classroom curriculum for her doctorate degree by the spring of 2009. RP 54; RP 598-599. She completed a mandatory full-time internship for the program by August of

2010. RP 609. As of August 2010, the only remaining prerequisites for Ms. McCrea-Jones to complete in order to become a gainfully employed clinical psychologist were to successfully defend her dissertation and pass the EPPP licensing exam. RP 55, 599.

During the summer of 2010, the parties moved to Spokane, Washington. RP 55. On October 22, 2010, Ms. McCrea-Jones communicated to a potential employer, Northwest Neurological Institute (“NNI”), that she intended to defend her dissertation in December of 2010, and she also had the goal of taking the EPPP licensing exam in January or February of 2011. RP 59-60; Exhibit P-36.

However, Ms. McCrea-Jones did not defend her dissertation until May of 2013. RP 599. During the three and a half years that passed between the Wife’s original estimation of defending her dissertation (December 2010 to May 2013), she was unemployed and the parties were obligated to pay George Fox University \$1,600 per semester to keep Ms. McCrea-Jones enrolled in the program. RP 63-65, 69.

In July of 2013, NNI offered Ms. McCrea-Jones a position in Spokane, Washington as a clinical psychologist that was estimated by NNI to pay \$93,716.04 annually. RP 73; Exhibit P-39, page 2. This estimated

pay would have exceeded Mr. Jones' 2013 earnings of \$81,929. Exhibit P-62. The Wife agreed at trial that starting pay for a clinical psychologist back in 2013 generally ranged from \$67,000 to \$95,000. RP 606. At the time of trial, the profession of clinical psychologists was designated by the Washington State Employment Security Department as an "in demand" profession with a statewide annual average income of \$70,630. RP 122-123, 127-128, Exhibit P-46, page 3, row 140. However, despite receiving an offer of employment estimated to be on the high end of the average starting salary in her chosen field, Ms. McCrea-Jones turned down the job offer. RP 75.

After the Wife's decision to turn down the NNI offer of employment, the family focus shifted to her taking and passing the EPPP licensing exam. RP 76. The parties spent time and money to outfit an entire area of the family residence with the space, equipment, and lighting needed for Ms. McCrea-Jones to prepare her dissertation and subsequently study for the EPPP licensing exam. RP 69-70.

For purposes of formal EPPP licensing exam preparation, the parties purchased an online preparation course and materials, but ultimately cancelled the subscription after several thousand dollars spent

because Ms. McCrea-Jones was not utilizing the prep course. RP 77. Subsequent to that failed effort, the parties purchased a preparation course/work shop that would take place in San Francisco over the course of four (4) days beginning September 17, 2015. RP 76-78; Exhibit P-41.

At this time during the fall of 2015, the only minor child in the house was Grace, who happened to be in school from 8 am to 3:30 pm every day. RP 613. Ms. McCrea-Jones testified that during the time Grace was in school during the day, she would balance studying for the EPPP licensing exam with taking care of the family dog, visiting her ill grandmother, and helping her adult daughter Tara with her college homework. RP 613. Despite the thousands of dollars spent on EPPP test preparation materials in 2015 and the Wife's attendance at an out-of-town San Francisco prep course, Ms. McCrea-Jones did not take the EPPP licensing exam. RP 78-79.

Mr. Jones initiated this legal proceeding to end the marriage on December 30, 2016. CP 4. At a temporary orders hearing at the beginning of the case, the Wife asked the Court to grant her access to \$1,800 of community funds for the purpose of purchasing new EPPP licensing exam test prep materials. RP 614, line 17 to RP 615, line 22. The Court granted

the request to use the community funds for this purpose. RP 614; CP 11. However, Ms. McCrea-Jones misappropriated and spent the aforementioned \$1,800 (without Court authorization) for a purpose entirely unrelated to her preparation for the exam. RP 614-615.

At the date of separation, Ms. Jones had incurred \$177,000 of student loan debt. RP 784. In the joint trial management report filed by the parties prior to trial and in his testimony, Mr. Jones proposed that the Court assign the Wife the entire balance of her student loans to her as her debt obligation, and he requested that the Court offset said balance against the community's financial contributions toward acquisition of the degree, lost wages when Ms. McCrea-Jones stopped working, and Ms. McCrea-Jones' future earnings. RP 12, 97-100; CP 108, footnote 15. During the marriage, Mr. Jones made payments from his community earnings toward the principle and interest owed on Ms. McCrea-Jones' student loans in the total amount of \$55,639.10. RP 96-97; Exhibit P-54, page 3. After the date of separation but before temporary orders were entered, Mr. Jones made payments from his separate property earnings toward the principle and interest owed on Ms. McCrea-Jones' student loans in the total amount of \$5,815. RP 96-97; Exhibit P-54, page 3. When

Mr. Jones was asked by the trial judge what amount of the student loan funds, if any, were used for the community benefit, Mr. Jones explained that he had examined check registers and payments made to George Fox University, and he had concluded that only \$30,000 to \$35,000 of the student loan funds were consumed by community expenses. RP 692.

Ultimately, the trial court concluded that Mr. Jones reaped no net financial benefit from the student loans, and that he did not receive any benefit (past, present, or future) from the professional degree that Ms. McCrea-Jones acquired. RP 800; RP 786.

The Wife's opening brief states that the net property awards were \$158,665 to Mr. Jones and \$8,600 to Ms. McCrea-Jones. *See* Appellant's Op. Br. at 12. However, with the balance of the student loans offset by the aforementioned considerations, the net property awards were \$158,660 to Mr. Jones and \$186,180 to Ms. McCrea-Jones. CP 57-69.

IV. ARGUMENT

A. THE TRIAL COURT'S FINAL DISTRIBUTION OF PROPERTY DOES NOT REPRESENT A MANIFEST ABUSE OF DISCRETION BASED UPON THE FACTS OF THIS CASE AND THE SUBSTANTIAL EVIDENCE IN SUPPORT OF SAID DISTRIBUTION IN THE TRIAL RECORD.

The Wife maintains the trial court abused its discretion because it

did not properly consider and apply the RCW 26.09.080 factors when it distributed the property. The Wife is mistaken.

In a dissolution action, the property of the spouses, whether community or separate, is before the court for distribution. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305, 494 P.2d 208 (1972). The court is directed by statute to distribute property and liabilities “as shall appear just and equitable,” based on consideration of the following factors:

- (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 Washington Supreme Court has construed the statute to require that trial courts consider all relevant factors in its distribution determination, with an eye toward achieving a just and equitable result. *In re Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985). The Court explained:

This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be

given greater weight than other relevant factors. The statute directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property.

In re Marriage of Konzen, 103 Wn.2d at 478. The trial court is in the best position to determine the relative importance and weight of the statutory factors. *Brewer v. Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). Accordingly, the court has “broad discretion” to determine what is just and equitable based under the circumstances of each case. *Brewer*, 137 Wn.2d at 769. A trial court’s distribution “should be disturbed only if there has been a manifest abuse of discretion.” *Id.*, 137 Wn.2d at 769.

A court abuses its discretion if the decision is manifestly unreasonable or if it arrives at its decision based on untenable grounds or reasons. Our Supreme Court has explained:

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

In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997) (citation omitted).

In reviewing a trial court decision, a reviewing court will review

the trial court's letter opinion, findings and conclusions, and judgment as a whole. *Robbins v. Dep't of Labor & Indus.*, 187 Wn. App. 238, 246, 349 P.3d 59 (2015). The trial court's memorandum opinion may be considered by the court of appeals as supplementation of formal findings of fact and conclusions of law. *Robbins*, 187 Wn. App. at 246.

In reviewing the superior court's decision, the role of the appellate court is to determine whether the superior court's findings are supported by substantial evidence in the record and whether those findings support the conclusions of law. *Id.* at 247.; *Eastwood v. Dep't of Labor & Indus.*, 152 Wn. App. 652, 657, 219 P.3d 711 (2009); *Tomlinson v. Puget Sound Freight Lines, Inc.*, 166 Wn.2d 105, 109, 206 P.3d 657 (2009). Substantial evidence exists if there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the stated premise. *Robbins*, 187 Wn. App. at 247; *Eastwood*, 152 Wash.App. at 657, 219 P.3d 711.

In light of the substantial discretion afforded trial courts, “[t]rial court decisions in dissolution proceedings will seldom be changed on appeal.” *In re Marriage of Stenshoel*, 72 Wn. App. 800, 803, 866 P.2d 635 (1993) (brackets added).

Here, as will be further explained below, the trial court weighed the statutory factors and concluded that the evidence in the record supported the finding of fact that the Husband received no financial benefit from the Wife's student loans or the professional degree she obtained during marriage, and the Husband would not be entitled to any of the future benefits derived by said degree. RP 786, 800. This finding is supported by sufficient evidence in the record to persuade a fair-minded, rational person of the truth of the stated premise. As a result, it would have been inequitable for the court to order a dollar-for-dollar equalization of the balance of those student loans in the final distribution of property.

1. The trial court's final distribution of property is supported by well-established law articulated by the Supreme Court of Washington in *In re Marriage of Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984) for analysis of professional degrees in conjunction with the statutory factors of RCW 26.09.080.

The Supreme Court of Washington summarized the legal considerations related to professional degrees that are obtained with the financial assistance of a supporting spouse during marriage, as well as the equitable division of liabilities associated therewith, as follows:

When a person supports a spouse through professional school in the mutual expectation of future financial benefit to the community, but the marriage ends before that benefit

can be realized, that circumstance is a ‘relevant factor’ which must be considered in making a fair and equitable division of property and **liabilities** pursuant to RCW 26.09.080....

In re Marriage of Washburn, 101 Wn.2d 168, 178, 677 P.2d 152 (1984)

(emphasis added). The Court goes on to explain:

“A professional degree confers high earning potential upon the holder. The student spouse should not walk away with this valuable advantage without compensating the person who helped him or her obtain it.”

Id.

The facts in *Washburn* are similar to this case. The parties got married young while they were both still getting their undergraduate degrees. *Id.* at 170. Upon their graduation, they both worked. *Id.* About three (3) years after the parties were married, the supporting spouse agreed to move to Pullman, Washington so that her husband could attend veterinary school at Washington State University. *Id.* The student spouse attended school full-time and worked part-time during the three and a half (3 ½) year period he was pursuing his graduate degree. *Id.* The supporting spouse worked full-time during this same period. *Id.* at 170-171. Ultimately, the parties separated only one and a half (1 ½) years after the student spouse began practicing as a veterinarian. *Id.* at 171.

In acknowledging the broad discretionary powers of the trial court to make an equitable property division, the court in *Washburn* expressed a reluctance to encroach upon that discretion by “providing a precise formula prescribing the amount of property to be distributed... to the supporting spouse.” *Id.* at 179.

Instead, the Court in *Washburn* identified four factors for consideration:

- 1) the amount of community funds expended on the education;
- 2) the lost wages the community would have earned if student spouse had kept working rather than going to school;
- 3) educational or career opportunities given up by the supporting spouse in order to obtain sufficiently lucrative employment, or to move to the city where the student spouse wishes to attend school; and
- 4) the future earning prospects of the spouses, including the student spouse now that he/she has the degree.

Id., 101 Wn.2d at 180.

In *Washburn's* companion case, *Gillette*, the supporting spouse was awarded an “equitable right to restitution” for contributions to the other spouse’s professional degree. *Id.*, 101 Wn.2d at 182.

Here, although Mr. Jones did not ask the trial court to directly compensate or reimburse him for his contributions to the Wife's acquisition of the degree, he did ask the Court to consider it when making an equitable distribution of property. RP 97.

The trial court heard testimony and reviewed evidence addressing each of the *Washburn* factors during the course of trial. First, the court heard testimony and reviewed evidence of the funds spent on moving the family to Oregon, student loan repayments, and expensive course materials purchased for Ms. McCrea-Jones' licensing exam preparation. RP 51, 76-78, 96-97; Exhibit P-41; Exhibit P-54, page 3.

Second, the court heard testimony and reviewed exhibits reflecting the Wife's average income of \$30,000 to \$31,000 annually prior to going back to school. RP 607-608. Mr. Jones testified that he believes the community would have been in better financial position at the time of trial if Ms. McCrea-Jones had never gone back to school, in part due to the lost wages. RP 98-99. Theoretically, if the Wife had earned \$30,000 annually from 2005 through 2016, that would have generated \$330,000 for the community.

Third, the court heard testimony about the relocation to Oregon

without first securing employment for Mr. Jones. RP 50-54. Mr. Jones took a lower paying job in Oregon initially to be close to the family. RP 53. Additionally, Mr. Jones had to commute back and forth between Oregon and Alaska since he still had responsibilities with the Alaska Air National Guard after the move to Oregon. RP 53-54.

Fourth, the court heard testimony indicating that Ms. McCrea-Jones starting salary range as a clinical psychologist back in 2013 was between \$67,000 and \$95,000. RP 72, 606, Exhibit P-39. Additionally, Ms. Jones was offered a position in Spokane in 2013 which was estimated to start at over \$93,000 annually. RP 73; Exhibit P-39, page 2.

The *Washburn* court made a factual distinction to be applied in these types of cases, as follows:

We point out that where a marriage endures for some time after the professional degree is obtained, the supporting spouse may already have benefitted financially from the student spouse's increased earning capacity to an extent that would make extra compensation inappropriate. For example, he or she may have enjoyed a high standard of living for several years. Or perhaps the professional degree made possible the accumulation of substantial community assets which may be equitably divided. However, our attention today is centered on the more difficult case of marriage that is dissolved before the supporting spouse has

realized a return on his or her investment in family prosperity.

Washburn, 101 Wn.2d at 181. In the case before this court, there is the worst of both worlds, financially speaking. The marriage endured for about a decade after the student loan debt was incurred, which required the family to pay over \$55,000 of community funds toward loan repayments, in addition to all the expenses related to preparations for the licensing exam. RP 96-97; Exhibit P-54, page 3. Subsequent to those repayments, the marriage was dissolved before any financial benefit was derived from the professional degree. RP 786.

The notion that the disproportionate financial contributions of one spouse or the disproportionate dissipation of marital assets / incurring of debts by one spouse would be a relevant factor for consideration, in conjunction with the factors of RCW 26.09.080, is not a unique concept in marital dissolution law. For example, in *In re Marriage of White*, 105 Wn. App. 545, 551, 20 P.3d 481 (2001), the court stated as follows:

When exercising its discretion, a trial court is permitted to consider, as one relevant factor, a spouse's unusually significant contributions to (or wasting of) the assets on hand at trial. As Division Three has noted, "Washington courts recognize that consideration of each party's responsibility for creating or dissipating marital assets is

relevant to the just and equitable distribution of property.”

Furthermore, in *In re Marriage of Steadman*, 63 Wn. App. 523, 528, 821 P.2d 59 (1991), it was held that the trial court may consider one party’s “negatively productive conduct” (in this instance, the failure to pay income taxes which resulted in additional tax liability for the community) when dividing property.

Here, Ms. McCrea-Jones actions, including the decision to incur \$177,000 of student loan debt with the knowledge that the parties had a mutual expectation of a financial benefit from the professional degree she sought, the expenditure of thousands of dollars as a result of the inexcusable delays in defending her dissertation (\$1,600 per semester for 3 ½ years), the expenditure of thousands of dollars on EPPP preparation materials and coursework, and her misappropriation of Court-ordered community funds that were ear-marked for EPPP materials are the epitome of “negatively productive conduct.”

The trial court weighed the value of the professional degree and what benefit was derived from it in its deliberation of the equities, as was memorialized by the court’s ruling as follows:

I also considered the fact that Mr. Jones did not benefit

from the professional degree that was sought, nor will he reap the benefit from that in the future. I tried to factor that in as well...” RP 786, lines 8-11.

Ms. Jones’ student loans: I’m also keeping that with Ms. Jones as there was no financial benefit to Mr. Jones. RP 800, lines 12-13.

If you actually total all the columns, you’ll see that it’s pretty fair. It’s fair taking into account all of the circumstances. I have tried to prioritize what’s been represented as the parties own priorities. I’ve thought about your specific circumstances. I understand, [Ms. McCrea-Jones], you do have a potentially lucrative degree and you could put that to use... I also think you are going to be in a position to earn a decent income with the degree you have once you complete the formalities of taking the test and becoming certified. RP 801, line 13 to RP 802, line 1.

2. The final distribution is supported by the trial court’s careful consideration of the factors under RCW 26.09.080.

First, as to the first two statutory factors, the trial court’s ruling reflects careful consideration of the nature and extent of the community and separate property. Each community and separate asset / debt from the joint trial management report is individually addressed in the ruling as to value and character. RP 782-821. The court identified having weighed equitable factors in favor of “both sides of the aisle in this case.” RP 787. Lastly, the Court added that it tried to prioritize what each party emphasized as especially important to him or her. RP 801.

Second, the Court references its consideration of the twenty (20) year duration of the marriage in multiple instances in the ruling. RP 779-781, 785, 788.

Third, the Court analyzed the economic circumstances of the parties at the time division was to become effective and concluded that, although the Wife would have a tight budget for a short period after trial, based upon her testimony and the potential earning capacity provided by her doctorate in clinical psychology, the court determined that she would not have trouble supporting herself adequately. RP 801, 814. The court estimated the Wife would be employed as a clinical psychologist no later than nine (9) months after trial. RP 801-802. Additionally, the court referenced having evaluated what it considered to be “reasonable expenditures” from the financial declarations and concluded that the maintenance award was sufficient to cover Wife’s expenses. RP 861. Lastly, the Court awarded the Wife the disproportionately larger amount of the liquid cash assets for immediate usage (i.e. estimated \$95,250 from the Oregon rental proceeds). RP 799.

This all suggests that the trier of fact was focused on the statutory factors of RCW 26.09.080 and, after weighing the testimony and analyzing

over one hundred (100) exhibits, determined the division of property was just and equitable.

3. The cases cited by the Wife are distinguishable to the matter before this court.

The Wife's opening brief promotes application of a rigid rule whereby "the spouse receiving the greater share of property is **always the financially disadvantaged spouse.**" See *Appellant's Op. Br.* at 14 (italics added). However, the Wife provides no citation to any Washington law defining the term "financially disadvantaged spouse." There was no finding of fact by the trial court that Ms. McCrea-Jones is "financially disadvantaged." RP 777-821, 859-867.

Ms. McCrea-Jones is not financially disadvantaged. As explained above, Ms. McCrea-Jones is a healthy forty-three (43) year old adult with a specialized skill stemming from her doctorate in clinical psychology. Her profession is "in demand" in the state of Washington. If she had chosen to accept the job offer from NNI in 2013, her estimated salary suggests she would have been the higher earner in the Jones household at that point in time. There is nothing standing in her way of becoming a successful clinical psychologist and practicing in that field for the next twenty (20)

plus years.

Can an individual become the “financially disadvantaged spouse” as a direct result of his or her voluntary unemployment? The suggestion that Ms. McCrea-Jones be afforded a disproportionately larger award of property in light of her decision not to follow through on her licensing and gain employment should be rejected.

Furthermore, the Wife’s position that this Court apply a rigid rule as to “financially disadvantaged spouses” is conflicted by the *Kaplan* case to which the Wife cites, as follows:

Fairness is attained by considering all circumstances of the marriage and by exercising discretion, **not by utilizing inflexible rules.**

In re Marriage of Kaplan, 4 Wn. App. 2d 466, 477, 421 P.3d 1046 (2018) (citing *In re Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989)) (emphasis added).

The Wife’s opening brief misrepresents what the aforementioned *Kaplan* case stands for. Her brief states that the court “upheld both the disproportionate property award and the maintenance order, finding that both were just and equitable.” *See Appellant’s Op. Br.* at 15. However, in *Kaplan*, the issue on appeal was not whether the wife’s disproportionately

larger award (55% of the community property) was just and equitable. Rather, *the wife* appealed the award, and she argued that it wasn't disproportionate enough and she should be awarded additional property/maintenance. The Court rejected her request. *Kaplan*, 4 Wn. App. 2d. at 476-484.

Regardless, *Kaplan* is distinguishable from the case before this court. First, the parties in *Kaplan* were near retirement age and possessed a community estate valued at \$4.77 million before factoring in the separate property. *Id.* at 472, 477. The Husband's annual salary was approximately \$387,000. *Id.* at 471. The Wife had moved for the Husband's career four separate times and she remained a stay-at-home mother for twenty (20) years leading up to the date of trial. *Id.* at 471-472.

Here, Mr. Jones and Ms. McCrea-Jones both have many working years left in their professional careers. RP 9. At the time of trial, there were approximately \$353,908 in assets and \$190,870 in debt to be divided. RP 785. In this case, it was actually Mr. Jones who moved for the benefit of Ms. McCrea's career from Alaska to Oregon. Additionally, the subsequent move to Spokane was a decision deemed by the parties to be mutually beneficial for their respective careers. RP 56. Ms. McCrea-Jones

was not a stay-at-home mother by her own admission from 1999-2009. In 2009, she was working at least 55 hours per week. In the period that followed, her primary focus aside from parenting (when Grace was not at school), was studying for a licensing exam intended to further her career.

Similarly, the *Donovan* case cited by Wife's opening brief is also distinguishable. In *Donovan*, the Court explained the disproportionate award to the Wife as follows:

The wife... is not prepared, without additional training, for entry into the labor market. Even as she trains for future employment she will have to arrange for childcare of her youngest child, who was 7 years old at the time of trial. The two older children are young teenagers who require parental supervision, if not care. Even after training, the wife's salary potential will undoubtedly be less than a third of her husband's present salary.

In re Marriage of Donovan, 25 Wn. App. 691, 696-697, 612 P.2d 387 (1980).

The same cannot be said for Ms. McCrea-Jones with regard to any of the foregoing reasons. In addition to the fact that her earning potential and skill-set are self-evident in the record, the parties' daughter Grace was 11 years old at the time of trial and attending school from 8:30 am to 3 pm every day. There is nothing in the record to suggest parenting Grace

requires a substantial degree of specialized attention during the period of time when she is not in school, except for vague references to pneumonias, anxiety, dietary restrictions, and a diagnosis of ADD. RP 536-537.

The Wife's opening brief also cites to the unpublished case of *In re Marriage of Mount* in support of a disproportionate award, yet fails to note the primary reason the Court gave for such award: the other spouse had "significant separate property." *In re Marriage of Mount*, 2014 WL 48002 at *1. In *Mount*, the evidence indicated that the husband would be inheriting \$525,000, despite his efforts to frustrate the opposing party's efforts to conduct a valuation of those assets. *Id.* at *3-4. Additionally, he was awarded \$83,000 from a retirement account as his separate property. *Id.* at *4. By way of contrast here, Mr. Jones was awarded \$16,397.76 of separate assets (tax-encumbered retirement funds) to go along with \$16,686.17 of separate debts (car lease and credit card debt accrued during the pendency of the proceeding). RP 784, 800.

The most common distinguishable theme in the cases cited in the Wife's opening brief is fact-patterns involving stay-at-home mothers who have sacrificed for their spouse's career and, as a result, are not adequately prepared to enter the job market. Simply put, the record does not support

the statement in the Wife's opening brief that "Ms. McCrea Jones is similar to the wives in *Donovan, Kaplan, and Mount*... the vast majority of her time and efforts were entirely devoted to the children of the marriage." See *Appellant's Op. Br.* at 20. By her own admission, she was not a stay-at-home mother from 1999-2009, except for summers, and she was working at least fifty-five (55) hours per week in 2009 shortly after Grace joined the family. This brief has cited to countless portions of the record reflecting personal and financial sacrifices made by the marital community in order to facilitate and further Ms. McCrea-Jones' career. These facts make Ms. McCrea-Jones situation inapposite to those wives in *Donovan, Kaplan, and Mount*.

In this case, the level of involvement of both parties in the parenting responsibilities was disputed. Ms. McCrea-Jones asserted at trial that she was left to handle the majority of the parenting duties for stretches of time, but Mr. Jones indicated that he believed parenting responsibilities were "fairly even" and, due to the nature of his employment, there were extended periods of time where he would be 100% available to handle the parenting for upwards of 11-15 days per month. RP 170-172; Exhibit P-64, page 3-4.

The trial court weighed the testimony of the witnesses, considered how parenting should be factored into the ruling (RP 786), and made a distribution it deemed to be just and equitable. The broad discretion afforded the trial court should not be disturbed on appeal.

B. THE TRIAL COURT'S FINAL RULING REGARDING SPOUSAL MAINTENANCE IS SUPPORTED BY WASHINGTON LAW AND SUBSTANTIAL EVIDENCE; TO THE EXTENT WIFE HAD A NEED FOR SUPPORT, IT WAS FULFILLED BY A COMBINED TWENTY-NINE MONTHS OF COURT-ORDERED MAINTENANCE.

The award of maintenance is within the discretion of the trial court. *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994) (citing *In re Marriage of Bulicek*, 59 Wn. App. 630, 633, 800 P.2d 394 (1990)). The trial court's discretion in this area is wide. *Id.* (citing *Bulicek*, 59 Wn. App. at 634). The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be just. *Id.* (citing *Bulicek*, 59 Wn. App. at 633).

In determining whether to award maintenance, the court considers the following factors identified in RCW 26.09.090:

- (1) the financial resources of the party seeking maintenance;
- (2) the time necessary for the party seeking maintenance to acquire education and training to find employment;

- (3) the standard of living during the marriage;
- (4) the duration of the marriage;
- (5) the age, physical and emotional condition, and the financial obligations of the party seeking maintenance; and
- (6) the ability of the party against whom maintenance is being sought to pay support.

Spousal maintenance is not a matter of right. *In re Marriage of Foley*, 84 Wn. App. 839, 845, 930 P.2d 929 (1997) (citing *In re Marriage of Scheffer*, 60 Wn. App. 51, 54, 802 P.2d 817 (1990)). It is the policy of the state of Washington to place a **duty** on the spouse receiving maintenance to gain employment if possible. *Daken v. Daken*, 62 Wn.2d 687, 692, 384 P.2d 639 (1963) (emphasis added).

Furthermore, the Courts impose an **obligation** on the receiving spouse to prepare so that he or she may become self-supporting. *Berg v. Berg*, 72 Wn.2d 532, 534, 434 P.2d 1 (1967) (emphasis added). Nor is the wife 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 (1973); *Friedlander v. Friedlander*, 80 Wn.2d 293, 297, 494 P.2d 208 (1972); *Morgan v. Morgan*, 59 Wn.2d 639, 644, 369 P.2d 516 (1962).

A request for continuing spousal maintenance at trial may be

denied on the basis of the amount of temporary spousal maintenance already received while the action is pending and the sufficiency of time provided to become self-supporting. *Lucky*, 73 Wn. App. at 209-210.

Despite the foregoing Washington law, at the time of trial, Ms. McCrea-Jones admitted that she had not applied for any form of employment from the date the original petition was filed in this matter in December 2016 to the present date of trial in August 2018. RP 621. This is remarkable considering the fact that even a cursory review of Ms. McCrea-Jones' voluminous eleven (11) page Curriculum Vitae (which explains her experience and skills in great detail) should lead one to conclude that she is highly employable, regardless of whether she has passed the EPPP licensing exam. Exhibit P-20, Wife's CV.

The Division III Court of Appeals decision in the above-cited *Lucky* case is instructive authority in the case before this court. The parties in *Lucky* were married for fourteen (14) years and had one eleven (11) year old son at the time of trial. *Lucky*, 73 Wn. App. at 202-204. The husband was a plastic surgeon and the wife was a registered nurse with a four year degree in psychology. *Id.* at 203. At the time of separation, the wife worked in the husband's practice without pay, so she would need to find

alternative employment moving forward. *Id.* After her separation from Dr. Luckey, the wife moved from the Tri-Cities area to Spokane with the parties' son where she was working part-time, handling all parenting responsibilities for the parties' child, and finishing a bachelor's degree at Gonzaga University. *Id.* at 205.

The wife in *Luckey* appealed the trial court's decision not to award any additional maintenance beyond trial, but Division III affirmed the trial court. *Luckey*, 73 Wn. App. at 210. The court explained its decision as follows:

The trial court concluded that no further spousal maintenance was warranted. Its relevant conclusion of law stated that it had considered the statutory factors and also the level of support paid in the first year of separation (\$22,800), the level of child support (\$785 per month), the fact that the property division was unequal in favor of Ms. Luckey, Dr. Luckey's additional payment of \$21,000 to Ms. Luckey in June 1991, and Ms. Luckey's ability to find full-time work soon.

Id. Ultimately, the fact that the wife had an eleven (11) year old child in the home and was finishing up a degree (despite already being educated and employable) did not outweigh the obligation the wife had to become self-supporting in light of the time and funds afforded to her while the dissolution matter was pending.

Similarly here, at the time of trial, Mr. Jones had paid seventeen (17) months of court-ordered spousal maintenance for a total of \$30,600. CP 11. Additionally, in the court's temporary order entered on April 12, 2017, Mr. Jones was ordered to pay \$1,099 per month for child support, along with the mortgage on the family residence, all insurance premiums for the benefit of the family, and minimum monthly payments on the community credit card debt. CP 11. Since the date of separation, Mr. Jones paid \$31,467.71 for payments related to the family residence that was ultimately awarded to Ms. McCrea-Jones, including the mortgage, escrow, insurance, and taxes. RP 80-81; Exhibit P-54, page 1. On top of all that, Mr. Jones accrued \$12,616 of separate credit card debt during the pendency of the dissolution, while Ms. McCrea-Jones came into trial with no signs that she had any cash flow deficiencies during the preceding twenty-two (22) months. CP 36-38.

At the time of temporary orders, Ms. McCrea-Jones filed a financial declaration representing to the court that she had no income and her monthly expenses were \$6,739.39. Exhibit P-30. At the time of trial, Ms. McCrea-Jones filed and presented an updated "post-trial" financial declaration representing to the court that she still had no income and her

monthly expenses were \$9,282. Exhibit R-121. The Wife asked the court to award her a total transfer payment (maintenance and child support) of upwards of \$7,000 per month for five (5) years at the time of trial. RP 20, 772-773. However, Mr. Jones filed and presented a “post-trial” financial declaration representing to the court that his net income was \$7,098.62 and his monthly expenses were \$4,653.04, which would only leave a \$2,445.58 surplus in his monthly budget. Exhibit P-48. The Court ultimately entered findings and a final child support order that adopted Mr. Jones’ proposed calculation of his monthly net income. RP 814.

Unlike the wife in *Luckey* who was not awarded any additional spousal maintenance, the trial court in this matter awarded Ms. McCrea-Jones an additional twelve (12) months of support. RP 801. The trial court found this to be sufficient in light of the finding of fact that Ms. Jones should not require more than an additional nine (9) months to become licensed and employed as a clinical psychologist. RP 801-802. Additionally, the trial court noted that it was “mindful” of the reduction in the monthly amount of maintenance ordered from temporary orders to the final ruling, but the trial court “looked specifically at the financial declarations including what [the trier of fact] thought were reasonable

expenditures.” RP 861, lines 21-24. The Court effectively rejected the suggestion that Ms. McCrea-Jones had a need of \$7,000 per month and/or Mr. Jones had the ability to pay that amount.

The Wife’s opening brief cites to *In re Marriage of Tower*, 55 Wn. App. 697 (1989) for the proposition that a disproportionate award in favor of “the only spouse with any significant earning capacity would be an abuse of discretion if it were not balanced by long-term maintenance.” *See Appellant’s Op. Br.* at 24. However, in the case before this court the evidence supports the fact that Ms. McCrea-Jones does have a significant earning capacity, and that is what the trial court determined as well. RP 801, line 17 to RP 802, line 3.

Lastly, the Wife’s opening brief emphasizes Ms. McCrea-Jones’ anticipated struggle caring for two special needs children. *See Appellant’s Op. Br.* at 25. Ms. McCrea-Jones testified at trial that Grace has been diagnosed with ADD and anxiety. RP 536. Mr. Jones also testified that Grace does have an official diagnosis of ADHD, but she is a “fairly typical child in terms of her needs.” RP 174, line 23 to RP 175, line 6. It is wholly unclear from the record what challenges the Wife anticipates moving forward.

Moreover, the trial court correctly rejected the invitation to make the Wife's unilateral decision to begin the adoption process for the child, Ashara, during the pending dissolution proceeding a basis for increased spousal maintenance. RP 37-40, 785-786.

C. THE TRIAL COURT'S VALUATIONS AND CHARACTERIZATIONS OF PROPERTY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; ANY MISCHARACTERIZATION OF PROPERTY THEREIN IS HARMLESS ERROR.

1. Assigned Property Error 1: The \$40,000 Pre-distribution

It is undisputed that the \$40,000 in question came from a refinance transaction that extracted funds from the equity of the family residence shortly before separation. RP 136-137, 589. It is also undisputed that the family residence (Dearborn) is a community asset. CP 31. The \$40,000 was unilaterally transferred into a bank account in the Wife's name only without Mr. Jones' consent in spring of 2016 when the parties were experiencing marital difficulties. RP 138-139; Exhibit P-57.

If Ms. McCrea-Jones was awarded the family residence with the inflated mortgage caused by the refinance and extraction of equity, the value of the asset she received would be dramatically discounted if she was not also charged with the pre-distribution of funds extracted from that

asset (especially considering both parties agree she received and utilized said funds exclusively for her own benefit). The trial court properly characterized these funds as community funds.

2. Assigned Property Error 2: The Chrysler Pacifica

It is undisputed that the source of funds used to acquire the Chrysler Pacifica came from funds extracted from the equity in the community family residence as a part of a refinance transaction. Exhibit R-111. The Wife's brief indicates that there is no way to trace the funds because the account holding the funds was commingled with other assets. *See Appellant's Op. Br.* at 30. However, Ms. McCrea-Jones' "accounting" of the \$40,000 refinance funds includes an entry indicating that \$4,000 of the funds were used to acquire the Pacifica. Exhibit R-111.

The trial court expressed a finding of fact that the source of funds used to acquire the vehicle was traced to community funds by testimony. RP 783, 790-791. The trial court also inquired with counsel during the ruling about their respective opinions as to characterization. RP 791. Counsel for the Wife indicated that it was his position that the court could segregate the down payment as community and deem the remainder separate in character, but it would probably be cleaner to characterize it all

as community. *Id.* That is precisely what the trial court did. Additionally, the trial court stated that it was making a “special finding” that the distribution pertaining to the Chrysler Pacifica and its debt would have remained the same, regardless of characterization as community or separate. RP 791, line 24 – RP 792, line 4.

3. Assigned Property Error 3: Numerica Account Value

Wife’s assignment of error regarding the Numerica account erroneously states that the trial court did not assign this particular account the date of separation value. *See Appellant’s Op. Br.* at 32. This is simply incorrect. Review of trial exhibit R-109 indicates that on the date of separation—November 13, 2016—the value was in fact \$1,303. The Wife admitted this at the time of trial. RP 672, line 24 to RP 673, line 22.

D. THE TRIAL COURT’S ORDER FOR THE PARTIES TO PAY THEIR OWN ATTORNEY FEES IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

With regard to attorney fee awards in dissolution matters, RCW 26.09.140 and the “need and ability to pay standard” weigh the financial resources of both parties. *E.g., In re Marriage of Leslie*, 90 Wn, App. 796, 805, 954 P.2d 330 (1998). An award of attorney fees is discretionary and neither party is entitled to attorney fees as a matter of right. *Id.*

The “need” of a party for an attorney fee award is predicated on whether that party has an absence of funds and a lack of ability to get them without extreme hardship. *In re Marriage of Coons*, 6 Wn. App. 123, 126, 491 P.2d 1333 (1972). Here, it is undisputed that Ms. McCrea-Jones had possession of \$40,000 shortly before separation. RP 136-137, 589. As was previously discussed, the Wife was awarded child support and spousal maintenance at temporary orders, along with the Court ordering Mr. Jones to pay various fixed expenses on her behalf. CP 11. Through testimony, Ms. McCrea-Jones also added that she was receiving \$1,100 per month from the state of Alaska for Ashara’s expenses. RP 632. Therefore, Ms. McCrea-Jones did not have an absence of funds or a lack of ability to gain access to them.

At the time of trial, Ms. McCrea-Jones had already paid \$24,315 in attorney fees during the pendency of the litigation, despite not having been specifically awarded fees by the Court at any point in time. Exhibit R-121. However, she had not accrued any separate credit card debt (she only listed credit card debt on her post-trial financial declaration which existed at the time of temporary orders). Exhibit R-121. Her “accounting” of the use of the \$40,000 of refinance funds only includes itemization of a total of

\$10,848 for attorney fees. Exhibit R-111. Therefore, one can conclude that Ms. McCrea had sufficient cash flow during the case to pay for the remaining \$13,467 she owed her attorneys (\$24,315 from her financial declaration at R-121 minus \$10,848 from her accounting at R-111).

Mr. Jones, on the other hand, had paid \$19,860 in fees at the time of trial. Exhibit P-48. He used \$3,500 of savings for a retainer, he borrowed \$10,000 from his parents as a loan, and he paid the remaining \$6,360 from his separate earnings. RP 166, lines 5-16. Additionally, as previously detailed, Mr. Jones accrued \$12,616 of credit card debt while this matter was pending. RP 165-166; CP 37.

The Wife was afforded more access to liquid funds for payment of fees all throughout the litigation process (i.e. the \$40,000 refinance funds), including post-trial. In the Court's final distribution of assets, it awarded the Wife an estimated \$95,250 from the Oregon rental proceeds, and it awarded the Husband an estimated \$31,750. RP 799. During the presentment hearing, it was represented to the Court that Wife's post-trial attorney fees were over \$20,000 (RP 827) and the Husband's were a little over \$25,000 (RP 823). Therefore, if the primary liquid assets awarded to the respective parties (i.e. the Oregon rental proceeds) are applied by the

parties to their outstanding balances to their attorneys, Ms. McCrea-Jones still has about \$75,000 remaining from the funds, and Mr. Jones is left with roughly \$6,000. Additionally, in consideration for the court's denial of the Wife's attorney fee award request, it ordered Mr. Jones to pay 50% of the capital gains taxes on the sale of the Oregon rental property, despite the fact that he only received 25% of the proceeds. RP 866.

The Court considered Ms. McCrea-Jones request for an award of attorney fees twice (at trial and at presentment) and, after careful consideration, denied it both times. RP 804, 859-860, 866. In doing so, the trial court explained its decision as follows:

I'm also going to direct that each spouse will be, despite the fact that Ms. Jones has significant debt, she's been awarded significant assets and the Court is also mindful of pre-distributed money. I'm going to direct that each spouse pay for his or her own costs and fees associated with litigating this case. (RP 804)

The Court was mindful of the testimony, and the parties put before the Court a number of equitable issues... (RP 859)

It may not be exactly equal in all aspects, but on a whole when you balance and consider the equitable issues the Court was balancing, I believe the Court's decision was reasonable, fair, just, and equitable in line with Washington law... (RP 859)

[The Court] understand[s] that the comparison

dollar-for-dollar is not precise, but [the Court] was considering all the equitable issues in play in this case when making the decision (RP 859).

The trial court's broad discretion on this issue is supported by substantial evidence. At no point in time was Ms. McCrea-Jones denied highly capable counsel, and the denial of an attorney fee award—in light of the disproportionate award of liquid assets in her favor—is not an abuse of discretion. Furthermore, Mr. Jones did not have the capacity post-trial to pay her the substantial fee award she was requesting. The net income after payment of monthly expenses and the financial liquidity simply are not there.

E. THE TRIAL COURT'S ORDER REQUIRING THE WIFE TO REFINANCE THE FORMER FAMILY HOME WAS STIPULATED TO AT TRIAL BY THE WIFE'S OWN TESTIMONY.

A dissolution trial court may order the parties to sell property and distribute the proceeds to one or both of them. *See generally, e.g., Murphy v. Murphy*, 44 Wn.2d 737, 270 P.2d 808 (1954) (trial court's decree ordering sale of parties' home affirmed, despite wife's contention that the home was not marketable in its present condition).

Additionally, a trial court has authority to compel the sale of the family residence, even absent the consent of the parties. *In re Marriage*

of Sedlock, 69 Wn. App. 484, 501, 849 P.2d 1243 (1993).

Here, at the time of trial, Ms. McCrea-Jones was asked in cross-examination whether she would be amenable to refinancing the home mortgage within a reasonable period of time. RP 659. Her response was as follows:

Yes, if its—yes, if it's a reasonable period of time and I have to research what that would take and I'm not aware of that right now. Yes, absolutely.

RP 659. Therefore, Ms. McCrea-Jones stipulated to such a provision as long as she had a reasonable period of time to do so.

The trial court contemplated how to make the Wife's refinance of the home mortgage most likely successful. RP 799. By awarding the Wife the vast majority of the liquid assets, including the estimated \$95,250 from the sale proceeds of the Oregon rental, the Court believed she could accomplish this goal. *Id.* Additionally, as previously noted, the Court anticipated she would be gainfully employed no later than nine (9) months after trial.

Now, the Wife's opening brief argues that the husband estimated selling the home would create a net loss of \$1,200 as justification for backing out of the stipulation. *See Appellant's Op. Br.* at 39. However, this

testimony was predicated on an appraised value of the home that was established all the way back on February 26, 2018. Exhibit P-1. The trial court's September 2019 deadline for refinancing the home is eighteen (18) months after the appraisal in question was conducted. There was no evidence at trial indicating whether a loss would occur from the sale of the residence that long after the appraisal. Furthermore, the comment by Mr. Jones that the Wife's ability to refinance would be impossible "at this point" was qualified by his explanation that she was unemployed and did not seem motivated to change that state of affairs any time soon. RP 295.

V. REQUEST FOR ATTORNEY FEES AND COSTS

The Appellee requests the court for an award of attorney fees pursuant to RCW 26.09.140 and in accordance with RAP 18.1, and asks the court to reject the Appellant's request for the same. RCW 26.09.140 grants the appellate court authority to award fees and statutory costs to either party on appeal. Here, the Petitioner/Appellee Benjamin Jones has incurred substantial fees and costs not only on a lengthy trial, but now to defend this appeal. As explained above, Mr. Jones needed to borrow funds from his parents to pay for his fees at the trial court level and the lion's share of the liquid cash awarded to him at trial was consumed by his

post-trial attorney fee bill. The trial court did not abuse its discretion in this case. Mr. Jones should be reimbursed his fees and costs on appeal.

VI. CONCLUSION

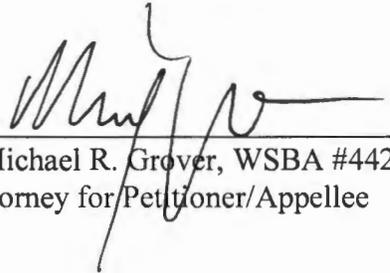
For the foregoing reasons, the trial court's findings of fact and conclusions of law should be affirmed, and the Final Divorce Order entered on November 16, 2018 should remain fully enforceable and unaltered in any way.

This appeal invites the Court of Appeals to casually sweep aside the judgment of the trier of fact who observed four (4) days of trial, heard testimony from six (6) different witnesses, and analyzed over one hundred (100) exhibits. The facts in this case were unique and the trial court's ruling exhibits a careful balancing of the equities. The trial court should be affirmed.

DATED this 18th day of November 2019.

Respectfully submitted,

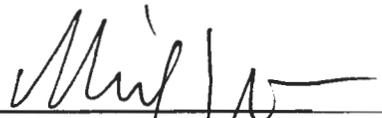
RANDALL | DANSKIN, P.S.

By: 
Michael R. Grover, WSBA #44270
Attorney for Petitioner/Appellee

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing document on the 18th day of November 2019, addressed to the following:

David J. Crouse Crouse and Associates 422 West Riverside Ave. Ste 920 Spokane, WA 99201	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Email Transmission
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Michael R. Grover