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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

Cause No. **36577-8-111**

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

MARIE MANEAU

v.

MARCUS MANEAU

BRIEF OF RESPONDENT MARIE MANEAU

Amy Rimov Attorney for Respondent
500 W. Riverside, Suite 500
Spokane, WA 99201
509-835-5377
WSBA # 30613

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A. INTRODUCTION

The parties to this appeal enjoyed an over 40 year committed intimate relationship and marriage. They jointly raised Marie's children and adopted one of Marie's grandchildren. They had been together throughout Marcus' career at Kaiser and Marie's years at Costco. Both are now retired.

Their adopted 12 yr old child (grandchild) is severely disabled with palsy, unable talk, walk, crawl, or even sit unassisted. He receives food and meds by feeding tube. The court ordered custody to Marie and restrictions to Marcus of supervised visits.

The largest community assets to divide were the house and the Kaiser pension. The trial court ordered the Kaiser pension to Marcus and the house to Marie (and the child). Marcus also was awarded his large VA disability monthly payments.

Marcus had more monthly income than he could use, while Marie had very little. Limited to the disabled child's lifetime, or either parent's lifetime, the court ordered a more equal income to each with spousal maintenance to Marie.

B. ASSIGNMENTS OF ERROR RESTATED

- 1) Assignment of error #1, regarding alleged mischaracterization of the house situated at 4929 N. Martin Street, was not objected to

at the trial level and therefore is not preserved for appeal and substantial evidence supported the finding.

- 2) Assignment of error #2, regarding Marcu's claim of an unfair and not equitable division of property without an interest in the home to him, was an award within the trial's court's discretion and not error.
- 3) Assignment of error #3, regarding the application of RCW 26.18.190 (2) as to Marcus receiving a credit against child support obligation, was not objected to at the trial level and therefore not preserved for appeal and was also within the court's fact finding discretion.
- 4) Assignment of error #4, concerning spousal support to Marie without considering specific employability options was not raised at the trial level and therefore was not preserved for appeal, additionally, the court found the parties were retired rather than employable.
- 5) Assignment of error #5, regarding Marie being paid ½ of her attorney fees due to Marcus's intransigence was not raised at the trial level and therefore was not preserved for appeal, additionally he was intransigent and frivolous in his requests for joint custody, and had the means to pay while the wife had need.

- 6) Assignment of error #6, an objection to Marcus paying monthly child support to Marie in the amount of \$1007.00 was not raised at the trial court, and not preserved for appeal, and the court also did not abuse its discretion.
- 7) Assignment of error #7, that Marcus was not to receive any child support credit for social security benefits paid to JM was not objected to at trial, and not preserved for appeal; additionally there was no evidence presented showing that JM's SS was not the result of JM's own disability pay, or from Marie's retirement status, and not Marcus's.
- 8) Assignment of error #8, that Marcus should receive a credit of \$650 for adoption support was not objected to at the trial, and not preserved for appeal; additionally, it is not supported by law.
- 9) Assignment of error #9, that the home at 4929 N. Martin was found to be community property rather than separate property, was not raised or objected to at trial, and was not preserved for appeal, additionally, the court did not abuse its discretion in its finding and the appellate court will not substitute its finding of facts for the trial court's.
- 10) Assignment of error #10, that the court was not just and equitable to order spousal support to Marie, is a new ideas on

appeal, and not preserved for appeal; additionally the court did not abuse its discretion when relying on the facts and all factors to order spousal support to Marie.

- 11) Assignment of error #11 that the court should not have found that the parties bought a house together, has no contrary argument, evidence or objection; the issue was not preserved for appeal.
- 12) Assignment of error #12, there was no objection to or contrary argument made to the court's findings that: "[d]uring the course of the cohabitation and marriage, the couple purchased the home where Marie and J.M. reside. . . ." so the issue was not preserved for appeal; additionally, substantial evidence supported the court's finding.
- 13) Assignment of error #13, there was no objection to or contrary evidence or argument made to the court's findings that the five non-exclusive factors associated with a committed intimate relationship had been met, the issue was not preserved for appeal; additionally, substantial evidence supported the finding.
- 14) Assignment of error #14, there was no objection to or contrary argument made, at trial, that the parties had not been holding themselves out as married since 1977 forward, therefore, the

issue was not preserved for appeal; additionally, substantial evidence supported that finding.

- 15) Assignment of error #15, there was no objection to or contrary argument made, at trial, to the purpose factor of the CIR that the parties' purpose of their relationship "was to be living as if they were married, to be together and to adopt and accept the responsibilities of that relationship to one another, even without the benefit of marriage," therefore the issue was not preserved on appeal; additionally, substantial evidence supported the court's finding.
- 16) Assignment of error #16, there was no objection to or contrary argument made to the trial court that the parties had met the "pooling their resources" factor of the CIR as they "pooled their work benefits, services, and resources, in raising the children and grandson, JM and purchasing and working around and in the house," so objection to this finding was not preserved for appeal; additionally, substantial evidence supports this finding.
- 17) Assignment of error #17, the trial court did not receive contrary objections, arguments, or facts, to preserve a challenge to the court's finding that the parties had been in a committed intimate

relationship; additionally, substantial evidence supported the finding.

- 18) Assignment of error #18, Marcus seeks child support credit, all to himself, for JM's \$1008 in monthly social security payments, without raising the issue at trial, or objecting to it, or otherwise preserving the issue for an appeal; additionally, the evidence does not support that Marcus's retirement was the only possible reason for JM's SS payment.
- 19) Assignment of error #19, Marcus is seeking a child support credit on appeal for the adoption support received by Marie, without objecting to or raising the issue at the trial court; additionally, a support credit is not legally appropriate.
- 20) Assignment of error #20, Marcus assigns error to the court's findings that Marie cannot go back to work without raising, arguing nor presenting evidence of a different position or conclusion before the trial court.
- 21) Assignment of error #21, Marcus assigns error to the court's Findings and Conclusions subparagraphs 21 and 22, complaining of the court's failure to give him credits for child support, without raising the issue before the trial court, and not presenting substantial evidence to support a different conclusion.

- 22)– 23) Assignment of error #22 - 23, Marcus assigns error to the court's judgment summary in the amount of \$5798.00 without preserving the issue at trial.
- 24) Assignment of error #24, Marcus assigns error to the court awarding the parties' home to the wife when the trial court did not abuse its discretion in so ordering.
- 25) Assignment of error #25, Marcus assigns error to \$800 in spousal support "without contemplating or determining whether she is capable of earning income on her own" when Marcus did not raise this theory to preserve it at the trial court; and additionally, substantial evidence supported the court's conclusion that the parties are retired.
- 26) Marcus assigns error to not receiving credits in the child support order, without objecting to it at the trial court, or providing the court any evidence on who or how much should be credited to each retired person, or the disabled person.

C. STATEMENT OF THE CASE

The parties in this action have lived together for some 40 years.

The court made the following oral ruling regarding the committed intimate relationship:

“In this case, the evidence is clear that from 1977 forward, the parties held themselves out to others as married and that they continuously cohabited other than a period, a brief period, when Mr. Maneau came to Spokane in 1987 and Mrs. Maneau didn’t come for approximately 6 months or a year later. . . .they were involved in a committed intimate relationship nearly as long or longer than they were married. But the duration of the relationship was obviously long, from ’77 to 2000, and then from 2000 forward, they were married.” CP 146 ln 8 -21 (court’s oral ruling).

“The court also looks to the purpose of the relationship, and from the evidence, the photographs that were admitted and the testimony, it’s apparent that they considered themselves married, that Marcus was, in fact, raising Frank and Delia as his own children, and that the purpose was that they would be together and they intended to adopt and to accept the responsibilities of that relationship with one another, even without the benefit of marriage.” CP 146 ln 22 – 147 ln 4.

“They clearly testified that they pooled their resources. After she arrived in Spokane, Marie found work here as well, and they pooled their resources not only for the raising of JaQuan but also for the purchase of the house, the purchase of goods and services in an around the house. And to the extent that the court could conclude from the testimony, it was

clearly the intent of the parties that this was a committed intimate relationship which then culminated in their marriage in 2000. So I do find this was a committed intimate relationship, and the court is obligated or at least entitled to characterize the property from 1977 forward in that light.” CP 147 lns 5-15.

“And so the court looks at this as if it were a long-term marriage of more than 25 years.” CP at 147.

The court’s oral ruling was incorporated as findings at CP 195, Findings and Conclusions about a Marriage.

The trial testimony provided substantial evidence for all findings, including the following.

Marie testified that the parties began dating in 1976, the centennial year, RP 47 lns 6-25, when Marie was 26 years old. RP 48 lns 14-16.

The parties began living together in 1977, in New Orleans, RP 48 ln 14-18 around the time of Mardi Gras, RP 48 ln 3 -5, when Marie’s children were five and six years old. RP 48 ln 8-13. Marcus began working for Kaiser after their relationship began. RP 49. He transferred to Spokane via Kaiser. RP 50 ln 3-10.

Marie testified that the parties lived together for 23 years, from 1977 – 2000, before getting married in 2000. RP 52, ln 3 – 7. She testified that they were together for affection, companionship, love, were faithful and

their families accepted them as husband and wife, even though they were not married. RP 52 lns 9 -24. They socialized together. RP 52 ln 17-24. They traveled and recreated together and with the kids. See RP 54 ln 16 – 23; 55 lns 1-10. They shared family sorrows together. RP 55 ln 11-18. They experienced racism together. RP 59 ln 24 – RP 60 ln 15. From the beginning of their relationship, Maria thought they would be together for ever. RP 61 ln 18-21. They lived like husband and wife and their families accepted them as husband and wife. RP 52 ln 21-24.

Marcus helped raise the children, RP 53 ln 2, teaching them how to ride their first bikes that he got them, and being very good to them, and having them call him “dad.” RP 53 ln 4-6. They had a family portrait taken in the 70’s with the kids and them, that still hangs on the family’s living room wall. RP 51- ln 6-24.

Marcus did not have kids of his own. RP 56 ln 3. He became a grandpa through Marie’s children. RP 55 ln 22 – RP 56 ln 2. At trial, he wanted to have joint custody of his “grandson,” JM. RP 62 ln 7 – 8 and see CP 55.

During the relationship, and while in New Orleans, Marie worked as a child care provider in people’s homes. RP 48 ln 23- 49 ln 1, RP 53 ln 7 - 12.

The parties left New Orleans for Spokane in 1987- 1988. RP 49 ln 13, RP 58 ln 3-8. Marcus came to Spokane first for his new job and to find them a place to live. RP 57 ln 5-8. Marie followed, joining Marcus before her children came to Spokane. RP 57 ln 9 - 58, ln 3.

Marie did the cooking, the cleaning and the grocery shopping, using her funds when she was working or his funds when she was not. RP 53 ln 16 – RP 54 ln 13.

Both parties paid the household bills before and after the marriage. RP 56 ln 19 -24. The parties shared utility bill expenses. CP 54 ln 12-15. The parties rented an apartment and then a duplex when they first arrived in Spokane. RP 61 ln 4 -14. When the rents kept increasing, they decided to buy a house. RP 58 ln 4 – 14; 61 ln 10-14. Marie took money out of her 401k to re-roof their house. RP 58 ln 15-21. Marcus painted the house. RP 58 ln 20 - RP 59 ln 3. They planted fruit trees. RP 59 ln 6-7. The house was paid off about 15 years ago, out of retirement funds, when Marcus knew he was going to be laid off. RP 59 lns 17-21. Marie considered the house to be hers. *See* RP 152 ln 13. Marie wanted the house to be awarded to her, for J.M.'s sake. *See* RP 153 lns 13-17.

The parties got married because Marcus said he wanted to make an honest woman out of Maria, and Maria said she would marry him so that when he died, she would get his money. RP 56 ln 5-8.

After they married, Marcus began to drink more and would get mean to Marie with outbursts. RP 56 lns 11-15.

Marie testified that she is 68 years old, retired at 64, and cannot work anymore. RP 164 ln 11-22. She also has chronic back pain due to three herniated discs from working on cement for 22 years and cannot stand for long periods of time, in addition to arthritic hands. RP 164 ln 14-17. The court found that “both parties have previously retired, and it’s not possible for retraining to go back to work at this point.” CP 155.

Marie also testified that she receives JM’s adoption support and her own Social Security income. RP 151 ln 5-8. She notes that JM receives disability income. RP ln 6-8. The adopted WSCSSW, Exhibit P-47, (CP 173) includes the \$650 for adoption support and Marie’s Social Security retirement at \$901.80/month in her column of income. On the EX P-47 worksheet, (CP 173) JM’s Social Security income was not placed in either column. JM’s social security disability payment of \$1,008.00 appears on Marie’s Numerica Credit Union statement. CP 89.

Neither parent testified, at any time, and no document admitted shows that JM’s social security benefit is due to the retirement social security benefit of only one parent. Had JM’s social security benefit been only the result of Marcus’s social security benefit, it would have, logically, arrived and been deposited into the joint Gesa Credit Union account,

where Marcus's social security benefits were deposited. *See* deposits at CP 77- 83.

But JM did not receive social security benefits solely as a result of only Marcus. That pay was deposited into the account in Marie's name. The record supports the court's conclusion that JM's social security benefit is JM's own disability income, or is a payment of benefits due to both of his parent's retirement pay. *See* CP 186, CP 195 para. 21 and RP 150 ln 1-5.

Witness, Annette White, saw Marie and Marcus holding themselves out to be husband and wife ever since she first knew them in Spokane, some 25 years ago. Marie and Annette had met while both worked at Costco. *See* RP 97 ln 9 – RP 98 ln 18.

D. ARGUMENT – POINTS AND AUTHORITIES

1) A committed intimate relationship was found, the evidence supports the findings, the property was appropriately characterized and divided.

The appellant claims the trial court erred in concluding the facts gave rise to a meretricious relationship at all. That is a mixed question of law and fact. *See In re Marriage of Pennington*, 142 Wn.2d 592, 602 – 603, 14 P.3d 764 (2000). Explaining the process, “the trial court's factual findings are entitled to deference, but the legal conclusions flowing from

those findings are reviewed de novo.” *Id.* at 603. To reverse on the committed intimate relationship finding, also known as an equity relationship, this court would have to find that the court abused its discretion in concluding that an equity relationship existed. *See In re Long and Fregeau*, 158 Wn.App. 919, 928, 244 P.3d 26 (2010).

The CIR factors aimed at examining all relevant evidence include, though not exclusively: “continuous cohabitation, relationship duration, relationship purpose, pooling of resources and services for joint projects, and the parties’ intent.” *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995) (*citing In re Marriage of Lindsey*, 101 Wn.2d 299, 304-05, 678 P.2d 328 (1984)).

Appellant does not dispute the first factor, “continuous cohabitation.” The parties were in a committed intimate relationship for 23 years, from 1977 until 2000, when they were married, and remained together for 18 more years, for a total of a 41 year relationship. *See* CP 146 lns 17-21. Duration of the relationship is a significant factor. *Connell*, 127 Wn.2d at 346. As noted in *In re Long and Fregeau*, 158 Wn. App. at 926, a few months of separation is not fatal to finding a committed intimate relationship.

Appellant does not dispute the finding that the purpose of the relationship was to be in a long term, marital like relationship. *See* RP 147 ln 1-2.

Appellant does not dispute the court's finding that the intent of the parties was to be in a committed intimate relationship that culminated in marriage, and accept the responsibilities of the relationship with one another, including such joint projects as the husband raising Frank and Delia, as his own children. *See* CP 146 ln 22 – CP 147 lns 4, 11-13.

The only factor the Appellant currently objects to the court finding is the pooling of resources and services for joint projects. Opening Brief at 20 – 23. This objection was not raised at trial and should be precluded under RAP 2.5 (a).

On this factor the court had found:

“They clearly testified that they pooled their resources. After she arrived in Spokane, Marie found work here as well, and they pooled their resources not only for the raising of JM but also for the purchase of the house, the purchase of goods and services in and around the house.” CP 147 ln 5-9.

Indeed, Marie had testified that: the parties had left New Orleans for Spokane in 1987 - 1988. RP 49 ln 13, RP 58 ln 3-8. Marcus came first for his new job and to find them a place to live. RP 57 ln 5-8. Marie

came to join Marcus before her children came to Spokane. RP 57 ln 9 - 58, ln 3.

Marie did the cooking, the cleaning, and the grocery shopping paid for out of her funds when she was working, or his funds when she was not. RP 53 ln 16 – 54 ln 13.

They both raised her children, jointly, and as a family. *See* RP 53 lns 2-6; 51 lns 6-24.

Both parties paid the household bills before and after the marriage. RP 56 ln 19 -24. The parties shared utility bill expenses. CP 54 ln 14-15. The parties rented an apartment and then a duplex when they first arrived in Spokane. RP 61 ln 4 -14. When the rents kept increasing, they decided to buy a house. RP 58 ln 4 – 14; 61 ln 10-14. Marie took money out of her 401k to re-roof their house. RP ln 16-21. Marcus painted the house. RP 58 ln 20 - 59 ln 3. They planted fruit trees. RP 59 ln 6-7. The house was paid off about 15 years ago, out of retirement funds, when Marcus knew he was going to be laid off. RP 59 lns 17-21.

Appellant relies on the case of *In re Marriage of Pennington*, 142 Wn.2d 592, 14 P.3d 764 (2000) that reversed a trial court's finding of a CIR. The supreme court in *Pennington* only found sufficient evidence in the record to support two of five factors of a committed intimate relationship. *Id.* at 604-05. Therein, a CIR could not be found with

significant facts against it including: sporadic cohabitation, instability of relationship, one partner insisting on marriage and the other refusing, an absence from the home with an affair, gaps in the sharing of expenses, no continuity of copayments of time and effort in any investments. *Id.* at 605.

Appellant claims that the most common determining factor associated with a CIR is the “pooling” of financial resources and property, but does not cite to authority. See Opening Brief at 22.

Contrarily, as stated in *In re Long and Fregeau*, 158 Wn.App. 919, 926, 244 P.3d 26 (2010), “No one factor [of a CIR] is determinative.” and “No factor is more important than another.” *Id.* (citing *Pennington*, 142 Wn.2d at 605).

Here, to support Appellant’s claim of lack of pooling of resources, Appellant injects and claims facts, not in the record, and not cited to the record.

Appellant attempts to mislead this court regarding what facts are in the record. At Opening Brief at 21, Appellant claims that the parties “continually maintained their own assets and finances separately throughout their relationship including the life insurance proceeds on her two deceased children which Ms. Maneau kept entirely for herself in her business account.” Appellant cites to RP 147. RP 147 does not support this blanket claim and those facts do not exist elsewhere in the transcript

either. Contrarily, Maria testified that from the daughter's life insurance proceeds, Marcus received \$5,000 to spend as he pleased. RP 185. A joint bank account appears in the record at CP 72-83.

For the next misleading, claimed, non-pooling fact, in Opening Brief at 22, Appellant claims the house was purchased solely by the appellant with no contribution by the wife, citing RP 59 and 156. The testimony at RP 59 and 156 does not support Appellant's claimed facts, at all. Rather, at CP 58, Maria testified that they purchased the house and that she paid for a new roof on the house by withdrawing from her 401k.

The next falsely claimed, non-pooling fact in the Opening Brief was that Ms. Maneau chose to keep her children's life insurance proceeds to herself without contribution to combined expenses. But this is also not supported anywhere in the record, and also not cited to the record in the opening brief.

Mr. Maneau claims he paid the insurance, maintenance and real estate taxes on the home, alone, and cites to RP 154-55. Opening Brief at 24. Mr. Maneau did not so testify. Rather, RP 154-55 is Maria testifying that she paid the insurance and taxes in 2018. Maria testified that both of them paid the household bills both before the marriage and during the marriage. RP 56 lns 19-24.

One of the joint projects during the committed relationship, as testified by Maria, was the raising of Maria's kids, Frank and Delilah. Marcus helped raise her children as if they were his own, RP 53 ln 2, teaching them how to ride their first bikes he got them, and being very good to them, and having them call him "dad." RP 53 ln 4-6. They had a family portrait taken in the 70's with the kids and them, that still hangs on the family's living room wall. RP 51- ln 6-24.

Marcus did not have kids of his own. RP 56 ln 3. He became a grandpa through Marie's children. RP 55 ln 22 – RP 56 ln 2. At trial, he wanted to have joint custody of his "grandson," JM. RP 62 ln 7 – 8 *and see* CP 55.

In his Opening Brief, Marcus claims that he or "they" had no choice but to adopt J.M. *See* Opening Brief at 22. But accepting such an onerous duty of adopting a severely disabled "grandchild" could only arise, as the court found, from Marcus's accepting the responsibilities of a marital like relationship with Maria, which included raising JM's mother, Dalia, as if she was his own child. CP 146 ln 2 – CP 147 ln 4.

It is Appellant's claimed facts that are not supported by the evidence. The trial court's findings are supported by the evidence, including the evidence within the joint project factor, and the trial court must receive deference for its findings.

Next, the court is to determine, de novo, whether the legal conclusions flowing from the court's findings support a committed intimate relationship finding. See *In re Marriage of Pennington*, 142 Wn.2d at 602-603. The trial court found all of the factors of *Connell* were met from the evidence at trial. CP 146 ln 8 – CP 147 ln 15. The court would have erred *to not* find a committed intimate relationship existed, when all the factors of a CIR were met.

Marcus asks the court to determine that the house was his separate property, because it was purchased prior to marriage, and it should be awarded to him, as his separate property.

But once a CIR is found, all property accumulated within the CIR is presumed to be community property. *Connell*, 127 Wn2d at 351; *Pennington*, 142 Wn.2d at 602. The presumption applies even if the property is held or titled in only one party's name. *Connell*, 127 Wn.2d at 351; *Oliver v. Fowler*, 161 Wn.2d 655, 668-69, 168 P.3d 348 (2007). A party can challenge the presumption with evidence that the property was acquired with funds that would have been characterized as separate property had the parties been married. *Connell*, 127 Wn.2d at 352.

Here, Marcus did not challenge the presumption of community property with any evidence, whatsoever, that any property was purchased

with funds that would have been characterized as his separate property, had the parties been married.

The only thing Marcus objected to was the court awarding the house to his wife. *See* RP 160 lns 1 – 25.

On appeal, Marcus claims the house was his separate property without providing an iota of evidence that it actually is. *See* Opening Brief at 22 -24. Whatever money Marcus and Marie used to purchase the house was presumed to be community property, since they were in a CIR in Washington State, and no evidence to rebut the presumption exists in the record. Marie considered it a joint purchase, even if her name was not on the title. RP 58 ln 4-14 and 61 ln 10-14. The opening brief references payment of the remaining balance from Marcus's retirement account. No evidence and no inference from evidence suggests that this retirement account was anything but community or community like funds, earned during the CIR and the marriage.

Even if there was even some evidence somewhere to support Marcus's contentions, the court of appeals will not substitute their judgment for that of the trial court on a disputed factual issue.

Worthington v. Worthington, 73 Wn.2d 759, 762, 440 P.2d 478 (1968).

Even if a CIR was not found, and if the house was found to be the separate property of Marcus, the court could still appropriately award the

house to Marie. The trial court is not required to award separate property to its owners, nor to divide community property equally. *In re Marriage of White*, 105 Wn.App. 545, 549, 20 P.3d 481 (2001). RCW 26.09.080 only requires that a court divide the property in a manner that appears just and equitable considering the factors. *Id.* The current law does not require “unique and unusual circumstances” as claimed by appellant at 24 of his Opening Brief – citing to ancient cases that have been superseded. *See e.g. In re Marriage of White*, 105 Wn.App. 545, 549, 20 P.3d 481 (2001); *In re Marriage of Konzen*, 103 Wn.2d 470, 477–78, 693 P.2d 97 (1985).

2) Social security benefits and adoption support benefits do not create inalienable rights to child support credits.

Marcus petitions this court for remand to apply JM’s \$1008.00 in social security benefits as “offset” against Marcus’s child support obligation.

Marcus was ordered to pay \$1007 in child support to Marie Maneau. RP 181. The court specifically ordered that Marcus was not to receive credit in reduced child support transfer for JM’s social security payments, as both parties receive social security retirement, JM is disabled, and the SS pay to JM was JM’s. CP 186.

Marcus did not object to CP 186 and did not ask for a credit of JM's social security benefit against Marcus's child support obligation at trial or at presentment. Marcus did not preserve this issue for appeal, per RAP 2.5 (a) requirements.

Alternatively, the court was not provided any evidence of what portion of JM's social security pay was attributed to payment on behalf of Marcus, what portion was attributed to payment on behalf of Marie, and what portion might be due to JM's own disability. Without evidence provided in the record, as to the proportionate source of JM's social security funds, no one was able to receive any child support credit of SS payments made to JM on their behalf. Evidence of whom to credit is required per RCW 26.18.190 (2).

Social security retirement benefits paid "on behalf of or on account of the child of . . . a retired person. . . the amount of benefits paid for the child [] shall be treated for all purposes as if the . . . retired person. . . paid the benefits towards the satisfaction of that person's child support obligation for that period for which benefits are paid."

RCW 26.18.190.

Appellant's claim that the father has a "legal, unqualified right to offset social security disability payments against a child support obligation" is simply not true. *See* Opening Brief at 26. An issue not raised and objected to at trial is not preserved for appeal. RAP 2.5 (a).

Secondly, here, there is zero evidence that JM's social security benefit is due to Marcus' "disability" benefits, as claimed by Appellant. *See* Opening Brief at 26. Marcus's disability benefits are VA disability benefits and no evidence shows that JM receives disability from the VA. *See e.g.* CP 72 showing VA disability, not SS disability payments, *and see* CP 78, \$22,213 in VA compensation direct deposited to the joint account.

Third, there is no differentiation anywhere in the record as to who should receive a credit for JM's SS payments or how much they should receive, when both parents are receiving SS retirement benefits. *See* Court's Oral Ruling CP 150 ln 1-2, CP 154 ln 13-23, and CP 155 ln 18-19.

Without evidence on each party's percentage of responsibility for JM's social security benefits, if any, neither parent could include JM's social security benefit in their income in the child support worksheet either. A child's SS benefits should be included in a parent's income if the parent will be receiving a corresponding credit. *In re Marriage of Briscoe*, 134 Wn.2d 344, 349, 949 P.2d 1388 (1998). Without requesting a credit, there was no reason to include JM's SS benefit in anyone's income, either, and neither parent did. *See* CP 173.

Marcus did not offer any child support worksheets at trial, and even in the court record, he has never offered to include JM's SS benefits

in his income. Without including the SS benefit in his income, he is not entitled to an offset, either.

RCW 26.18.190 does not include an ability to credit adoption support as a credit against payment of child support. RCW 26.18.190 is limited to payments on behalf of a child from the Dept. of L & I or self insurer, SS admin. and Veteran's benefits. Appellant's citation to RCW 74.13A.020 is not helpful to appellant, because it does not authorize any credit of adoption support against child support.

Marie testified that she receives JM's adoption support and her own Social Security income. RP 151 ln 5-8. She notes that JM receives disability income. RP ln 6-8. Exhibit P-47 shows the \$650 for adoption support and Marie's Social Security retirement at \$901.80/month in her column. On the P-47 worksheet, neither parent included JM's Social Security income in their column. JM's social security disability payment of \$1,008.00 appears on Marie's Numerica CU statement. CP 89. Marie understood these funds were to be used on JM's behalf. RP 197 lns 1-11.

Neither parent testified, at any time, and no document admitted shows that JM's social security benefit is due to the retirement social security benefit of only one parent.

No testimony and no evidence at any time showed that JaQuan received social security benefits solely as a result of only Marcus's

retirement status. The record supports the court's conclusion that JM's social security benefit is a payment of benefits due to both of his parent's retirement pay, or it could also have been J.M.'s disability pay, but insufficient evidence existed that it should be credited against Marcus's child support. *See* CP 186; CP 195 para. 21 and RP 150 ln 1-5.

3) Marie was properly awarded spousal support in the amount of \$800/month after the court considered all of the requisite factors.

Marcus gave no trial court arguments nor facts to support the argument that spousal support to Marie was not warranted and needed. Arguments or theories not presented to the trial court will not be considered on appeal. RAP 2.5 (a); *In re Marriage of Tang*, 57 Wn.App. 648 (1990) (*citing Ryder v. Port of Seattle*, 50 Wn.App. 144, 150, 748 P.2d 243 (1987)); *see also Aiken, St. Louis & Siljeg P.S. v. Linth*, 195 Wn.App. 10, 22, 380 P.3d 565 (2016)); *Herberg v. Swartz*, 89 Wn.2d 916, 925, 578 P.2d 17 (1978); *Boeing v. State*, 89 Wn.2d 443, 450-51, 572 P.2d 8 (1978).

Alternatively, there was no abuse of discretion to order Marcus to pay Marie \$800/month in spousal support during JM's life.

Awards of maintenance are "a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time." *In*

re Marriage of Washburn, 101 Wn.2d 168, 179, 677 P.2d 152 (1984).

“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.”

In re Marriage of Bulicek, 59 Wash.App. 630, 633, 800 P.2d 394. “The trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property.” *In re Marriage of Estes*, 84 Wn.App. 586, 593, 929 P.2d 500 (1997).

The non-exclusive maintenance factors of RCW 26.09.090 include the seeking party’s financial resources including property given to them, their ability to meet their financial resources independently of maintenance, time needed to become appropriately employed, the standard of living during the marriage, the duration of the marriage, the age, physical and emotional condition, and the ability of the other parent. *Id.*

The court considered all of the statutory factors attendant to spousal support. CP 154- 155. The court noted that both parties were retired and that it was not possible for retraining to go back to work. CP 155 ln 2-3. The evidence supported this finding. *E.g.* RP 164 ln 10 – 165 ln 9. The court noted that Marcus had more monthly income than he needed, at over \$5,000/month, before receiving the Kaiser retirement. CP 155 ln 11 – 20. At the same time, it found that Marie had low income at

only \$1,551.80, (SS and adoption support) before child support. *See e.g.* CP at 174, EX P-47. Marie testified that she did not believe she could earn money for taking care of JM because she had adopted him. RP 200 ln 7-10.

There was no obligation for the court to consider Marie's ability to receive income from the state of Washington to act as a health care provider for JM, especially when Marie's testimony showed that income stream was not possible. *See* RP 200 ln 7-10. No evidence was presented at trial that Marie, at 68 years old, was employable. Accordingly, the court found that she was retired and not able to go back to work. CP 155 ln 1-3.

The parties' monthly income was very disparate. Marie had net social security retirement income at \$901.80. CP 173, and found by the court to be approx. \$1000/net. CP 196. Marcus had \$1,815 net from SS and \$3197 in VA disability. CP 196 para 27. He also had \$807.65/month in Kaiser Aluminum Retirement. RP 66.

The child, JM had \$1008.00 in SS deposited into Marie's account, CP 89 and \$650 in adoption support. *See* CP 173 and 195 para. 21-22. Both of these sources flow to Marie, since she is the custodian.

Prior to paying spousal support, Marcus had \$5820 in income at CP 173. After paying spousal support he had \$5020 and Marie would

have \$1,701.80. Marie also had JM's income to help support the household, for total household income for both of them at \$3359.80.

If the appellate court approves the child support payment of \$1007 from Marcus to Marie without allowing Marcus a credit for JM's SS income, then the total household monthly cash flow would be \$4013 to Marcus and \$4366.80 to Marie and JM.

No abuse of discretion occurred.

4) Payment by Marcus of ½ of Marie's attorney fees was warranted and within the court's discretion.

The court found that Mr. Maneau has the ability to pay attorney fees to Marie Maneau and that Marie needed some assistance in attorney fees under RCW 26.09.140. The court also found that Mr. Maneau caused additional and unnecessary attorney fees to Ms. Maneau as described in *In re Marriage of Wallace*, 111 Wn.App. 697, 45 P.3d 1131 (2002) of demonstrative litigious behavior and intransigence at trial. CP 156-157 (Court's Oral Ruling, RP 16-17)

Throughout the action and into trial, Marcus Maneau continuously sought 50% custody of his extremely disabled adopted child. *See e.g.* RP 166 ln 25 – 167 ln 19. Mr. Maneau demonstrated at trial that he cannot read or understand numbers, *see e.g.* RP 23 ln 8-23, RP 26 lns 9 -27 ln 17,

RP 29, ln 11 – 25, did not know what month it was, RP 17 - 19, does not recall his own address, RP at 15-16, and has a very difficult time speaking, *see e.g.* RP 19 ln 14 – 21 ln 24. Additionally, he drinks an excessive amount. *See e.g.* RP 39 ln 20 -RP 42 ln 7; RP 63 ln 20 - 64 ln 21. Marcus cannot properly take care of a very disabled child for 24 hrs., let alone 50% of the time. The judge so found. CP 152 ln 1-25.

Yet, many hours of trial were taken up by testimony to establish custody when custody should have never been disputed. A 50% custody request by Marcus was an exceedingly frivolous request. *See e.g.* RP 32-44; RP 62 – 89; RP 100 ln15 – 106 ln 12; RP 109 ln 14 – 121 ln 23; RP 172 ln 4 – 174 ln 25.

The court noted that Marcus's inappropriate custody request and representation of himself caused additional trial time, as well as continued difficulty for the court in managing the case, all resulting in inappropriately increased attorney fees to Marie. *See* CP 157 ln 22-25. Marcus had also inserted much verbal disrespect towards the court and witnesses. *See e.g.* ; CP 161 ln 10-17; CP 189 ln 21 – CP 190 ln 7.

The court did not abuse its discretion to find that Marcus demonstrated litigious behavior and intransigence at trial, as found in *Wallace*, and that Marcus had funds from which to pay attorney fees.

5) Appellant’s suggestion that “uneven” equals “unfair and inequitable” is not the law. An “uneven” distribution of property is not the same as an “unfair and inequitable” division of property; there were no derogations of the legislative factors here.

The court reviews for abuse of discretion on whether the court’s property distribution was just and equitable. *Muridan v. Dedl*, 3 Wn.App. 2d 44, 56, 413 P.3d 1072, *review denied*, 191 Wn.2d 1002, 422 P.3d 912 (2018).

The trial court is not required to divide community property equally or award separate property to its owner. RCW 26.09.080 requires only that the court's property dispositions appear just and equitable after considering all relevant factors. *In re Marriage of White*, 105 Wn.App. 545, 549, 20 P.3d 481 (2001).

In reaching a “just and equitable” property division, the trial court must consider “the desirability of awarding the family home . . . to a spouse [] with whom the children reside the majority of the time.” RCW 26.09.080 (4). The court is also to consider the economic circumstances of each spouse at the time of the effective division of property; the nature and extent of both community and separate property, and the duration of the marriage. RCW 26.09.080.

The spouse alleging error bears the burden of showing an abuse of discretion on the part of the trial court. *In re Marriage of Sheffer*, 60 Wn.App. 51, 56, 802 P.2d 817 (1990).

Here, Mr. Maneau complains that the court awarded the house to his wife. CP 159 – 161.

But the court did exactly what the court is highly encouraged, if not directed by statute, to do: award the family home to the parent with whom the child will be residing, and in this case, expected to be residing in for the rest of his life. *See* CP 159 ln13-18; CP 160 ln 10-24; 161 ln 1-7.

The court had to consider the economic impact of monthly entitlements when dividing assets, as a disparate monthly income could turn a property division inequitable. *See In Re Marriage of Groves*, 447 P.3d 643, 649 (August 25, 2019).

Claims of excessive awards are reviewed for abuse of discretion. *Danielson v. Carstens Packing Co.*, 115 Wn. 516, 417, 197 P. 617 (1921). No abuse of discretion arises when the trial judge follows the required statutory and case law directives, because then all of the reasons, grounds and result are tenable and manifestly reasonable. *See In re Marriage of Wallace*, 111 Wn.App. 697, 707, 45 P.3d 1131, 1136 (2002).

No abuse of discretion occurred in the division of assets here.

E. RAP 18.1 ATTORNEY FEES - ATTORNEY FEES SHOULD BE AWARDED TO MARIE ON APPEAL

Under RCW 26.09.140, the appellate court may award either party attorney fees or costs incurred on appeal of a dissolution proceeding. “In exercising our discretion, we consider the arguable merit of the issues on appeal and the parties' financial resources.” *In re Marriage of Booth and Griffin*, 114 Wn.2d 772, 779-80, (1990).

RCW 26.09.140 allows a court to award attorney fees to one of the parties to a dissolution after considering the financial resources of both parties. *Groves*, 447 P.3d at 650.

Marcus's monthly income was more than twice what Marie's income was. *see e.g.* CP 173 and 180. Marie's income is near poverty level while Marcus has more income than he can spend: \$1,551/mo. v. \$5820/month pre-trial, or \$2371/mo. v \$5,020/mo. when \$800 in monthly spousal support is transferred to Marie.

The court awarded the community property assets of the Dodge Ram Truck at \$3,350 and the GESA joint account valued at \$27,063 to Marcus, along with ½ of the Numerica CU account credited back for atty fees, for \$27,063 total in CP cash to Marcus. *See* CP 149 and 150 lns 17-22 and 158 ln 9-15. The house is not a liquid asset, and needed for JM's care.

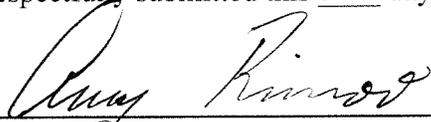
The court did not abuse its discretion in ordering Marcus to pay 50% of Marie's attorney fees . Here, like at trial, the great majority of this appeal is frivolous – requesting reversal of decisions not objected to at trial, and also objecting to the court's decisions that are clearly within the court's discretion. Additionally, the alleged facts Appellant claims to support his position were not presented as evidence.

Marie has continued need for attorney fees assistance. Marcus has refused to pay any child support while this action has been pending, claiming the social security credit and exemption to himself. The duration of the wife's need will revolve around the determination of the SS credit against child support issue and JM's and each parties' life spans.

F. SUMMARY

Appellant presents a frivolous appeal according to RAP 2.5 (a). If any error exists, they were invited by Marcus for his failure to provide contrary facts or law at the time of trial. Even with analysis on the merits, no errors can be found given the law and standards of review. Like at the trial court, attorney fees to Marie are warranted.

Respectfully submitted this 31st day of October, 2019.



AMY RIMOV, WSBA No. 30613
Attorney for Marie Maneau

FILED

OCT 31 2019

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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8 **STATE OF WASHINGTON,**
9 **COURT OF APPEALS, DIVISION III**)
10)
11 **MARCUS MANEAU,**)
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13 **APPELLANT,**)
14 **and,**)
15 **MARIE MANEAU,**)
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17 **RESPONDENT.**)
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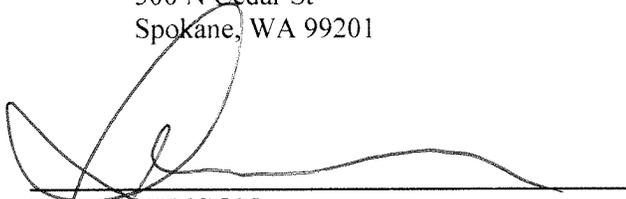
No.: 36577⁸III

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 31st day of October, 2019, a copy of the Response Brief, in the above-captioned matter, as well as this certificate of service, was caused to be served on the following person in the manner indicated:

Via HAND DELIVERY to: Bevan Maxey, Atty for Appellant
1835 W Broadway St.
Spokane, WA 99201

Court of Appeals Div III
500 N Cedar St
Spokane, WA 99201



KEN JOHNSON
Legal Assistant to Atty Amy Rimov
505 W. Riverside, Ste 500
Spokane, WA 99201