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**COURT OF APPEALS  
DIVISION ONE  
THE STATE OF WASHINGTON**

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**ALI GANJAIE, Appellant**

**Vs.**

**KATHERINE GANJAIE, Respondent**

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**Appellant's Reply Brief (RAP 10.3)**

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**Appellant's responses to Respondent's Brief have been emboldened and inserted into the Appellant's original brief for ease of readability. No other changes have been made to the language of the original appeal brief.**

#### **ASSIGNMENT OF ERRORS**

- 1. The trial Court has erred in following the requirements of RCW 26.09.191(1), (2), (3) and (4) by limiting Ali Ganjaie, Father's residential schedule with daughter.**
- 2. Trial Court erred in calculating and awarding the child support as stated in child support scheduled by using Petitioner's incorrect income at the time of the ruling.**
- 3. The trial Court abused its discretion by ordering a protection order against Ali Ganjaie, Father, without sufficient evidence that any act of domestic violence against daughter had occurred by a preponderance of the evidence.**
- 4. The Court has also abused its discretion and erred for not following the requirements of RCW 26.09.080 regarding the distribution of assets and liabilities (mortgage payments, real estate taxes, and insurance of the family home) of the parties as just and equitable at the time of property division.**

5. Trial Court abused its discretion by denying Appellant's request for spousal maintenance without sufficient ground and for violating the standard review pursuant to RCW 26.09.090 subsections (a), (c), (d), (e) and (f).
6. Trial Court has abused its discretion by awarding respondent attorney's fees and sanctioning the Appellant for unattainable financial documentations that the Respondent requested.
7. Trial Court erred by awarding the Son's remaining education fund and his car to the Appellant as assets.

#### STATEMENT OF CASE

This matter comes before the Court on the above issues.

- 1) The parties were married September 13<sup>th</sup>, 1981.
- 2) The parties have two children: Amin (Son), age 20, and Nilofar (Daughter), age 16.
- 3) Husband/Appellant, Ali Ganjaie, is 50 years old and is unemployed as of January 13<sup>th</sup>, 2009.
- 4) Wife/Respondent, Katherine Ganjaie, is 46 years old and employed at Real Networks as a Software Test Engineer.
- 5) The parties separated July 5<sup>th</sup>, 2007. Parties' duration of marriage is approximately 26 years (Long Term Marriage).

- 6) Agreed Temporary Parenting Plan was entered February 14<sup>th</sup>, 2008, CP pg. 35-43, and Agreed Order of Child Support was entered February 14<sup>th</sup>, 2008, CP pg. 20-34.
- a. The February 14<sup>th</sup>, 2008 order specifies in section 2.1 *Parental Conduct (RCW 26.09.191(1), (2))*, CP pg. 36, and 2.2 *Other Factors (RCW 26.09.191(3))*, CP pg. 36, that neither section applies, and therefore did not limit or prohibit Petitioner's conduct with the child or his right to make decisions regarding the child, CP pg. 40.
  - b. Daughter's residential schedule was agreed upon by both parties as 43% of time to be spent with the Father, and 57% of time with the Mother, equating to one extra day per week with the Mother. This schedule was followed from DOS, July 5<sup>th</sup>, 2007-February 14<sup>th</sup>, 2008.
  - c. All school breaks and summer vacation were left reserved, CP pg. 36-37.
  - d. Day-to-day and major decisions, including educational, non-emergency health care, and religious

upbringing, were to be made jointly by both parties,  
CP pg. 40.

- 7) An agreed Order of Transfer to Family Court Department was entered October 10<sup>th</sup>, 2008, CP pg. 48. As per this order, “The parties agree to have FCS conduct a parent investigation/evaluation.”
- 8) An ex parte order was issued on December 30<sup>th</sup>, 2008, ordering that Daughter will reside with Mother until the hearing for the order, January 23<sup>rd</sup>, 2009, CP pg. 63-66.
- 9) The Parenting Plan was modified by Court order on January 27<sup>th</sup>, 2009 to have Daughter reside with Mother pending the FCS Parenting Plan evaluation.
  - a. The previously requested appointment of a GAL was also denied by this order.
- 10) FCS recommended in their Parenting Plan that the Daughter reside primarily with Mother, due to the fact that father has “engaged in a pattern of behavior that is consistent with domestic violence” CP pg. 124.
  - a. There was no witness testimony or record of domestic violence against Daughter by Father at time of trial,

and the FCS evaluator did not reference any RCW or laws that Father violated in regards to domestic violence towards the Daughter.

- 11) The FCS Parenting Evaluation was filed on February 25<sup>th</sup>, 2009, followed by a Motion for a Private Evaluation of the Daughter by a professional psychiatrist was filed by Petitioner on March 4<sup>th</sup>, 2009 in response to FCS report. This Motion was denied at time of Trial on March 9<sup>th</sup>, 2009 on the basis of untimely filing.
- 12) Respondent requested Pattern Interrogatories and Production of Documents for the duration of marriage (26 years). This request was later vacated by Court order on January 23<sup>rd</sup> to reduce the requested documentation from 26 years to 5 years. Appellant complied with this revised order on January 27<sup>th</sup>, 2009.
- 13) Sanction was imposed by trial Court to compel Appellant's Discovery Material for duration of Marriage (26 years) on November 20<sup>th</sup>, 2008, CP pg. 61.
- 14) The request for continuance of the Trial date by Appellant was denied at the January 23<sup>rd</sup>, 2009 pretrial hearing.

- 15) One half of the Respondent's Attorney's Fees were ordered as a money judgment against the Appellant, including the Discovery Materials sanction, calculated through the last day of Trial CP pg. 69.
- 16) The Decree of Dissolution, April 8<sup>th</sup>, 2009, ordered the immediate sale of the family home and division of the proceeds with an approximate 80% in favor of respondent (Wife) and 20% to Petitioner (Husband), CP pg. 68-78.
- 17) The Final Parenting Plan, CP pg. 101-108, Final Order of Child Support, CP pg. 89-100, Findings of Facts and Conclusions of Law, CP pg. 83-88, and Order for Protection, CP pg. 79-82, were also entered on April 8<sup>th</sup>, 2009 as part of Decree of Dissolution.
- 18) Child support for the daughter was calculated with Appellant's previous year income, despite the fact that Appellant had been unemployed for almost 3 months at the time of ruling.
- 19) The Decree of Dissolution also includes a restraining and protection order against Appellant on daughter's behalf.

## ARGUMENT

**The Respondent argues that: “The Appellant’s Decision Not To Provide A Complete Transcript of the Proceedings Precludes a Determination That There Was Not Adequate Factual Support For The Trial Court’s Decisions.” On the contrary, Mr. Ganjaie, Appellant, did not provide a complete transcript of the proceedings because there was no factual support for the Trial Court’s decisions to begin with. The Trial Court decisions to which Appellant has taken issue were made purely by the Court’s discretion, disregarding any facts or evidence on record. The Respondent’s failure to provide said “factual support” in the Response Brief of Respondent further proves the fact that there was no substantive evidentiary data to speak of in the Trial Court proceedings.**

**Furthermore, RAP 9.2 (a) states: “If the party seeking review does not intend to provide a verbatim report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements within 30 days after the notice of appeal was filed or discretionary review was granted and served on all parties of record.” Appellant filed a Statement of Arrangement to this effect**

**and served on all parties June 5<sup>th</sup>, 2009. In this Statement, Appellant cited “extenuating financial circumstances” as the reason for not providing a verbatim report of the Trial Court proceedings, and noted that any relevant designated Clerk’s Papers would be provided by the Superior Court Clerk.**

**Assignment of Error 1:**

**The Trial Court’s decision to limit Father’s time with his daughter cannot simply be based on merits, but should instead be based on tangible, factual data, of which there was none in this particular case. Furthermore, the Respondent contends “...that no adequate cause hearing was required as this was the initial determination of the parenting plan on dissolution, and not a modification of a parenting plan.” This is incorrect, as an agreed Parenting Plan was signed and entered by Hon. Judge Patricia Clark on February 14<sup>th</sup>, 2008, CP pg. 35-43. Taking into account the aforementioned Parenting Plan, the decision in question was not the initial determination of the Parenting Plan, but in fact a modification of the previously agreed plan that had been in place for over a year before dissolution proceedings.**

In Re: the Parentage of Jannot 110 Wn. App. 16 (2002), the trial Court violated RCW 26.09.270 Adequate Cause Determination, and RCW 26.09.260 as Washington requires that the parents seeking major modification of a Parenting Plan first submit affidavits establishing that adequate cause exists to justify a full hearing. The trial Court also abused its discretion in this case by not following RCW 26.09.191(4), Request for Screening Assessment.

The Court abused its discretion and erred by failing to convene an evidentiary hearing relating to an adequate cause determination; Appellant asserts that the Court's failure to make an adequate cause determination was an abuse of its discretion. A trial Court abuses its discretion if its decision is manifestly unreasonable or is based on untenable grounds. In Re: the Marriage of Kinnan, 131 Wn. App. 750, 129 P.3d 807 (2006), the denial of an evidentiary hearing relating to the Court-appointed modification of Parenting Plan was clearly unreasonable and was predicated upon untenable grounds.

RCW 26.09.1 91 (4) states that "in cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor

on the child and the parties.” In the context of the entire statute, the purpose of the screening/assessment requirement is to give the court professional psychological advice to implement the requirement under RCW 26.09.191(m): that restriction is reasonably calculated to protect the child from physical, sexual, or emotional abuse or harm.

RCW 26.09.191(m) also compels the court to forecast the potential harm of contact between a child and an allegedly abusive parent. The court must use a screening/assessment as part of its forecast. No record of screening forecast exists in this case. The practical effect of RCW 26.09.191(m) and RCW 26.09.191 as a whole is to require that a relevant assessment be conducted to determine if the alleged abuse did occur and whether it can be mitigated, therefore affecting whether residential time should go forward with or without limitation. The screening/assessment provision is a legislative mandate that guarantees that relevant evidence will be brought before the court. The trial Court abused its discretion in regards to Appellant’s due process and fundamental rights, as RCW 26.09.191 now makes the screening/assessment mandatory. As such, the Court was in error by not conducting a screening/assessment prior to entry of the Final Parenting Plan, on April 8<sup>th</sup>, 2009.

In Re: Marriage of Watson, (132 Wn. App. 222, Division Two, March 28<sup>th</sup>, 2006), the trial Court limited the Father's contact with the Daughter based on unfounded allegations of sexual abuse by the Mother, which was later reversed and remanded with reinstatement of the original parenting plan, due to the trial Court having exceeded its authority and abused its discretion by limiting the father's residential time."

Assignment of Error 2:

**Appellant disagrees with the Respondent's statement claiming that the appropriate records were not provided to properly calculate child support; the verbatim report of proceedings was not required. Furthermore, Appellant argues that the error in calculation was made on a fundamental level, by using the income from a job for which Husband was no longer employed.**

Washington State Child Support Calculation RCW 26.19.080 requires that: "(1) the basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income." The trial Court erred in the matter by using Appellant's income from his previous year (2008) employment despite the fact that he was unemployed at the time

of trial for the child support calculation. Father has been unemployed since January 13<sup>th</sup>, 2009.

Because there is a genuine dispute about Appellant's income, the trial Court considered Respondent's (Mother) "Standard Calculation"; that is, the amount each parent should be contributing to the child expenses, based on income. Standard Calculation in line 15e of WSCSS-Worksheet dated 6/2008; CP pg. 98 uses Appellant's income from 2008 employment.

Trial Court has made a temporary deviation for six months, CP pg. 100, without any provision to correct the Standard Calculation based on Appellant's income at the time of this ruling. Before deciding on "Transfer Payment," the Court must consider the accuracy of the Standard Calculation mandated by RCW 26.19.080 and any applicable deviation per RCW 26.19.075. The trial Court erred by ruling the Transfer Payment as calculated, CP pg. 96, and by ignoring Appellant's request for adopting the incorrect Standard Calculation worksheet as a basis for Transfer payment to the Respondent.

Assignment of Error 3:

**The Appellant argues that there was no evidence on record to lead the Trial Court to issue a protection order between Father**

**and Daughter. This decision was merely an abuse of the Trial Court's discretion based on the Mother's unfounded allegations.**

Re: Marriage of Deborah K. Falk-rovang Res/cross-app., V. W.

David Rovang, App. /cross-res. (2007, Court of Appeals Division II, State of Washington, Unpublished Opinion), the evidence of sexual abuse by David Rovang was insufficient to have found occurred by a preponderance of the evidence. Therefore, the issuance of the trial Court protection order was reversed. As in the aforementioned case, there is insufficient evidence in regards to acts of domestic violence (verbal abuse) in this case, and therefore the trial Court abused its discretion in issuing a protection order against Father on Daughter's behalf as there are no grounds or reasons set out in the record for the Court's decision.

Trial Court violated the Procedural Due Process of the Fourteenth Amendment, which states, at a basic level, that Procedural Due Process is essentially based on the concept of "fundamental fairness." As construed by the courts, it includes an individual's right to be adequately notified of changes or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the

final decision over the proceedings must be impartial in regards to the matter before them.

Or, to put it more simply, when an individual is facing a deprivation of life, liberty, or property, Procedural Due Process mandates that he or she is entitled to adequate notice, a hearing, and a neutral judge.

Trial Court has not correctly followed the Due Process for ruling a protection order between the Father and Daughter, CP pg. 79-81.

Assignment of Error 4:

**Respondent claims Appellant has made “unsupported statements and is apparently attempting to offer additional testimony not presented at trial.” This is incorrect as the original brief below explains the Trial Court’s errors in Division of the Assets. Furthermore, Respondent claims Appellant is adding additional testimony not presented at trial, but fails to cite any such testimony.**

Pursuant to RCW 26.09.080 regarding the distribution of assets and liabilities of the parties as just and equitable at the time of the division of the property:

**“In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:**

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

**The Trial court decision as entered in the Decree of Dissolution, CP pg. 68-78, orders:**

- a) The immediate listing of the family home located at 2931 223<sup>rd</sup> Ave Ne, Sammamish, WA 98074, for the appraised price of \$578,000, CP pg. 75.**
- b) Any adjustment to the sale price may be made by motion to Hon. Judge Patricia H. Clark.**
- c) The Petitioner (Husband) shall pay all costs associated with the family home until sale.**

- d) Upon the sale of the home, the husband will receive \$50,000 of the net proceeds, the remainder of which will go to the Respondent (Wife).
- e) If the husband is not employed or the house does not sell within six months of the order, either party may motion the court for further ruling on the sale of the home.

The court has abused its discretion in dividing the liabilities of the parties pursuant to the above RCW 26.09.080, which specifically states "...the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable..." The Appellant has paid all liabilities associated with the family home since the date of separation, July 5<sup>th</sup>, 2007, totaling approximately \$2,700 per month to account for mortgage payments, taxes, and homeowner's insurance. Crediting the Wife's share of the family home liabilities to the husband would constitute a fair and equitable distribution of the liabilities. This totals approximately \$32,400, calculating half of the above-mentioned \$2,700 for 24 months, from date of separation to now. It should also be considered, pursuant to RCW 26.09.080(4) above that the Husband is unemployed, and had been so for approximately three

months at the time of trial. The Court did not consider the post-judgment condition the Father would be left in, as he has been forced to liquidate retirement accounts to continue paying for liabilities associated with the family home.

CP pg. 78, Worksheet prepared by Respondent's counsel indicates on line 17 of the worksheet that Charles Schwab Inv. Acct. in the amount of \$25,000 has been credited to the Appellant (Husband) as an asset, which in fact is 19 year old Son's education fund and is not an asset. The Court has allowed on line 20 of the Worksheet a debit of \$-9000 for Son's education. The remaining \$16,000 must be also debited as it will be used for the Son's continued education.

Additionally, CP pg. 78 line 2 of the Worksheet, entitled "Less Sales Costs" is only an estimate and the way that trial Court has ordered the "Fixed" amount of \$50,000 to the Husband is based on the assumption that the sale cost would amount to \$57,800 and that is overstated and depends on the final sale price of the house and will net more money in favor of the Respondent (Wife) in this Calculation.

Line 28, The 2001 MB C240, is referring to the Son's vehicle and is not an asset to the Appellant since it was purchased for son during last year of high school and will remain as his property, not the

Appellant's; therefore, the \$-9,975 should have been debited against Husband's asset allocation.

The Safe deposit Cash, line 38, is also overstated since the responded admitted in her cross examine testimony during trial that she took \$3,000 prior to DOS, July 5<sup>th</sup> 2007.

The Court may have intended to distribute the assets and liabilities close to 50-50% division as stated hand written \$223,289 to Husband (48%) and \$238,816 to Wife (52%), but considering the foregoing facts, the above Liabilities for the house expenses i.e. (Mortgage, Taxes, Insurance) and the allocation of Son's education fund and his Car as an asset to the Husband, it makes the division of assets and liabilities 67% in favor of the Wife, which is not just and equitable division as required by RCW 26.09.080.

This is an abuse of trial Court's discretion by dividing the community with such a disparity between the two parties, without providing any reasonable ground for the decision.

Assignment of Error 5:

**The Appellant claims the Trial Court abused its discretion based on the following:**

Pursuant to RCW 26.09.090 regarding factors of Maintenance

orders for either spouse:

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

The trial Court abused its discretion in denying Husband's motion for spousal maintenance until he regains employment. Trial Court also violates the standard review pursuant to the above RCW 26.09.090, in specificity subsections (a), (c), (d), (e), and (f). Husband and Wife had been married 26 years at the time of separation, and Husband had been unemployed for approximately three months at the time of trial. Prior to that, Husband had been grossing nearly \$6,500 per month and had established a very high quality of living. Furthermore, the trial Court granted \$677 child support in favor of the Wife, in addition to requiring the Husband to pay all costs associated with the family home.

Assignment of Error 6:

**The Appellant claims the Trial Court abused its discretion based on the following:**

According to RCW 26.09.140 and RAP 18.1, the Appellant requests that the attorney's fees awarded to the spouse as part of the Decree of Dissolution be reversed because the spouse did not provide any records that she is in need of refund of these expenses. In Re: Marriage of Mansour (126 Wn. App. 1, Division I, Dec. 27<sup>th</sup>, 2004), Paragraph 47 states: "Finally, the wife requests attorney fees on appeal

under RCW 26.09.140 and RAP 18.1. To award attorney fees on appeal, we ‘examine the arguable merit of the issues on appeal and the financial resources of the respective parties.’...Based on her affidavit and because the husband did not counter with an affidavit proving inability to pay, we grant the wife’s request for attorney fees and set the matter before a commissioner of this court for a determination of the appropriate amount.” Therefore, the trial Court abused its discretion in awarding half of Respondent’s attorney’s fees to be paid by Appellant as a money judgment, and did not consider Appellant’s economic condition at the time of trial, or equalize the needs of both parties regarding the attorney’s fees.

Furthermore, the court awarded the Respondent the sanctions imposed against the Appellant (\$75 per day) from November 20<sup>th</sup>, 2008 through the end of trial, March 12<sup>th</sup>, 2009. These sanctions were in regards to Respondent’s discovery requests for 26 years of unattainable tax records and financial information (See STATEMENT OF CASE (12) and (13)). The Appellant requests the Appellate court take note of the trial Court’s inconsistency in matters regarding these sanctions; sanctions were first imposed for not providing 26 years of tax and financial documents, however when this time period was later revised

by the trial court to a more reasonable 5 years of information, the sanctions for 26 years still remained.

Assignment of Error 7:

**The Respondent claims this error is “essentially the same allegation as alleged error 4.” The following is still true, and is not based on a miscalculation, but instead on the misappropriation of this money as an asset to the husband, when in fact it is a liability as it had been agreed upon by husband and wife that the money would be for the son’s education.**

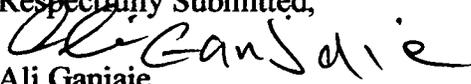
The trial Court abused its discretion in awarding the remainder of the Son’s education fund and his car to the Appellant as assets. The Court has allowed \$9,000 of his \$25,000 education fund to be debited, with the remaining \$16,000 evaluated as assets to the Husband, CP pg. 78 line 20. The Appellant requests that the Appeal Court reverse this portion of the assets and assign it as a liability as the remaining money has been set aside to use for the Son’s education. The Son’s car, valued at \$9,975, CP pg. 78 lines 28, should also be deducted as a liability since it is not an asset that the Appellant can access; the car is the Son’s main mode of transportation to and from college, and was purchased by Husband and Wife for the Son during the last year of marriage.

CONCLUSION

**It is requested that the Respondent's not be considered, and the Appellant following relief be considered:**

- 1) Reverse protection order for the Daughter, Nilofar Ganjaie, CP pg. 79.
- 2) Reinstate the original agreed Parenting Plan, CP pg. 35.
- 3) Remand the child support to trial court for reconsideration of support calculation based on Husband's current income, CP pg. 96.
- 4) Reverse attorney's fees and discovery sanctions (money judgment) against the husband, CP pg. 69.
- 5) Order spousal maintenance for Appellant until he is able to regain employment, pursuant to RCW 26.09.090.
- 6) Remand the calculation of assets and liabilities pursuant to RCW 26.09.080 and reasons provided in aforementioned Assignment of Error 4.

Respectfully Submitted,

  
Ali Ganjaie  
Appellant

Dated: NOV 20, 2009