

63523-9

63523-9

No. 63523-9-I

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION I

KATHLEEN JEAN JANES

Petitioner/Appellant

v.

STEVEN CRAIG JANES

Respondent

APPELLANT'S REPLY BRIEF

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COURT OF APPEALS
DIVISION I
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I. REPLY ARGUMENT

Respondent Steven Janes does not dispute that his former wife of 35 years was placed in a grossly disparate economic situation by the trial court's ruling. He argues only that because his wife received 55% of their assets, and because the trial court found she has some ability to support herself from that property, the result is within the trial court's discretion. The argument ignores the multiple considerations of RCW 26.09.080, and .090. And it ignores this state's Supreme Court holding that a decree which results in patent disparity in the economic circumstances in which the parties are left is not a just and equitable disposition of the property of the parties within the statutory purview, and is a manifest abuse of discretion. *Edwards v. Edwards*, 74 Wn.2d 286, 287-288, 444 P.2d 703 (1968).

Respondent attempts to avoid the obvious by, e.g., blaming the trial court's rulings on the wife, and by offering a mishmash of technical arguments to prevent review of the decision. None of his arguments have merit.

The appeal should be granted.

A. This appeal should be determined on its merits.

1. The timeliness of this appeal is not at issue.

Respondent Steven Janes, hereafter “Steve,” argues that Kathy Janes’s (hereafter “Kathy”) appeal is untimely. *See Response Brief, pp. 22-24; then see pp. 17-22.* But Steve forfeited that argument long ago. This Court’s interlocutory order of Sept. 8, 2009 granting Kathy’s motion to modify found her appeal to be timely. *Sept 8, 2009 Order Granting Motion to Modify.*¹ This Court’s Sept. 8 decision is not a decision terminating review, because it granted review. It is thus an interlocutory decision. *Fox v. Sunmaster Products, Inc.*, 115 Wn.2d 498, 501, 798 P.2d 808, 810 (Wash., 1990), citing RAP 12.3(b). Steve may challenge the Sept. 8 ruling of this court only by motion for discretionary review, filed within 30 days of the ruling. *Id.*, citing RAP 13.3(c); RAP 13.5(a), and *Court Clerk transmission letter of Sept 8, 2009.* Steve failed to challenge the ruling. Steve’s “response brief” is a prohibited collateral attack on this Court’s unappealed Sept 8, 2009 order. *See, e.g., City of Bellevue v. Montgomery*, 49 Wn. App. 479, 743

¹ This Court’s Commissioner raised the issue of the timeliness of Kathy’s appeal. *See Letter from Commissioner, May 27, 2009; Notation Ruling, June 26, 2009.* This Court granted Kathy’s motion to modify that ruling. *Sept 8, 2009 Order Granting Reconsideration.* This Court held that: “The motion to modify is granted and the appeal shall proceed as to the decree of dissolution entered by the trial court on January 13, 2009 as well as the May 11, 2009 ruling striking the motion for reconsideration.” *Id.*

P.2d 1257 (Wash. Ct. App. 1987). Missing the opportunity to appeal, then “appealing” a decision is “frivolous in the extreme.” *In re Marriage of Penry*, 119 Wn.App. 799, 804, 82 P.3d 1231 (2004).

Steve’s claim that the appeal is untimely is frivolous in the extreme.

2. The error assigned by Kathy is that for which review is sought.

Steve argues that Kathy’s opening brief is deficient in assigning error. He is incorrect. “[W]here the nature of the appeal is clear and the relevant issues are argued in the body of the brief and citations are supplied so that the Court is not greatly inconvenienced and the respondent is not prejudiced, there is no compelling reason for the appellate court not to exercise its discretion to consider the merits of the case or issue.” *State v. Olson*, 126 Wn.2d 315, 323, 893 P.2d 629 (1995).

Here, Kathy first assigns all requisite error per RAP 10.3(a)(3). *See Opening Brief at p. 15*. Kathy’s brief then details how the trial court’s award and its refusal to reconsider that award fails to achieve the requisite economic parity between these long-term spouses as a matter of law. *See, e.g., Table of Contents, p. 1, identifying each error*

in section V(B)-(E), and see Opening brief, Page 15, “Assignments of Error.”

Later in his brief, Steve argues with the specific assignments of error made, claiming that Kathy “fails to assign error to any of the trial court’s findings.” *Response Brief at p. 18, 37-38.* This is also a frivolous assertion. Kathy assigned error to specific findings. *Appellant’s Brief, p. 15, assigning error to findings 2.12, 42 and 43.*

Steve then argues over findings to which error is intentionally not assigned, e.g., Steve argues that Kathy “failed to assign error” to trial court “finding 34,” which finds that a 55/45 split of community assets in her favor was just and equitable. *See Response Brief, p. 37.* Kathy did not assign error to finding 34 because she does not disagree with it. A 55/45 split of community property in her favor cannot be considered inequitable. What she assigns error to is the trial court’s conclusion of law “that the court’s distribution of properties *and liabilities* is fair and equitable.” *Appeal Brief, page 16, second assignment of error to conclusion of law, para. 3.4 at CP 135, emphasis added.* In other words, an equitable property split was turned into a grossly disparate result when, after making that distribution of property, the trial court then imposed separate and community liability

on Kathy, and failed to consider the resultant incomes the entirety of its distribution effected, or to consider Kathy's financial needs given the distribution, denying maintenance and fee assistance, and rendering the end result grossly unfair and inequitable. Kathy thus assigned error to "the equity of its result." *See Opening Brief, page 16, and arguments V(B)-(E)*

In another example, Steve argues that Kathy has only partially assigned error to the court's finding 2.12 regarding spousal maintenance. *Response Brief* at p. 37(citing CP 130, para. 2.12). He is correct. Kathy does not assign error to the portions of trial court findings which are not challenged. *Opening Brief* at pp. 15-16. Kathy therefore does not challenge the first sentence of the court's Finding 2.12, because the first sentence is a finding that maintenance *should* be ordered (until the equalizing payment is paid of \$560,000 "because the wife will have the need, and the husband will have the ability to pay"). *CP 130, Ins. 8-9*. No argument there. Maintenance should indeed be ordered until that time. What happens thereafter is not addressed. Nor does Kathy challenge the second sentence of the same para. 2.12, which finds that an award of spousal maintenance would "come out of" the business asset awarded him. *CP 130, Ins. 9-10*. This is accurate.

Maintenance is determined based upon income, Steve was awarded an income producing business asset, and, yes, maintenance would necessarily “come out of” that asset. No argument there.

Kathy also did not assign error to a trial court finding that continued maintenance would give Kathy a duplicative award, *Response Brief*, p. 39, because there *is* no such trial court finding. The finding made by the trial court states that it distributed the value of the business through its property award, and that any “attempt to distribute the value of the business through monthly maintenance would be in error.” *CP 130*, *Ins. 11-13*. Kathy agrees. But the trial court was never asked to distribute the value of the business through both a property payment and again as monthly maintenance. The trial court’s use of *In re Marriage of Barnett*, 63 Wn.App. 385, 388, 818 P.2d 1382 (Wash. Ct. App. 1991) reflects only its confusion over the existence of two different statutes controlling its decision.

Specifically, a trial court is first required to make an equitable disposition of all property and liabilities of the parties. *RCW 26.09.080*. The value of a business is one of these property assets. *See In re Marriage of Hall*, 103 Wn.2d 236, 241, 692 P.2d 175 (1984).

Here, the court valued the business, and distributed that value through a property allocation of 55%.

Having thus valued and distributed both property and debt, *then* the court was to consider maintenance in light of its preceding property/debt distribution. *RCW 26.09.090*. The tasks are done in sequence, as *RCW 26.90.090* makes it clear that in considering maintenance, the trial court must consider the separate or community property and separate and community debt it has just apportioned to each spouse, and, as a result, each's ability to meet their needs independently. *Id.*

What seems to cause the trial court confusion is Kathy's argument that one viable scenario for implementing equity would be to award Kathy 75-100% of the community property value *instead* of maintenance, and then order that *property* payment to be paid out over time, instead of maintenance.² *RP 1014, commencing at ln. 17 - RP*

² Kathy argued that maintenance could be problematic because of difficulties with determining Steve's actual cash flow, given his history of intransigence in that area. *RP 1015, lns. 19-20; and see CP 305-309; CP 251; CP 253-255; CP 38; CP 559; CP 587; CP 133, finding 17*. She argued that one way of avoiding continuing problems with maintenance would be to award *all* of the community value of the property to the wife, and have that property equalization payment paid to her monthly. *RP 1014, lns. 17-22; RP 1018, lns. 15-20*. But even such percentages may still not achieve equity because of the substantial income being produced to Steve through the community business he was awarded. *See RP 1014, lns. 2-18*.

1018; and specifically see e.g., p. 1017, ln. 18 – RP 1018, ln. 1. But this is a very different scenario from that in *Barnett*. The *Barnett* Court held that maintenance is not to be used to distribute property value if the court has already distributed the same value through the property transfer payment. 63 Wn.App. at 388. Obviously, distributing the very same award twice by different means would be duplicative. The scenario is inapplicable here. Kathy did not request duplicative amounts. She requested, as one possible option, only one substantially disparate property award, paid to her over time.

Thus, the trial court’s finding that it was not going to “distribute the value of the Janes’ business through monthly maintenance” is a correct statement of the law, but superfluous—no one ever asked the trial court for such relief.

Similarly, Kathy did not take issue with the trial court’s finding that, after the equalization payment was made, Kathy would “leave the marriage with a substantial amount of assets, including commercial rental properties...” *CP 130, lns. 13-15*. Again, the finding is correct; it simply neglects to consider Kathy’s separate and community debt against those substantial assets and her resultant monthly income. This is why Kathy challenged only the tail end of that sentence, i.e., that the

court's property division will allow her to support herself. *See Appellant's Assignments or Error, page 15, assignment 1, lns. 14-15.* Here, the "substantial amount of assets" Kathy received did not give her "the ability to support herself." *Id.* And that is what she briefed. She has likewise assigned error to all findings of the court that allegedly supported this finding of self-support ability. *Assignment of Error, p. 15, paras. 1-3.*³

In sum, Kathy challenged the findings and conclusions for which she seeks review. She challenges the end result of this trial court's decree, which implements gross economic disparity between these long-term spouses.

3. All pleadings filed in the trial court constitute the record on review.

Steve argues that this Court cannot consider Kathy's pleadings filed in support of reconsideration, because they were "stricken pleadings." *Response Brief, page 22.* He's wrong. Steve confuses pleadings stricken from the record as untimely filed, with timely filed pleadings where the court refuses to hear the motion. *See e.g., O'Neill*

³ Examples include the court's finding that the award of the commercial properties will allow Kathy to have the ability to generate stable rental income that keeps pace with the cost of living, and to purchase annuities that will give her the requisite income. *Id.*

v. Farmers Ins. Co. of Washington, 124 Wn.App. 516, 521-522, 125 P.3d 134 (2004). The trial court did not strike pleadings from the record as untimely here—it struck a motion it specifically found to be timely filed. *See CP 42, para. 1*. Striking a timely filed motion to reconsider has been deemed by this court to be no more than a denial of that motion, and appealable as such. *See Order of Sept 8, 2009*.⁴

Thus, all pleadings filed in support of reconsideration are part of the appellate record. RAP 9.1(a), (c) (identifying pleadings, orders and other papers filed with the clerk of the trial court as clerk’s papers for the record on review). All pleadings are before the Court for consideration.

4. Invited error is not applicable to this result.

Steve argues that this trial court’s decree of dissolution should not be reviewed for error because Kathy invited the trial court’s error. *See Response Brief at p. 27*. This argument is also frivolous.

The “invited error” doctrine prohibits a party from setting up an error in the trial court and then complaining of it on appeal.

⁴ In Kathy’s motion to modify filed July 24, 2009, which was granted, she requested the following relief: This Court should hold that Appellant’s appeal notice was timely and properly filed, that a trial court’s decision “striking” a properly filed motion to reconsider is a decision determining that action under RAP 2.2(a)(3), and that such a ruling constitutes the “decision” on the motion to reconsider for the purpose of RAP 5.2(e)RAP 5.2(e). This court granted the motion.

Humbert/Birch Creek Const. v. Walla Walla County, 145 Wn.App. 185, 192, 185 P.3d 660 (2008), reconsideration denied (Aug. 5, 2008), ; *City of Seattle v. Patu*, 147 Wn.2d 717, 720, 58 P.3d 273 (2002).

Precedent in this area involves very specific requests which were granted, whereafter the requestor appealed their own agreements.

In *Humbert*, an appellant had agreed in writing with the Department of Transportation to certain intersection improvements and conditions. He then appealed the implementation of his own agreement. *Humbert/Birch Creek Const.*, 145 Wash. App. at 192-193. In *City of Seattle*, a party requested a certain jury instruction and then complained on appeal that the exact instruction was erroneous when given. *City of Seattle*, 147 Wn.2d at 721. And in *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995), cited by Steve, a defense counsel moved for the admission of classically inadmissible evidence—i.e. polygraph testimony—and when that evidence was admitted at his request, he then complained of it on appeal. No analogy exists between these cases and what is present here.

Kathy's asking for a substantially disproportionate property distribution paid to her in cash in lieu of maintenance as one option for implementing equity is not an invitation to implement inequity.

Suggesting scenarios to achieve equity does not “invite error.” Steve argues that since one of Kathy’s suggested options was “a disproportionate property division in lieu of ongoing spousal maintenance,” *see Response Brief at p. 27*, she invited this court’s result. But this is akin to arguing that because someone asked for \$100 cash and got a \$55 waffle iron, they got their request. It doesn’t make sense.

The transcript of closing argument shows Kathy’s efforts to assist the court in fashioning an equitable result from grossly disparate economic circumstances, taking into consideration Steve’s intransigence with income information. *RP 988, 1014-1018*. One proposed option offered by Kathy to address her dim view of Steve’s intransigence was to award her 75-100% of the property value paid out to her *in cash*. *See, e.g., RP 1018, lns. 11-21; RP 1019, ln. 1*. She argued that achieving equity, however, would have to abide the trial court’s ultimate findings as to the property value, because those values would necessarily determine what Kathy could realize through a 75% distribution. *RP 1018, lns. 2-14*.

Kathy did not ask the court for 55% of the property. She surely did not ask that her distribution be awarded to her through non-income

producing commercial buildings located across the state from where she lived. Kathy did not ask that she be given no maintenance, along with debt-producing commercial properties; nor did she ask to take on all of her own separate and community debt, as well as all of her own attorney fees, nor did she ask to be left to support herself on her Social Security income of \$682 a month, paying her own health insurance premiums of \$465 a month. Invited error does not apply.

What Kathy requested was an equitable distribution of property, debt and income after 35 years of marriage. She argued that the Court “consider the method of disproportionate distribution...*but only if it equalizes the economic circumstances...*” *RP 1016 at ln. 24 - RP 1017 at lns. 1-2*. She argued that “[U]ltimately, the package that’s put together has to be this Court’s package. And it has to be based on the values it finds, the income that it finds for Mr. Janes and the financial circumstances of his life. And, ultimately, how to equal(ly) divide that.” *RP 1018, lns. 2-8*.

Steve then misconstrues a colloquy referenced on a telephonic hearing after the court’s decision had already been made, where Steve claims that Kathy desired “a disproportionate property distribution instead of maintenance.” *Response Brief at p. 29, citing 11/5/08 RP,*

pp. 4-5. Kathy's counsel noted, "that concept certainly was mentioned to the Court," *RP 5, 11/15/08, lns. 9-10*, but the cited comment follows Kathy's reiteration of the same above theme of using such scenarios in a manner which would implement overall equity. *Id., RP 4, lns. 4, lns. 15-25*. What Kathy unequivocally proposed was a reasoned effort to achieve economic parity from her marriage of 35 years, given the nature of the assets and income, and the dynamics of the case. The court's implementation of Kathy's proposed concepts was neither what was requested, nor achieved, and was abuse of discretion.

- i) Failure to request an increase in temporary maintenance is not invited error.

Steve points out that Kathy never asked for an increase in her maintenance while trial was pending, apparently as some form of invited error. *Response brief at p. 7*. The trial court itself found that the maintenance awarded Kathy under its prior orders had been disparate. *CP 134, finding 35*. In fact, the trial court awarded Kathy a 55% property distribution to allegedly remedy this past inequity in maintenance. *Id.*

- ii) Kathy did not request the commercial buildings as opposed to a larger cash amount.

Steve argues that as Kathy “did not decline” the commercial properties, and thus invited the result. *Response Brief at pp. 32.* Again, Kathy does not claim it was error to award her the commercial properties; she claims that in so awarding her those buildings, the trial court failed to consider the economic circumstances its award then created. It is the trial court’s failure to consider the income necessary to manage the property and debt estate awarded her, and to equalize the standards of living, given its awards, that constitutes abuse of discretion. Invited error is not at issue here, either.

Steve’s support for his claim that Kathy invited being awarded the commercial properties is yet another post-decision colloquy during a phone call. His construction of the colloquy is again misconstruction. *See Respondent’s Brief, p. 32, citing Nov. 5, 2008 RP 25.* The portion of the colloquy cited evidences the trial court’s acknowledgement that Kathy did not want the commercial properties, the trial court stating: “I knew the wife didn’t want them I thought it would be good for her to have some income-producing property.” *11/05/08, RP 25.* Kathy’s counsel indicated only that she was not prepared to give the trial court an immediate answer to its sudden offer to “switch properties” while on the phone before the court’s distribution could be assessed, i.e., “based

on the values that have been attributed here.” *Response Brief*, p. 32, citing *RP 25 on Nov. 5, 2008*. The entirety of the result was thereafter formally challenge by reconsideration motion because of the income and debt situation it caused. *See Motion to Reconsider, CP 113-115; CP 89-91*. Invited error is not at issue.

B. The ability to support oneself does not equate to economic parity.

Steve’s response to the actual result of this trial court’s decree is located at pp. 35-42 of his brief. But it offers nothing to support the court’s decision. At pp. 37-38, Steve claims that Kathy failed to assign error, which is addressed above. At pp. 38-29, Steve argues that substantial evidence exists to support the trial court’s finding that Kathy will be able to support herself. And at pp. 40-41, Steve argues that Kathy was left with assets totaling \$2.167 million and thus, she was not entitled to maintenance after Steve paid the equalizing payment. *Pp. 40-41*. Steve also blames Kathy’s grossly disparate economic situation on her trial attorney’s fees. *See p. 41*. None of these premises, even if they are all accurate, address the issue presented – i.e., that the trial court’s decree implemented reversible economic disparity between these long-term spouses.

Steve agrees that in determining abuse of discretion, this appellate court “must consider the trial court’s overall award, not just an isolated component.” *See Response Brief, p. 36*. But in this regard, he offers nothing to support the trial court’s overall result.

As to Steve’s theory that if Kathy can support herself, then the result is within the trial court’s discretion—this ignores RCW 26.09.080 and precedent. A spouse’s ability to support themselves does not equate to economic parity. *RCW 26.09.080; RCW 26.09.090; Edwards, 74 Wn.2d at 287-288*.

As to Steve’s argument that since Kathy received \$2.2 million in assets, she received equity—large numbers do not equate to economic parity between spouses. Large asset value doesn’t address ongoing debt or income. And real estate can’t be used to buy groceries.

As to Steve’s argument that Kathy’s disproportionate distribution, whatever it was, equates to equity, that is obviously incorrect just by viewing monthly income left to each party alone. In fact, the trial court did not award its 55/45% distribution because it achieved equity going forward. It awarded that disproportion to rectify years of past disparity in temporary maintenance awaiting trial. *CP134, Findings of Fact 35*. No mention is ever made by the trial

court of the comparative economic condition in which its dissolution decree will leave the parties, or the concept of achieving economic parity in the economic conditions of both parties. *Edwards v. Edwards*, 74 Wn.2d at 287-288.; *In re Marriage of Pea*, 17 Wn.App. 728, 731, 566 P.2d 212 (Wash. Ct. App. 1977);

Moreover, even the finding that Kathy received income sufficient to support her needs itself is not supported by substantial evidence, and is contradicted by the court's other findings. The only evidence Steve can point to to support the finding of income from commercial buildings is: a) that Kathy herself argued that the commercial properties had income, and b) that Steve's building appraiser identified alleged net operating income (which is taxable income) under Steve's management of all three buildings at around \$5,250 a month. *See Response Brief, pp. 30-31*. The evidence being argued is from exhibits P-53, p. 10; P-55, p. 11; and P-57, p. 10; RP 458-459. But neither argument of counsel, nor the cited evidence, equated to substantial evidence of the finding, because the trial court itself made a finding that *no* income arose from these buildings when it calculated Steve's net income from 2003 to 2007. *CP 37*. Nowhere in

the court's calculation of Steve's historical net income did it find that he received any income from the commercial properties. *Id.*

Thus, it was abuse of discretion to find that no income existed from the buildings to Steve, *CP 37*, but then conversely find that Kathy might achieve "stable rental income" from these buildings. *CP 135, finding 42.*⁵

Steve himself also points out that Kathy's listed living expenses were \$5,900 a month. *See Response Brief at p. 8.* Yet the highest revenue referenced as generated by the commercial properties under Steve's management would have arguably been \$5,250 in taxable income. *RP 458-459.* But Steve and Kathy both identified the commercial buildings as creating a total of \$2,700 per month of debt that had to be paid from any operating income that existed. *CP 184, para. 5.8; and see n. 2 in Opening Brief.* Thus, Kathy would be unable to pay her living expenses even if the income actually existed.

Finding 2.12 and Finding 42 thus remain without substantial basis in the evidence. They are contradicted by the court's finding no

⁵ Kathy's counsel simply pointed out that the business appraiser referenced these income figures based on Steve's past management. *RP 978, ln. 7 -RP 979, ln. 10.* That assessment was based only on what Steve told the appraiser. *RP 459.* But Steve told the court under oath that the commercial buildings produced no income—and that Steve had to spend out-of-pocket funds at the rate of \$1,450 monthly to support the buildings. *See CP 184, para. 5.8.*

such income from the properties during Steve's historical management of the buildings. *CP 37*.

C. **A pretrial award to assist with attorney fees incurred prior to trial does not address post trial debt.**

Steve also argues that the court did not abuse its discretion when it declined to award Kathy additional attorney fees. His reasoning is that Kathy had already been awarded "almost \$100,000 in fees prior to trial, and received sufficient property with which to pay her fees." *Response Brief, p. 42*. But RCW 26.09.140 does not rely on past fee awards to determine the moving party's present need and ability to pay as the case evolves. *See In re Marriage of Mueller*, 140 Wn.App. 498, 510, 167 P.3d 568, 574 (Wash. Ct. App. 2007)(analyzing the then present economic circumstances at the time of the request on appeal). Steve argues that the reason that Kathy lacks economic parity with Steve is not because of the court's distribution, but because Kathy's "equalizing payment was depleted by payment of her astonishingly high attorney fees." *See Respondent's Brief at p. 41*. This is nonsense. Even astonishingly high attorney fees required to be paid by a party are a requisite part of the trial court's analysis of a party's separate debt, which must be considered in achieving equity. *RCW 26.09.080*. Steve

clucks over how the trial court “commented on the expensive nature of Kathy’s choice of counsel and the resulting attorney fees.” *See Respondent’s Brief at p. 41.* But Kathy’s local counsel withdrew from representing Kathy because Kathy had been unable to pay her fees. That local counsel’s fees remained outstanding even at the time of trial. *CP 155, ln. 82 (\$16,685 of fees outstanding to Jessie Valentine).* Kathy’s trial counsel noted that the only way that Kathy could obtain representation was by a lawyer literally agreeing to “debt finance” Kathy’s fees. *RP 1021-1023.* And as noted in the Appellant’s opening brief, prior to trial, Steve had paid timely all of his three local dissolution attorneys more than he had contributed to Kathy’s fees. *CP 185, § 6.1.* He then went on to pay for two separate attorneys to assist him through trial. *Id.* Yet he remained debt free. *RP 187-189.*

The trial court thus knew that Kathy had combined outstanding fees of \$150,000 owing two successor counsel. *CP 93, lns. 7-15.* And at no time did the trial court find that Kathy’s fees were unreasonable. *See Opening Brief at p. 29.* In fact, this record reflects an extensive history of litigation between the petition filing of November 21, 2003, *CP 907-909*, through May 2009 (a period of six years). *CP 27.* The file reflects numerous orders demonstrating court intervention to

compel Steve to produce basic information and to comply with orders. *See, e.g., Oct. 4, 2007 Order granting motion to compel, CP 305-309; orders modifying prior orders because of different facts and circumstances, CP 247; orders continuing trial because, on Kathy's counsel's commencement of representation, it was determined that, after three years in litigation, neither party had obtained a business evaluation of the Janes Company, CP 446-449; intransigence findings against Steve, CP 251, para. 2; arguments over attorney fee awards after Steve failed to provide information in a timely fashion, CP 253-255; orders reimbursing Kathy for debt that Steve had not disclosed during trial, CP 38-40; orders of contempt against Steve, CP 569, CP 587; more findings of additional contempts at trial, CP 133, para. 17 (where Steve paid attorney fees out of community funds, and also depleted the parties' 401K accounts after restraints were entered), etc.*

By the trial court's refusal to provide Kathy fee assistance, it required her to pay those substantial fees from the only cash she had to live on. The end result further exacerbated the gross economic disparity between the parties, and contributed to the abuse of discretion.

D. Steve's request for fees is frivolous.

Steve characterizes this appeal as "Kathy's insatiable desire for

more.” *CP 45*. This trial court awarded Steve \$23,000 a month in net income, residence in a \$2.2 million dollar home overlooking the ocean, and the community’s business valued at over \$1,000,000. It relegated this wife of 35 years to living in an 800-square foot leased home with plastic on the windows, *RP 969, Ins. 12-14*, receiving Social Security payment of \$635 against \$465 of a health insurance premium, taking loans from friends to live on, and managing commercial properties that go into debt monthly until she can sell them. Kathy’s funds were exhausted as of the end of this last year.

Appeal of such a grossly disparate result is not frivolous.

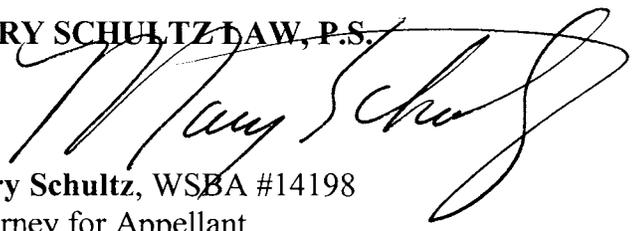
CONCLUSION

This appeal should be granted, and the matter remanded to the trial court with direction to implement economic parity between these two spouses.

DATED this 22 day of April, 2010.

Respectfully Submitted,

MARY SCHULTZ LAW, P.S.


Mary Schultz, WSBA #14198
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on the 22nd day of April, 2010, she served a copy of the **Reply Brief of Appellant** to the persons hereinafter named, at the place of address stated below, which is the last known address, via regular U.S. mail.

ATTORNEYS FOR DEFENDANTS:

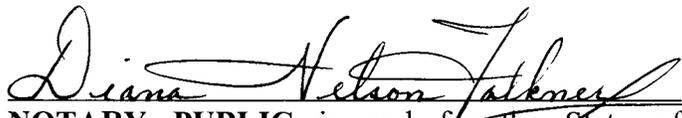
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TINA REHM

SUBSCRIBED AND SWORN to before me this 22nd day of April, 2010.




NOTARY PUBLIC in and for the State of Washington, residing in Spokane.
Commission Expires: 04/01/12