

No. 65512-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

BARBARA MUDROVICH,
Appellant,

v.

PAUL MUDROVICH
Respondent.

BRIEF OF RESPONDENT

Appeal from the Superior Court of King County
The Honorable Christopher A. Washington

No. 09-3-07317-7 SEA

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 ORIGINAL

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I. INTRODUCTION

This appeal arises from the trial in the dissolution of marriage proceeding between the parties, which commenced on October 28, 2009 in King County Superior Court, Judge Christopher A. Washington presiding. Findings of Fact and Conclusions of Law, Decree of Dissolution, Order of Child Support and Parenting Plan were entered pursuant to that trial on May 5, 2010. Appellant Barbara Mudrovich (hereinafter “Barbara”) initiated this appeal on June 4, 2010, and submitted her Appellant’s Brief on January 31, 2011. Respondent Paul Mudrovich (hereinafter “Paul”) requests the orders of the trial court be affirmed, and that he be awarded his reasonable attorney’s fees and costs incurred in defending this appeal. The parties will be referred to by their first names for the purpose of clarity.

II. STATEMENT OF ISSUES IN RESPONSE

Paul assigns no error to the trial court. The following are the issues presented by Barbara’s assignments of error:

1. There has been no violation of the Americans with Disabilities Act or failure to accommodate a disability.
 - a. Further, there is no reference to the record to support a claim of failure to reasonably accommodate; and

- b. No notice of appeal for the denial of accommodation was ever filed, and such a notice would be untimely now.
2. The trial court's credibility determinations cannot be disturbed on appeal.
 - a. The trial court's factual findings are supported by substantial evidence; and
 - b. No evidence was improperly excluded.
3. The trial court cannot be held in error for not staying proceedings where no trial continuance was requested.
 - a. Barbara's counsel withdrew substantially earlier than stated in her brief, and moreover was replaced by substitute counsel immediately, negating the factual basis for Barbara's assignment of error, which is also lacking reference to the record; and
 - b. There was no settlement, and thus none was reached without Barbara's consent.
4. The trial court's division of property was equitable.
 - a. A claim of inequitable division of assets cannot be established without reference to the record.
5. The trial court's child support allocation was equitable.

- a. A claim of inequitable allocation of child support cannot be established without reference to the record.

III. STATEMENT OF THE CASE

This is a dissolution of marriage case initiated by Paul on September 30, 2008. CP 1-7. Barbara and Paul were married on June 10, 1988, and separated July 1, 2008. CP 836. They had four children together, Christopher (age 20), Lillian (18), Hannah (13) and Jacob (13). CP 840. Barbara is a forty-eight year old engineer with the Federal Aviation Administration, while Paul is a forty-eight year old employee of King County's Finance Department. Appellant's Brief, p.6; RP v.I, p.112. Barbara earns approximately \$20,000 more than Paul annually. RP vol.V, p.872.

Trial commenced on October 28, 2009, and final decree and orders entered on May 5, 2010. Barbara was designated primary parent of the three minor children, and Paul was ordered to pay child support of \$1,500 per month and his proportionate share of uninsured health care expenses and agreed upon extracurricular activities. CP 819-828, 843-858. Barbara was also awarded approximately 50% of the community estate. CP 829-32, 836-39.

Some months *after* the trial and entry of the final Decree, Barbara claimed that she was disabled under the definitions of the Americans with Disabilities Act, and entitled to various accommodations by the courts. *See* p.8-9, Respondent's Brief, *infra*. Her disability is based on an unsubstantiated diagnosis of PTSD and "Legal Abuse Syndrome," that she claims to have suffered due to the conduct of the trial judge and counsel. *See* GR 33 Findings and Order of December 21, 2010, attached hereto as **Exhibit 1**.¹ Post trial and entry of the final decree, she was granted some accommodation by the Court's ADA compliance liaison, Linda Ridge for this alleged syndrome. However, when those accommodations were not satisfactory to her, she requested additional accommodation. Her requests for further accommodation were denied on December 21, 2010 and no appeal of the order denying has been properly initiated. *Id.* Thereafter, a person purporting to be an "ADAAA Advocate" attempted to appear on her behalf representing her in court and was eventually sanctioned for violation of Civil Rule 11 by Judge James Doerty. *See* Order Denying

¹ For an unknown reason, the GR 33 Findings and Order do not appear in the Superior Court Clerk's docket. If this had not been the case, it would have been provided via Paul's Supplemental Designation of Clerk's papers. A true and correct copy of this Order is attached as Exhibit 1 for the court's reference.

Motion to Reconsider Participation of ADAAA Advocate and Imposing CR11 Sanctions, attached hereto as **Exhibit 2**.²

IV. ARGUMENT

Barbara's assignments of error and argument are confusing, misleading, lack citation to the record, and are without basis in law or fact.³ Paul will address each argument in the order presented by Barbara.

1. First Assignment of Error

Barbara's first assignment of error references the trial court's alleged failure to reasonably accommodate an alleged disability.

Barbara argues "*[t]here is more than adequate evidence on the record of this case, provided by medical and psychological practitioners licensed in and out of the State of Washington, that demonstrates...*" her disability status under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. Appellant's Brief, p.12. First and foremost, there is no reference to the record, and there were in fact no disability

² This document is also be provided in Respondent's Supplemental Designation of Clerk's Papers, but is attached hereto for the court's convenience.

³ Barbara cites alleged facts in her brief that occurred months past the entry of the final orders in support of her assignments of error. Almost the entirety of Barbara's Statement of the Case does not contain citation to the record below. Due to Barbara's failure to follow the RAPs, Paul filed a Motion to Strike Barbara's Appellate Brief. Although Paul's motion was denied, this Court instructed Paul to argue Barbara's failure to cite to the record in this Brief. Paul renews his objection to Barbara's failure to cite to the record and to strike all portions of her brief that are not in compliance with the Rules of Appellate Procedure.

accommodation requests made at the time of trial or prior to the entry of the final Decree that are properly subject to this appeal.

In addition, Barbara sets forth the definition of a “*disability*” under the ADA, but fails to set forth the full standard to establish a violation of the ADA. *Id.* To establish a violation, she must show, *inter alia*, that she has been excluded from participation in or been denied the benefits of some service, program, or activity by reason of her disability. Civic Ass'n of Deaf v. Giuliani, 915 F. Supp. 622, 634 (S.D.N.Y. 1996) (citing Clarkson v. Coughlin, 898 F. Supp. 1019 (S.D.N.Y. 1995)). The party alleging violation of the ADA bears the burden of proving by a preponderance of the evidence the elements of a claimed violation. *See Bartlett v. New York State Bd.*, 970 F. Supp. 1094, 1116-17 (S.D.N.Y. 1997).

Barbara does not refer to any example of exclusion from participation, and in fact the record reflects that she appeared and testified at trial, was represented by counsel, and clearly participated. CP 835. She made no request for accommodation before or during trial or prior to entry of the final orders.

Ironically, most of the evidence of disability before the trial court, and properly subject to this appeal, was that of Paul and the children’s disabilities. *See, e.g.*, CP 859-916. While Barbara’s diagnosis of

ADD/ADHD was before the court, there was simply no mention of PTSD. Therefore, Barbara's claim of disability and need for accommodation at trial is without merit. Without a showing of a reasonable request, or a specific example of being excluded from participation, there can be no violation of the ADA. Likewise, without any evidence of a disability, it would be incredulous to conclude that the trial court erred in not finding the presence of a disability and granting accommodations that were never requested.

Furthermore, the denial of accommodation requests that Barbara does reference occurred no less than four months *after* the entry of the final decree, and no less than eleven months after trial. See Appellant's Brief, Exh. 5; see also **Exhibit 1** (GR 33 Findings and Order, December 21, 2010). Barbara's alleged disability is based in part on a diagnosis of ADD/ADHD, which appears to be common to both parties. CP 859-916. Her claimed disability is also based on a supposed diagnosis of Post Traumatic Stress Disorder ("PTSD"). Appellant's Brief, p.14. Criterion A1 of a diagnosis of PTSD, and the "essential feature" of the disorder, is:

[T]he development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one's physical integrity; or witnessing an event that involves death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or

threat of death or injury experienced by a family member or other close associate.

American Psychiatric Association. (2000). *Diagnostic and statistical manual of mental disorders* (4th ed., text rev.). Washington, DC., § 309.81, p.463. However, the only source for her PTSD that Barbara has described is the “*stress of Family Court litigation.*” Appellant’s Brief, p.6. It is clear why she has never actually provided a diagnosis from a licensed Washington mental health provider – she does not fit the diagnostic criteria – notwithstanding the unsubstantiated claim of diagnosis by three providers. Id. at pp.13-14.

Finally, the GR 33 Order is not within the scope of review of this appeal, *see* RAP 2.4, and it is too late for Barbara to file a Notice of Appeal related to this Order, *see* RAP 5.2. The findings support the order, and were entered pursuant to the requirements of GR 33 upon Barbara’s request for accommodation. *See* Exh. 1 GR 33 Findings and Order. “*Unchallenged findings of fact are also verities on appeal.*” In re Estate of Jones, 152 Wn.2d 1, 5, 93 P.3d 147 (2004); RAP 10.3(g). The findings and order were within the sound discretion of the trial court, and should not be disturbed on appeal.

Barbara's claims for violation of the ADA and/or improper denial of reasonable accommodations are not supported in law or in fact, and must be denied.

2. Second Assignment of Error

Barbara's second assignment of error relates to perceived violations of the trial court's "gatekeeper function." Appellant's Brief, p.15. However, her first argument related to this assignment appears to address a claim of either ineffective assistance of counsel, or a claim of error for the lack of a trial continuance, and are addressed below in regards to the third assignment of error. Id. The remaining arguments relate to the testimony of the parties. Id. at 15-18.

The 'gatekeeper function' of the trial court has generally been held to apply to the admissibility of scientific evidence, under the *Kelly-Frye* and *Daubert* standards. *See, e.g., Reese v. Stroh*, 128 Wn.2d 300, 315 (1995). There was no scientific evidence presented at trial. The only other potential implication of the 'gatekeeper function' is in the admission of evidence, but Barbara has not assigned error to the admission of any exhibits.

In any case, "[a]dmission of evidence lies largely within the sound discretion of the trial court; absent abuse of that discretion there is no error." Davis v. Globe Mach. Mfg. Co., 102 Wn.2d 68, 76, 684 P.2d 692

(1984); ER 403. “*A trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons.*” Id.

Instead, Barbara’s argument here appears to address issues of credibility and the weight accorded to certain testimony. Resolution of conflicting testimony, credibility determinations, and the persuasiveness of evidence are the province of the fact-finder, not appellate courts. *See Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003); In re Marriage of Grimsley-LaVergne, 156 Wn. App. 735, 742, 236 P.3d 208 (2010); In re Marriage of Zier, 136 Wn. App. 40, 48, 147 P.3d 624 (2006). Credibility determinations are not reviewed on appeal, In re Marriage of Rideout, 150 Wn.2d 337, 352, 77 P.3d 1174 (2003); In re Marriage of Eklund, 143 Wn. App. 207, 212, 177 P.3d 189 (2008), and factual findings are only reviewed for substantial evidence, In re Marriage of Myers, 123 Wn. App. 889, 893, 99 P.3d 398 (2004). “*Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding.*” Jones, supra.

The purported inconsistencies in Paul’s testimony that Barbara references are irrelevant to the factual findings that were entered. Appellant’s Brief, p.16; CP 835-42. CP 438. The accusation that the undersigned attorney “*took advantage of Barbara’s disabilities by*

deliberately triggering her symptoms through stress and other mechanisms to confuse her...” is unsubstantiated and frivolous.

Appellant’s Brief, p.16-17. Likewise, the allegation that the trial court “*refused to admit evidence of Paul’s anger management problems...*” and reference to its “*refusal to admit the family violence testimony*” are mere fabrications as Barbara has failed to cite even one example in her brief. Id. at 17.

Indeed, the only evidence the trial court appears to have excluded consisted of a hearsay document, RP v.II, p.329-34, hearsay testimony, RP v.III, p.542, and evidence concerning a minor financial transaction, RP v.IV, p.731-34.

Barbara did not request limiting factors based on violence or abuse in the parenting plan, nor did she request a protection or restraining order. CP 427-44. Barbara testified as to her recollection of anger and violence issues, and was actively prompted by the trial judge to provide details, which she could not. *See, e.g.*, RP v.III, p.525-27. Dr. Wendy Hutchins-Cook also testified concerning whether Paul had an anger management issue. *See, e.g.*, RP v.IV, p.697. There was no improper exclusion of evidence concerning anger management or family violence.

Barbara next opines that Paul testified misleadingly, without referencing what basis for appeal this would constitute. Appellant’s Brief,

p.17-18. Next, her argument on the second assignment of error appears to twist back to the requirements of the ADA, which has already been addressed.

In summary, the second assignment of error is devoid of merit. Barbara's claim to a nebulous "*unimpeachable right*" pursuant to the ADA is not cognizable, and no basis for reversal can be discerned. *Id.* at 18.

3. Third Assignment of Error

The next assignment of error appears to concern the conduct of Barbara's attorney at trial, and the lack of a trial continuance.

First, it is noteworthy that the only request for a trial continuance in this matter was actually made by Paul. CP 227-44. Barbara opposed that request, CP 245-59, but it was nevertheless granted, continuing the trial from August 21, 2009, to October 26, 2009. CP 291-93. No request to continue the October 26 trial date was made.

In any event, CR 40(d) provides that "*[w]hen a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a continuance.*" CR 40(d). A trial court's decision granting or denying a motion for a continuance is reviewed for a manifest abuse of discretion, which occurs where the trial court's ruling is manifestly unreasonable or is based on untenable grounds or reasons. State v. Heredia-Juarez, 119 Wn.

App. 150, 153, 79 P.3d 987 (2003). As no continuance was actually requested here, there can be no such manifest abuse of discretion. The undersigned attorney can find no authority for the notion that a trial judge has a duty to continue a trial *sua sponte*.

It is also noteworthy that Barbara's attorney actually withdrew more than a month before trial, approximately on September 16, 2009, and was immediately replaced by substitute counsel. The withdrawal did not occur "...two weeks prior to trial on the merits." Appellant's Brief, p.19.

Barbara also states that her "*trial attorney called no witnesses, had no understanding of her client's PTSD, and failed to provide any post-trial representation...*" Appellant's Brief, p.10. In fact, the record reflects that her trial attorney called three witnesses: Barbara, the parenting evaluator Dr. Wendy Hutchins-Cook, and Paul. RP, v.III p.472, 549, v.V p.963. Her trial attorney also offered a detailed post-trial memorandum. CP 460-88.

Next, Barbara opines that her trial attorney “*had apparently consented to a number of actions and agreements [that] were not in Barbara’s best interest and of which she was unaware until after her attorney’s departure.*” Appellant’s Brief, p.19. However, she makes no reference to which actions and agreements these were.

The only discernible agreement was the Joint Statement of Evidence, CP 370-82, which is mandated by King County Local Civil Rule 4. KCLCR 4(k). There simply was no financial settlement, and the final documents were not agreed by the parties. *See Appellant’s Brief*, p.19. These documents were entered on May 5, 2010, pursuant to a Notice of Presentation issued on March 31, 2010. CP 805. Barbara and her attorney had apparently experienced a breakdown in their relationship by this time, but her attorney nevertheless prepared a detailed list of objections to Paul’s proposed orders, and clearly did not agree to the final orders as proposed by Paul. *See Exhibit 3* (Summary of Changes to Proposed Final Orders/Objection to Presentation).⁴ She also had submitted the post-trial memorandum addressing the specific areas of disagreement over final orders. CP 460-88. In any case, the trial court’s final orders represent the trial court’s intent, and Barbara’s assent to them is immaterial.

⁴ This document will also be provided in Respondent’s Supplemental Designation of Clerk’s Papers, but is attached hereto for the court’s convenience.

The third assignment of error also appears to amount to a claim of ineffective assistance of counsel. Appellant's Brief, p.19. However, in a civil matter, ineffective assistance of counsel is not grounds for reversal. See Nicholson v. Rushen, 767 F.2d 1426 (9th Cir. 1985). Therefore, such a concern, if any, is irrelevant in this appeal.

In summary, Barbara's third assignment of error concerning the conduct of her attorney at trial and the lack of a trial continuance do not present any tenable grounds for reversal.

4. Fourth Assignment of Error

The fourth assignment of error addresses the division of property. In a marriage dissolution proceeding, the trial court must "*dispos[e] of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors.*"

RCW 26.09.080; In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005).

Such factors include, but are 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 at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time."

RCW 26.09.080. They may not include marital misconduct. Muhammad, *supra*, at 803-04.

“An equitable division of property does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of parties.” In re Marriage of Crosetto, 82 Wn. App. 545, 556, 918 P.2d 954 (1996). *“The court may consider the health and ages of the parties, their prospects for future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable future acquisitions and obligations, and whether the property to be divided should be attributed to the inheritance or efforts of one or both of the spouses.”* Olivares v. Olivares, 69 Wn. App. 324, 329, 848 P.2d 1281 (1993). (overruled on other grounds, In re Estate of Borghi, 167 Wn.2d 480, 219 P.3d 932 (2009)).

The trial court has broad discretion in awarding property in a dissolution action, and will be reversed only upon a showing of manifest abuse of discretion. In re Marriage of Harris, 107 Wn.App. 597, 601, 27 P.3d 656 (2001). If a trial court's finding is within the range of the credible evidence, the appellate court should defer. In re Marriage of Rockwell, 141 Wn. App. 235, 248, 170 P.3d 572 (2007).

First and foremost, it is uncontested that Barbara is just one month older than Paul. CP 3. Barbara earns \$122,009 in gross income annually, while Paul grosses \$97,496 annually. Notwithstanding her current claims of disability, Barbara continues to work full-time with the Federal Aviation Administration, CP 464, and the trial court had ample evidence to support a conclusion that her future earning capacity would be equal to or greater than Paul's. This supports an equal award of property, if not one actually more favorable to Paul.

The actual split of community assets resulted in Barbara receiving a net value of \$240,305.50 (community assets less community debts), while Paul received a net value of \$226,605.95. CP 829-32, 836-39. Barbara bemoans the fact that she was assigned substantially more debt, but omits the fact that she a.) received more community assets, such as the house, and b.) incurred substantially more separate debt. Id. She also

omits the fact that she supported an equal division of property at trial. *See* RP v.VII, p.1240, ln.21 (“Well, I just want half.”).

As to separate property and debts, each party was made liable for their separate debts. Paul received separate interest in property that had been gifted to him by his parents, and each party received the separate contributions they had made towards retirement benefits since separation. Id. Barbara argued for a separate contribution from pre-marital funds to the marital home, CP 462, but there was substantial evidence of commingling of funds, and it was well within the court’s discretion to characterize this contribution as community. She did receive an equitable credit for her separate contribution to paying down the mortgage post-separation. CP 834.

Also, the burden is on the party claiming the existence of separate property to clearly and convincingly trace the property to a separate source. In re Marriage of Skarbek, 100 Wn. App. 444, 448, 997 P.2d 447 (2002). The trial court declined to find the presence of a community debt to Paul’s father, as Paul requested, *see* RP v.II, p.248-49, clearly evincing that the trial court did not favor either party’s claims. CP 829-34.

Barbara also opines that she supported Paul through some portion of his education, and therefore is entitled to a greater share of the property distribution. While it is true that the “*contribution of the supporting*

spouse to the attainment of a professional degree by the student spouse is a factor to be considered in dividing property and liabilities,” Barbara ignores crucial distinguishing facts noted in that holding. In re Marriage of Washburn, 101 Wn.2d 168, 170, 677 P.2d 152 (1984). “*When one spouse supports the other through professional school in the mutual expectation that the community will enjoy the financial benefit flowing from the resulting professional degree, **but the marriage is dissolved before that benefit can be realized,***” the supporting spouse should be compensated. Id. (emphasis added).

Here, it was disputed exactly when Paul finished college, but there is no question that it was very early in the marriage. The community enjoyed the financial benefit flowing from the degree for almost two decades. Thus, there was no valid claim for compensation for any support Barbara provided to Paul early in their marriage. Further, given that Barbara offered no evidence establishing the value of her contribution to Paul’s education, it would have been error for the trial court to require compensation.

Clearly, the division of property was just and equitable, within the trial court’s sound discretion, and supported by substantial evidence. It should not be disturbed on appeal.

5. Fifth Assignment of Error

The final assignment of error addresses a purported inequitable child support allocation. Appellant's Brief, p.28. The legislature's stated intent in enacting the child support schedule statute, chapter 26.19 RCW, was "*to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living.*" RCW 26.19.001; In re Marriage of McCausland, 159 Wn.2d 607, 611, 152 P.3d 1013 (2007). "*The overriding purpose of the child support schedule is to insure that children are protected with adequate, equitable and predictable child support.*" In re Marriage of Oakes, 71 Wn. App. 646, 650, 861 P.2d 1065 (1993); RCW 26.19.001.

The trial court begins by setting the basic child support obligation, determined from an economic table in the child support schedule and based on the parents' combined monthly net income and the number and age of the children. McCausland, *supra*. If the parents' combined monthly net income is greater than \$12,000, the court may exceed the table based on written findings of fact. *See id.* (Threshold was \$7,000 at the time of the *McCausland* decision, but is now \$12,000. The Court's reasoning should now apply to incomes over \$12,000). A trial court may deviate from the standard calculation of child support "*...after considering certain special needs of the children, such as those necessary to address*

disabilities or medical, educational, or psychological needs.” State ex rel. Stout v. Stout, 89 Wn. App. 118, 123, 948 P.2d 851 (1997).

In addressing a deviation on these grounds, the trial court should consider the *Daubert/Rusch* factors, which include: “(1) *the parents’ standard of living and (2) the children’s special medical, educational, or financial needs when entering its written findings of fact.*” McCausland, *supra*, at 620 (citing In re Marriage of Daubert, 124 Wn. App. 483, 495-96, 99 P.3d 401 (2004), and In re Marriage of Rusch, 124 Wn. App. 226, 233, 98 P.3d 1216 (2004)).

Here, the parties’ combined net income was found to be \$13,217 per month, in excess of the upper threshold of the child support economic table. CP 855. Paul’s net income of \$5,551.35 comprised 42% of the combined net income. Id. His basic support obligation was therefore \$1,324.26. Id. The court deviated upwards from this figure, ordering a transfer payment of \$1,500 per month. CP 846. Paul was also ordered to continue to provide health insurance for all of the children. CP 849-50. Paul was also ordered to pay 42% of agreed expenses not included in the transfer payment, and 45% of uninsured medical expenses. CP 848; 852.

Given that the support obligation exceeds the statutory threshold, and also that Paul is ordered to provide medical insurance and bear his proportional share of all other agreed expenses incurred on behalf of the

children, the Order of Child Support clearly will provide adequate support for the children. Likewise, it accords with the parties' income and standard of living, and the children's special medical and educational needs. Barbara's claim that the order requires her to pay three quarters of the children's expenses is not supported by any reference to the record. Appellant's Brief, p.28-29. Again, there can be none, as Paul is clearly ordered to pay his proportional share of such expenses. The order as entered was within the trial court's sound discretion, and cannot be regarded as inequitable.

V. **CONCLUSION**

Barbara has established no error on the part of the trial court, and certainly no manifest abuse of discretion has occurred. The Appellant's Brief is rife with factual mis-statements, lacking in references to the record in most areas of argument, and many of the orders Barbara requests this court to review are not properly subject to this appeal.

There was no request for a trial continuance (apart from Paul's earlier request, which is not referenced), or settlement, as Barbara claims. There has been no failure to reasonably accommodate a disability, or violation of the ADA. Determining credibility, weighing evidence, and resolving conflicting testimony are all functions within the sound discretion of the trial court, and there has been no manifest abuse of that

discretion. The claim of inadequate representation is not well placed.

Finally, the property division was just and equitable, and the child support allocation was appropriate.

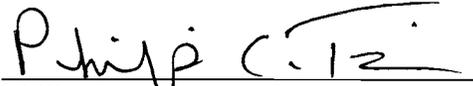
Therefore, the Court of Appeals should affirm the trial court's Decree of Dissolution, Findings of Fact and Conclusions of Law, Parenting Plan and Order of Child Support.

Request for Attorney Fees and Expenses:

Also, the Court should grant Paul an award of his reasonable attorney fees and costs incurred in responding to this appeal. RCW 26.09.140 allows the court to order one party to a marriage dissolution action to pay attorney fees and costs to the other party for "*enforcement or modification proceedings after entry of judgment.*" McCausland, *supra* at 621; RCW 26.09.140. Under RAP 18.1, a party has a right to recover reasonable attorney fees or expenses on review. Id.; RAP 18.1. The amount of fees and expenses should be calculated at a later time, by affidavit. RAP 18.1(d).

Respectfully submitted this 25th day of March, 2011.

TSAI LAW COMPANY, PLLC

A handwritten signature in black ink, appearing to read "Philip C. Tsai", written over a horizontal line.

Philip C. Tsai, WSBA #27632

Benjamin J. Haslam, WSBA#36669

Attorneys for Respondent

TSAI LAW COMPANY, PLLC

2101 Fourth Avenue, Suite 1560

Seattle, WA 98121

Exhibit 1

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re the Marriage of:
PAUL MUDROVICH
Petitioner
&
BARBARA MUDROVICH
Respondent

Case No. 08-3-07317-7 SEA

**GR 33 Findings and Order Regarding
Request for Disability Accommodation**

On September 1, 2010 subsequent to a lengthy and contentious divorce trial Barbara Mudrovich requested accommodation for an alleged disability. In her request she states “*I cannot obtain access to the court or enforcement of orders and legal rights or advocate for my rights to protection without accommodation.*” Barbara’s request was accompanied by a report filed under seal by a licensed mental health counselor in West Palm Beach, Florida.

The court finds that this report fails to meet the professional standards required in Washington, that the provider is not licensed in Washington, and that the report is facially specious. It contains assertions about the trial judge that have no basis in fact and if were made by an attorney would be grounds for discipline. The report is not a basis to find a disability.

The court reserves whether to require a mental health evaluation or disability assessment

1 of Barbara by a qualified provider.

2 Some accommodation has previously been extended to Barbara. See correspondence
3 from the court's ADA compliance liaison Linda Ridge. That correspondence referred the
4 remaining requests to the undersigned. On December 2, 2010 Barbara emailed the court
5 requesting a written order pursuant to GR 33

6 The court denies any further accommodation for the reason that the applicant has failed to
7 satisfy the substantive requirements of GR 33; that the applicant (Barbara) is not entitled to any
8 accommodation requiring the expenditure of public funds such as appointed counsel because she
9 has substantial funds at her disposal; and that the requested accommodations would
10 fundamentally deny the petitioner due process of law by turning the post dissolution proceedings
11 into secret *ex parte* proceedings; and that permitting the applicant to participate in the
12 proceedings in the manner she requests would create a direct threat to the well-being of the
13 children subject to the parenting plan.

14 **The next hearing is January 7, 2011 in rm. E 7-33 of the King County Court House**
15 **at 10:30 a.m. This is a show cause on contempt. Failure to appear in person may result in a**
16 **warrant being issued for Barbara's arrest.**

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19 DONE this 2/8th of December 2010

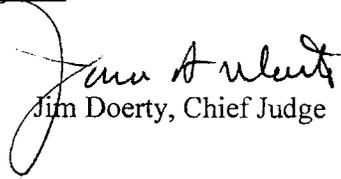
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22 Jim Doerty, Chief Judge
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Exhibit 2

1 allowing him to act as Respondent's lawyer, the other to reconsider the December 21, 2010 GR
2 33 findings and Order Regarding Request for Disability Accommodation (document 191 in the
3 record). The later is not timely as motions to reconsider must be made within ten days.
4 Presenting it in this way is a CR 11 violation.

5 The motion before the court contains assertions not well grounded in fact, including
6 identification of materials purported to be in the record which are not in the record and
7 mischaracterizations of evaluations of the Respondent, in particular Don Baker's. The use of a
8 power of attorney to justify the unauthorized practice of law and commit a criminal act is an
9 argument not warranted by existing law. These are CR 11 violations.

10 Barbara would be well advised to seek representation by an attorney. She was well
11 represented by excellent counsel in the dissolution trial. She refused to communicate with
12 counsel after the trial concluded leaving counsel without direction (document 132 in the
13 recuord). An ADAANA advocate is not a substitute for legal counsel.

14 Mr. Goldblatt and the Respondent conjure up the horrors attendant on the dubious
15 "diagnosis" of legal abuse syndrome and the fictional assessment done by Rebecca Potter, assert
16 that participation in post dissolution legal proceedings caused by Barbara's misconduct is a
17 "major life activity", and most speciously seek to avoid accountability to court orders because
18 Barbara has purportedly been advised to avoid any exposure to stress from courtroom activities.
19 The only courtroom activities since the divorces were finalized nine months ago have been
20 caused by Barbara herself. The case should be over. Barbara is generating the conflict. The
21 current situation is entirely of her own making. The only reason she is exposed to courtroom
22 activities is her contemptuous disregard of the parenting plan.

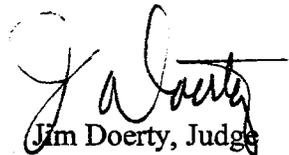
23 Barbara's purported disability is remarkably strategic. At the January 7, 2011 hearing the
24 court observed that her ability to respond and address the issues deteriorated to confusion only
25 when specifically confronted with proof of lying and illegal activity. She was remarkably
26 organized and articulate otherwise.

1 The motion to reconsider is DENIED.

2 Ken Goldblatt is fined \$2,500.00 in CR 11 sanctions payable immediately to the Clerk of
3 the Court. He will not be permitted to file documents or accompany Barbara to court until the
4 terms are paid. Further instances of unauthorized practice of law may result in contempt findings.

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6 DONE this 19th of January, 2011


Jim Doerty, Judge

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Exhibit 3

HON. CHRIS WASHINGTON
Presentation 4/7/2010
No oral argument

Superior Court of Washington
County of KING

In re the Marriage of:

PAUL MUDROVICH,

Petitioner,

and

BARBARA MUDROVICH,

Respondent.

No. 08-3-07317-7SEA

**SUMMARY OF CHANGES TO
PROPOSED FINAL
ORDERS/OBJECTION TO
PRESENTATION**

[NO MANDATORY FORM]

This pleading summarizes respondent's changes to the proposed final orders submitted by petitioner and noted for presentation on April 7, 2010. Each change is supported by a reference to the exact time on the CD of this Court's oral ruling of December 18, 2009, submitted with working copies, or is a technical correction such as correcting a child's age.

1. DECREE

LOCATION OF CHANGE	NATURE OF CHANGE	LOCATION OF RULING ON CD
Page 2, ll. 67-69	Delete para. 6	2:13:03 "We're not going to have money going either way"
Page 2, l. 77	Re-number para. 7 as para. 6 because of deletion above	
Page 3, ll. 5-9	Re-number para. 8 as para. 7 and delete second sentence.	Not on CD--Court did not retain jurisdiction to resolve personal property disputes
Page 3, l. 11	Re-number para. 9 as para. 8	
Page 3, l. 33	Insert "SE" before 58 th St.	
Page 3, ll. 51-53	Delete transfer payment	2:13:03 "We're not going to have

SUMMARY OF CHANGES- Page 1

WECHSLER BECKER, LLP
SUITE 4550 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WA 98104
Tel: 206-624-4900 Fax: 206-386-7896
www.wechslerbecker.com

OPPOSING

LOCATION OF CHANGE	NATURE OF CHANGE	LOCATION OF RULING ON CD
		money going either way"
Page 3, ll. 61-62	Delete "as provided on attached list"	2:19:28
Page 3, line 69	Insert "General Dynamic retirement benefit, if any"	2:23:39
Page 4, line 61	Change Edlund debt to \$34,000	

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

LOCATION OF CHANGE	NATURE OF CHANGE	LOCATION OF RULING ON CD
Page 3, ll. 51-55	Delete reference	Not on CD—Court did not retain jurisdiction to resolve personal property disputes
Page 6, line 3	Christopher Mudrovich is 20	
Page 6, line 5	Lillian Mudrovich is 18	
Page 6, line 73	Correct typo: "payment son" should be "payments on"	
Spreadsheet	Delete	2:13:03 "We're not going to have money going either way"

3. PARENTING PLAN

LOCATION OF CHANGE	NATURE OF CHANGE	LOCATION OF RULING ON CD
Page 1, line 59	Delete Lillian Mudrovich	N/A – child is over 18 now
Para. 2.2	Delete section 191 restriction and reserve	3:22:01 and 3:22:40
Page 3, line 13	Change "three" to "two"	3:49:49
Page 3, line 17	Change time to "noon to 5 p.m."	3:50:20
Page 3, line 59	Change "Saturday" to "Sunday"	3:50:20
Page 4, lines 33-37	Delete	N/A-- winter break 2009 is over
Page 7, lines 45-53	Delete	N/A-- child is over 18
Page 11, lines 31-45	Delete	N/A – not a proposed plan

4. CHILD SUPPORT ORDER

LOCATION OF CHANGE	NATURE OF CHANGE	LOCATION OF RULING ON CD
Page 7, lines 7-13	Delete petitioner's language, insert: "Provided that father is current on child support at the end of each calendar year: the parties shall each claim two exemptions so long as all four children are eligible to be	3:07:42

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LOCATION OF CHANGE	NATURE OF CHANGE	LOCATION OF RULING ON CD
	claimed as dependents. Once only three children are dependent, in even years mother shall claim two exemptions and father one exemption, and in odd years father shall claim two exemptions and mother claim one exemption. Once only two children are dependent, each parent shall claim one exemption. If only one child is dependent, the parties shall alternate, with mother claiming the exemption in even years”	
Page 10, line 65	Delete “No back support is owed as this time” and insert “Back support that may be owed is not affected by this order. Back interest that may be owed is not affected by this order.”	3:15:13
Page 11, line 7	Insert “Both parties shall designate their existing life insurance to secure their child support obligations.”	3:18:24
Page 2, page 3, page 4, page 6, page 7	Changes in numbers all driven by changes on worksheets	2:40:39 passim

5. CHILD SUPPORT WORKSHEETS

Respondent’s counsel reran petitioner’s worksheets using the exact same gross incomes and pension contributions. She made **one change only**—she allocated two exemptions for the children to each household, and added each party’s individual exemption, for a total of three exemptions per household, **consistent with the allocation of exemptions ordered** by this Court. This single change produced the changes in the worksheets presented on behalf of respondent.

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6. ISSUE NOT ADDRESSED BY THE COURT

The Court did not address the payment of private school tuition for Hannah and Jacob (and the completion of Lillian's final year in high school, which ends in spring 2010). Petitioner agreed that the children should continue to attend private school.

DATED this 7th day of April 2010.

WECHSLER BECKER, LLP

By *Ruth Laura Edlund*
Ruth Laura Edlund, WSBA # 17279
Of Attorneys for Respondent

2011 MAR 29 PM 1:22

Superior Court of Washington
County of King

In re the Marriage of:

PAUL MUDROVICH

Petitioner,

and

BARBARA MUDROVICH

Respondent.

No. 08-3-07317-7 SEA

APPEAL NO. 65512-4-I

**Amended and Supplemental
Declaration of
MAILING**

I, Kimberly Anderson, declare as follows:

That on the 25th day of March, 2011, I deposited in the U.S. mail, postage prepaid, a copy of the following document:

Respondent, Paul Mudrovich's Supplemental Designation of Clerk's Papers
Respondent, Paul Mudrovich's Appellate Brief

to the following person:

Barbara Mudrovich
11651 S.E. 58th Street
Bellevue, WA 98006

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

Dated this 28th day of March, 2011.

Kimberly Anderson

DECLARATION OF MAILING

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TSAI LAW COMPANY, PLLC
Attorneys at Law
2101 Fourth Avenue, Suite 1560
Seattle, WA 98121
206.728.8000

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