Supreme Court No. 98990-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

COA No. 36393-7-III

BEVERLY SEVIGNY
Respondent,

v.

MICHAEL G. SEVIGNY
Petitioner.

PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

Page

APPENDIX A

Page(s)

TABLE OF AUTHORITIES

Page(s)

Washington Cases

Page(s)

Statutes and Court Rules

Other Authorities

I. IDENTITY OF PETITIONER & SUMMARY

Petitioner Michael Sevigny ("Mike"), appellant below, asks this Court to accept review of the divorce property division part of the Court of Appeals decision ("Decision") terminating review specified in Part II.

Mike's appeal challenged the mischaracterization and distribution of substantial post-separation real property acquired by Mike; the inequitable judgment requiring the immediate transfer payment of over $707,000 rather than deferred payments; and the unreasonably high maintenance granted Respondent Beverly Sevigny ("Beverly"). The Court of Appeals gave Mike partial relief by vacating the maintenance award.

But in affirming the property division, the Decision flipped the separate property presumption of RCW 26.16.140 and sidestepped settled case law to uphold the characterization of Mike's post-separation real property as community property by putting the burden of proof on Mike to prove its separate character. It affirmed inclusion of $341,332 of separate property as "community property" and affirmed the 60/40 split in favor of Beverly, $1,280,396 to $853,597. The trial court had also imposed very high maintenance of $6,500 per month, despite the large amount of property distributed to Beverly and her income and living circumstances.

Because the largest assets were the construction business Mike began in 2007 and post-separation acquisitions by Mike's new properties business, both awarded to him, the trial court ordered a large equalization "transfer payment" of $707,485. But it did not structure payment so it was feasible for Mike to pay within the context of the property division and the

economic circumstances of the parties. It ordered immediate payment. Instead of a deferred payment plan letting Mike pay it off over several years from the income stream of the business, he was supposed to pay off the entire judgment immediately from no apparent payment source, while also was paying monthly maintenance of $6,500. This was untenable.

Though the panel recognized part of the inequity and vacated the maintenance award, the Decision affirmed the characterization of post-separation property and the overall allocation that included Mike's post-separation property. When Beverly moved to have Mike pay the transfer amount in 2019, he could pay half only by selling assets awarded to him and giving that cash to Beverly. This changed the property division to a **78/22** split in favor of Beverly, not the 60/40 split the trial court ruled was fair and equitable. This is patently, substantively unfair. Much is due to ignoring RCW 26.16.140's presumption that post-separation property is separate property and including in the divisible estate a substantial portion of Mike's post-separation property, thus requiring a transfer payment.

Review of the property division is warranted because the decision conflicts with basic principle of community property law that the character of property is determined on the date of acquisition and the statutory directive that post-separation acquisitions are presumed separate property. If unchanged the final property division enriches Beverly beyond what even the trial judge thought was fair and just, contrary to settled law that the division be fair, just, and equitable to ***both*** parties, no matter how maintenance is addressed on remand. Review should be granted.

II. COURT OF APPEALS DECISION

The Decision was filed June 16, 2020, after granting reconsideration to modify footnote 9. App. A-1 to 21. Mike's timely motion to publish in part was finally disposed of on August 26, 2020, App. A-22-23. An extension was granted to September 28.

The Decision affirmed the property division and judgment embodying the $707,000 transfer payment from Mike to Beverly. App. A-11-15. However, it reversed the maintenance award on the basis that "the record does not support a finding that he has the ability to pay both the $707,000 judgment entered against him and this level of maintenance at the same time", citing the statutory provision requiring the trial court to consider not only the obligor spouse's ability to meet his own needs, "but also his ability to meet his other 'financial obligations' while paying spousal maintenance." Decision at App. A-17-18, citing RCW 26.09.090(1)(f). It held the trial court abused its discretion by its

> …failure to give fair consideration to RCW 26.09.090(1)(f), or to make findings to support a determination that Michael can both service his debt to Beverly without a significant loss of income and afford to pay $6,500 a month in maintenance…

Decision at 18, App. A-18.

The Decision got it half right by vacating the maintenance award and remanding to calculate an amount not only commensurate with the property she received but, more fundamentally, with Mike's ability to pay. Mike does not seek review of the Decision's ruling vacating the maintenance award.

III. ISSUES PRESENTED FOR REVIEW

1. Where one spouse is awarded the business that has funded the community and the other spouse is granted a large transfer payment the first spouse has no assets or loan avenues to pay, does the trial court abuse its discretion by making payment of the transfer immediate where, as here, the obligated spouse has to sell two properties nominally awarded to him to fund payment of half the transfer, and where, as here, this results in a 78/22 split of the divisible assets in favor of the receiving spouse, rather than the 60/40 split the trial court ruled was fair and equitable?

2. RCW 26.16.030 defines community property as property acquired after marriage by one or both of the spouses during the marriage. RCW 26.16.140 provides that post-separation earnings and accumulations are that spouse's separate property. Long-settled case law provides that the character of property is determined on its date of acquisition, *e.g., Estate of Borghi*, 167 Wn.2d 480, 484, 491, 219 P.3d. 932 (2009). Should review be granted to clarify that these principles mean a spouse cannot rely on a community property presumption to characterize property as community, including realty, when the date of acquisition is post-separation, but instead has the burden to establish by at least direct and positive evidence that such property was obtained with community resources or efforts which should be compensated?

3. Should review be granted where the Decision flipped the statutory presumption of RCW 26.16.140 that post-separation property is separate property and erroneously imposed the burden of showing the property's separate character by clear and convincing evidence on the spouse who acquired it after separation, contrary to the statute and settled law on establishing the character of property?

4. Should review be granted to give effect to RCW 26.16.140 and its intent to help separated couples re-establish themselves by confirming that post-separation property not acquired by community funds or from community efforts, cannot be "awarded" or allocated as part of the divisible estate, but can be considered for purposes dividing the separate and community divisible property that was acquired before or during the marriage, and in setting any maintenance or support award?

IV. STATEMENT OF THE CASE

A. The Parties, The Marriage, February 1, 2013 Separation Date, And The Construction Company.

Mike and Beverly were married in August 1979 (OB at 8), separated in February, 2013. Both were 60 when trial was held in May, 2018, after which the court found:

> The marital community ended on February 2013. **The parties stopped acquiring community property and incurring community debt on this date**.

CP 13, ¶5 (emphasis added).[1]

During the 33-year marriage, Beverly first was a stay-at-home mother until their youngest reached first grade, then she went back to work part time teaching as a substitute, and later worked full time both as a paraprofessional in the classroom and as a secretary for the school district. Decision at 2. Mike worked in his father's construction company until 2007, when he opened his own company, M. Sevigny Construction, Inc., with his son Matt. *Id.*; OB at 5-6. As seen by the valuation of Mike's half of the company at $775,000 (CP 52), it was successful. Company documents in the record show that Beverly was considered a joint owner, though she devoted 10 per cent of her time while they each devoted 100 per cent of their time to the company. *See* OB at 6; Ex. PE 1.22, pp. 7-8.

[1] This ruling was not appealed and is at the heart of Mike's appeal and this Petition because it is at odds with the trial court's ruling that the 16th Ave. Properties parcels acquired post-separation were community property, even though Beverly did not have an ownership or management interest in the company and Mike bore all the financial risk it entailed, as discussed *infra*.

B. Mike Created A New Business With His Son Matt In 2012, 16th Ave. Properties, LLC. Beverly Was Not An Owner Or Operator of the LLC, Which Acquired Realty Long After the February 2013 Separation, Including Late 2014 And After.

Mike testified to creation of the 16th Ave. Properties LLC (the "LLC") in 2012 with his son Matt. OB 7. The exhibits show that Beverly is not named as an owner of the LLC and only received income from it as an employee, as detailed in the Opening Brief. *See* OB at 7 (detailing the tax schedules covering the LLC); p. 12 fn. 4 (documenting Beverly was not at financial risk if the LLC failed, contrary to her lawyer's closing rebuttal argument, a bald assertion without foundation)[2]; Thus, Beverly's interest in the LLC's properties at the time of trial was through her community interest in Mike's share of that business, which he operated with Matt up to the time of separation. It was a purely financial interest via her marriage. That interest ended when they separated, as did Mike's interest in her school paychecks and new retirement contributions.

The exhibits demonstrate that the LLC was operating late in 2012 – the appraisal done for Beverly for trial notes the LLC acquired "Parcel 3" out of bankruptcy on "12/11/2012 for $380,000. *See* Plaintiff's Exhibit

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[2] Footnote 4 of the Opening Brief explained:

As pointed out *supra* p.7, Mike's exhibits, RE 2.9 & 2.21, and ***Beverly's*** exhibits PE 1.23 and 1.4 show that Beverly is ***not*** a member of the LLC, and thus would have no obligation for its debts other than by statutory community property liability. Rather, for the work done after separation she would bear no potential liability under RCW 26.16.140 for any debts Mike incurred individually or through the LLC, and thus was perfectly shielded from any risk. *See* RCW 26.16.200 (spouse not liable for debt incurred for post-separation debts.) Indeed, that was the original purpose of that statute when passed in 1881, by helping to put women and wives on more even footing with men than they were under the common law system.

("PE") 1.31, p. 5. ("Korn Appraisal"). On the same page the Korn Appraisal states that "Parcel 4" was "sold from Success Management LLC to 16th Ave Properties LLC **11/13/2014** for $750,000. Property is presently listed for $1,350,000." *Id.* (emphasis added). Parcel 4 was acquired over a year and nine months after Mike and Beverly separated.[3]

Assuming the first three parcels mentioned by the Decision are presumed to be community because they were acquired before separation, they totaled $1,352,654, only 17 per cent of the total value given by Korn of $7,990,500. *See* 1.31, p. 4; CP 50 (trial court's letter decision listing properties and values given by Korn). Since the parcels in the Korn Appraisal apparently are numbered in the order they were acquired given the dates for Parcels 1, 3 and 4, then per the Korn Appraisal, some $6,400,000 of the appraised value of the LLC was from post-separation properties acquired in December, 2014 or later. Each of those properties should get RCW 26.16.140's separate property presumption based on date of acquisition alone, which Beverly would have to challenge with "clear and direct" evidence to have treated as community. Even assuming the first four parcels are presumed to be community, the last three – and the most valuable – should have been presumed separate under the statute and *Borghi* based on their dates of acquisition. It would be up to Beverly to show by clear and direct evidence otherwise.

[3] The Decision notes only the "Parcel 3" and the original parcel and commercial building on the date of formation at 1212 N 16th Avenue, but does not mention the post-separation Parcel 4 referenced in the Korn Appraisal. *See* Decision at 5-6. It thus did not address how Parcel 4 is characterized given its acquisition date.

C. 2018 Trial, Mike's Proposed Division Excluding Post-Separation Property And Trial Court Decision After Reconsideration.

Mike's OB summarized his position at trial, which the trial court did not follow, and argued it in detail at OB 26-29.

> Mike's counsel argued application of both RCW 26.16.140 and *In re Marriage of Griswold* for why the post-separation property acquired by 16th Avenue Properties that Mike owned and operated should be allocated to him, because where the post-separation business increases in value or loss due primarily to the efforts of the managing spouse, that spouse bears the gain or the loss. RP 217-18. That also is consistent with RCW 26.16.190, which protects the non-involved spouse from injurious acts of the other spouse including post-separation, and RCW 26.16.200, which protects a spouse from the separate debts of the other spouse. As a high-risk venture, Beverly was protected from the losses that could occur to 16th Avenue Properties should there be a failure in the real estate market, as there was in 2008-2012. Thus he summarized that:
>
> > ….under our proposal, she gets $786,855.00 of virtually zero risk, properties and investment. Almost $250,000 of that is liquid. He gets [$]523,000 of business related assets so he can continue to try to make a living and under our proposal there are five more years of maintenance at [$]2,500 and hopefully someday retire.
>
> RP 218. The proposal, 60/40 in favor of Beverly, did not require a transfer payment.

OB at 13-14. Mike submitted his proposal as exhibit RE 2.3, App. A-80-82 hereto. By proposing Beverly get virtually all the liquid assets, the family home, and the North Fork cabin, the split was 60/40 in her favor and no transfer payment was required. His figures at RE 2.3 show a total estate (after deducting the home mortgage debt) of $1,309,902 and he proposed that Beverly receive $786,855 and Mike get $523,047, a 60/40 split that did not require a transfer payment.

In contrast, Beverly's counsel did not suggest tracing to determine what portion of the LLC's properties acquired post-separation was the result of community funds or efforts to provide the basis for a lien in favor of the community. Beverly's approach was that everything in the LLC was community, no matter if acquired after separation. Enticingly easy, it is at odds with Washington law on determining the character of, or imposing a community lien on separate property and post-separation earnings and accumulations, whether for separate real property improved during the marriage,[4] or stock options,[5] for other property interests including insurance[6] and lottery winnings,[7] or for post-separation bonuses based in part on work performed during the marriage.[8] Because of its error in not giving effect to the presumption flowing from RCW 26.16.140 that property acquired post-separation is separate property to affirm the

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[4] *E.g., In re Marriage of Elam,* 97Wn.2d 811, 816-17, 650 P.2d 213 (1982 (separate real property improved during the marriage); *In re Marriage of Pearson-Maines,* 70 Wn.App. 860, 868-870, 855 P.2d 1210 (1993) (real property during marriage).

[5] *E.g., In re Marriage of Short,* 125 Wn.2d 865, 873, 890 P.2d 12 (1995) (stock options were part separate based on post-separation vesting dates, ***reversing*** Court of Appeals decision holding then entirely community); *In re Marriage of Harrington,* 85 Wn.App. 613, 625-29, 935 P.2d 1357 (1997) (citing and applying *Short*).

[6] *E.g., Aetna Life Ins v. Bunt*, 110 Wn.2d 368, 372-74, 754 P.2d 993 (1988) (applying RCW 26.16.140 and the defunct nature of the marriage to ***reverse*** the appellate decision awarding the "surviving spouse" half the insurance proceeds; community funds were not used to pay the final premium when the marriage was defunct). "It is the fact of the community that gives rise to the community property statute; when there is no 'community', there can be no community property." *Id.* at 372.

[7] *See Seizer v. Sessions,* 132 Wn.2d 642, 649, 653-54, 657-58, 940 P.2d 261 (1997) (applying the statute, *Bunt,* and *Short* to reverse and remand for consideration of whether the marriage was defunct and, if not, whether the ticket was purchased with separate or community property).

[8] *E.g., In re Marriage of Griswold*, 112 Wn.App. 333, 48 P.3d 1018 (2002), argued at OB 26-29 and Reply Brief at 3.

trial court's property division, the Decision sidestepped Mike's arguments at OB 26-35[9] and conflicts with each of those cases cited *supra*.

After trial the court included all the LLC's properties as community property to be divided between the parties, with Mike's interest a net value of $341,332 (spreadsheet, CP 52, line CA-5), divided what it determined were $2.1 million in net community property assets 60/40 in favor of Beverly (which the Decision notes was the split Mike suggested, Decision at 3), and ordered $6,500/month maintenance for ten years until Beverly was 70. What the Decision does not note, however, was that Mike's suggested split was predicated on much lower maintenance of $2,500/month for five years and a smaller divisible estate, since he asked that the 60/40 split apply to the community property and presumed that, per the statute, all post-separation property was separate and would remain with the person holding it, much like their personal bank accounts holding their earnings from post-separation work.

On this record and presentation, there was no need for Mike's counsel to argue a structured payment scheme, His proposal was based on the actual divisible property of the parties from the marriage, much lower maintenance, and suggesting a 60-40 split so that no transfer payment was needed. Moreover, Beverly's counsel offered no authority for the

[9] The argument heading for § IV.C. was: "Even Assuming *Arguendo* That The Post-Separation Property Acquired By 16th Avenue Properties Is Community Property, The Trial Court Erred Under *Marriage of Griswold* and RCW 26.16.140 By Failing To Credit Mike With The Post-Separation Increase In Value Of That Asset Which Was Solely Under His Operation And Control And The Increase Was Due Solely To His And His Business Partner's Efforts.

dramatic change to community property law of effectively nullifying RCW 26.16.140. Each party presented their proposal. Neither argued how the other's different approach should be modified, whether by a deferred or structured payment plan or a different split, or a more detailed calculation of community or separate interests in the LLC's properties. After the trial court chose an approach, the only recourse was appeal.

D. Beverly's Effort To Enforce The Transfer Payments in 2019 Demonstrating That The Property Division Was 78-22 In Her Favor, Not 60-40 As Trial Court Said It Intended.

The parties' financial declarations and objections filed in the Court of Appeals (*infra* at App. A-24-79) show clearly the problem created by the property division and with requiring an immediate transfer payment which Beverly could enforce, and which she moved to do in the summer of 2019 while the appeal was pending. *See* App A-49 ¶ 5 (Beverly recounting filing a motion to enforce the transfer payment, receiving a total of $379,546 from Mike).

Mike describes in his financial declaration (App. A-25-27) and his objection to Beverly's financial declaration (*see* App. A-65-69) that making those payments meant that he was forced to sell and give the proceeds to Beverly for two properties that had been awarded to him (App. A-26-27).[10] Even partly complying with the transfer payment by

[10] ¶ 7. In sum, by the end of October, 2019, I had paid off $379,546.70 of the revised and final transfer payment of $707,485, still leaving a "balance" owing for the transfer payment of $327,938.30 of Judge Harthcock's decision.

¶ 8. I was only able to do this by converting some of the property awarded to me to cash, which I then gave to Beverly to pay down the transfer payment. I thus had

paying it down by over half meant selling an income-producing property from the LLC and the couple's vacation cabin, properties Mike can never get back, and give the proceeds to Beverly, and thus changing the overall property division to 78/22 in Beverly's favor instead of the 60/40 division the trial court stated was its intent. *See* App. A-66-67, ¶¶ 3-7.[11]

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. Review Should Be Granted Per RAP 13.4(1),(2), & (4) To Address The Need To Structure Or Defer Large Transfer Payments An Obligated Spouse, Such As Mike, Otherwise Has No Ability To Pay For A Property Division To Be Tenable. Requiring Immediate Payment Which Can Only Be Done By Selling Assets That Had Been Awarded Reduces That Party's Net Share Of The Property Division Below What The Trial Court Stated It Intended, In This Case Changing The Split From 60/40 To 78/22, Demonstrating It Was Manifestly Untenable.

While the Decision's vacation of the maintenance award materially helps Mike, depending of course on the extent to which the trial court

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to use property awarded to me to fulfill the property award to her, reducing my share from what the trial court awarded by the amount I paid. In short, my property award was ***reduced*** by these payments of $379,546.70.

Michael Sevigney's Financial Declaration (filed 3/2/20), App. A-26-27.

[11] Requiring the immediate transfer payment decreased my share of the property division while keeping Beverly's share at full value. It cut nearly in half my percentage of the property division. After transferring the $379,500 to Beverly from selling income-producing properties I had been awarded, I net $474,097 of our property instead of the $853,597 stated by the judge after reconsideration. That net is only 22% of the total estate the judge valued at $2,133,993, barely half the stated goal of a 60-40 per cent division. This is the result of the trial judge's decision of the large transfer payment that was to be made immediately, despite the fact I could only make payments from future earnings (after paying $6,500 per month maintenance), or selling what I was "awarded," like the cabin and the income-producing property from the LLC. These are properties I was awarded, but will never get back.

Declaration of Mike Sevigney In Support of Financial Declaration of Beverly Sevigny, ¶7 (filed 3/9/20), App. A-68.

reduces the maintenance obligation on remand, it does not correct the fundamental problem of failing to defer or structure payments so that they can be paid over time from the income generated by the business awarded to Mike. Without such deferred payments, the decision requires Mike to transfer assets he was just awarded to Beverly and thus reduce his actual share of the total marital estate below what the court stated was its intent.

The result, therefore, does not match what the trial court stated was, in fact, fair and equitable and should be vacated since it necessarily fails to meet that statutory requirement of RCW 26.09.080.

Moreover, with all due respect to the panel members who concluded that the overall division nevertheless met the statutory requirement, in this case changing the division from 60/40 to 78/22 is inequitable on its face, beyond the lack of congruence with the trial court's stated intent. It is more akin to the 82/18 split of community-like assets that was so disproportionate it "raise[d] further concerns of possible prejudice," close to if not in fact a "facially anomalous result." *See Tatham v. Rogers,* 170 Wn.App. 76, 84 ¶9, 106 ¶55, 283 P.3d 583 (2012) (vacating property division in committed intimate relationship action following evidence of the judge's undisclosed partiality toward the opposing party's counsel together with the "facially anomalous result" of the 82/18 split).

Review should be granted to confirm that it is an abuse of discretion when the structure of the judgment for a property division essentially requires the obligated spouse to materially decrease his or her

share of the property award far below what the trial court ruled he or she should receive in order to comply with the court's order for transfer, and that in such cases the courts need to provide for payment of the transfer amount out of anticipated, historical income amounts or other reasonably available assets, or loan options. Otherwise, the stated property division is a sham.

B. Review Should Be Granted Per RAP 13.4(b)(1), (2), and (4) Because The Decision Conflicts With Supreme Court and Published Court Of Appeals Decisions Including *Estate of Borghi* and RCW 26.16.140 As To The Presumption Attaching to Post-Separation Acquisitions. Review Can Clarify That That Since The Character Of Property Is Determined On The Date Of Acquisition, Post-Separation Property Is Presumed Separate Property And A Spouse Asserting It Is Community Has The Burden To Establish It Was Obtained By Community Resources Or Efforts Which Should Be Compensated.

The basic framework for community property law in Washington provides that the character of property as community or separate is determined when it is acquired, *e.g., Estate of Borghi*; that property acquired after marriage is presumed community property per RCW 26.16.030;[12] and that all property acquired after separation is the separate property of the spouse acquiring it per RCW 26.16.140.[13] The

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[12] The relevant part of RCW 26.16.030 provides:

Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage … by … either husband or wife or both, is community property. Either spouse … acting alone, may manage and control community property, with a like power of disposition as the acting spouse … has over his or her separate property….

[13] RCW 26.16.140 provides in relevant part:

When spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each.

straightforward approach to characterizing property acquired after separation is it is presumed to be the separate property of the separated spouse acquiring it – otherwise, the statute is meaningless. And per *Borghi,* a spouse who seeks to rebut that presumption has the burden to establish by (at least) "direct and positive evidence" that it is in fact community property.

A key analytical error the Decision made below, which conflicts with *Borghi* and multiple other decisions as well as the statute, was flipping the presumption and burden of proof for establishing the character of the post-separation properties acquired by the 16th Ave. Properties LLC. As the above heading and Issue 2 imply, the statutes and case law state a straightforward analysis for the parties and courts: the separate property presumption arises for property acquired after the parties are living separate and apart. A spouse who contends otherwise bears the burden of establishing by, at minimum, clear and positive evidence that the post-separation property was acquired with community efforts or resources which should be compensated. *Borghi.*[14] Mike contends that since Beverly did not submit any evidence of intent by him to change the post-separation

[14] The split decision in *Borghi* did not definitively resolve the question of the quantum of evidence required to overcome a presumption of the property's character. *Compare, Borghi*, 167 Wn.2d at 484-85, fn. 4 (Stephens, J, plurality opinion) ("once a presumption in favor of either community or separate property is established, the burden to overcome the presumption is by clear and convincing evidence.") and *id.* at 492 (Madsen, J., concurring) ("Once established separate property retains its separate character unless there is direct and positive evidence of a change in character," declining to address "what type of evidence is sufficient to overcome the … presumption" because there was no evidence in the case bearing on the question).

acquisitions into community property, as in *Borghi,* the Court would not have to decide the issue of what quantum of proof is required to overcome the presumption.

The Decision below misapplied the law of presumptions for characterizing property when it held that Mike had the burden of proof for property that was acquired post-separation. *See* Decision at App. A-8-9,[15] quoting *Berol v. Berol,* 37 Wn.2d 380, 382, 223 P.2d 1055 (1950) to support holding that Mike had a requirement of proving by "clear and satisfactory evidence" that the 16th Ave. Properties acquisitions were made with his separate funds, and that he "did no tracing to establish he used separate funds to acquire any of the properties the LLC purchased after separation, and thus failed to meet his burden of proof." Decision at App. A-9. The Decision misapplied the law, demonstrating why review is needed to clarify this important area.

In *Berol,* the case quoted at length, the property at issue was a life insurance policy which the husband asserted was purchased with separate funds, making the policy separate property. 37 Wn.2d at 381. But the policy was taken out ***during*** the marriage. Rather than being subject to the

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[15] The Decision held:

> Michael had the burden of proving by clear and convincing evidence that the LLC's acquisitions involved an investment of his separate property. *Sedlock*, 69 Wn. App. at 509; *see also In re Marriage of Schwarz*, 192 Wn. App. 180, 189, 368 P.3d 173 (2016). While Michael is correct that RCW 26.16.140 characterizes earnings and assets accumulated after separation as separate property, he produced no evidence that he used his separate earnings to purchase any of real estate the LLC holds.

separate and apart statute, it was subject to the basic presumption that all property acquired during marriage is community.

Berol thus did not address the effect of the separate and apart statute and its rule and presumption that post-separation property is separate. *Berol* does not even arguably apply to any of the 16th Avenue Properties LLC acquisitions made post-separation, which fall under the terms of RCW 26.16.140. Rather, per *Borghi*, as to those properties it is Beverly's obligation to demonstrate community efforts or funds were used by, at minimum, direct and positive evidence. Similarly, while *In re Marriage of Schwartz* follows *Borghi*, it also did not involve post-separation acquisition of property, and so also does not apply to the post-separation properties.[16]

Under Washington statutes, the only property before the dissolution court *for division*, or to satisfy a community creditor, is the property of the parties' marital estate and their separate property as it existed when the marriage became defunct, at the time of separation and

[16] Nor does *In re Marriage of Sedlock,* 69 Wn.App. 484, 849 P.2d 1243 (1993), which involved whether a payment "shortly after separation" of $14,700 for a condo control or apply. First, the cited portion is *dicta* for guidance on remand. Second, there is nothing in the decision to indicate RCW 26.16.140 was raised or addressed. Rather, the court noted that "Under these facts, it cannot be presumed that he paid for the condo purchase with his separate earnings" since it was so close to the separation date and at that time "his income was heavily encumbered."

when the separate and apart statute, RCW 26.16.140, applies.[17] The trial court exceeded its authority and thus abused its discretion by including after-acquired, non-marital separate property in the property division which, by statute, was not available for division. Review should be granted to clarify and reinforce this aspect of community property law and harmonize the relationship between RCW 26.16.030, .140, 190, & .200, together with the underlying principle embodied in *Borghi* that property's character is determined on the date of acquisition.

C. Review Should Be Granted Per RAP 13.4(b)(4) To Address The Scope And Intent Of RCW 26.16.140 In Helping Divorcing Couples To Move On By Confirming That Their Future, Non-Marital Earnings And Accumulations Are Not At Risk Of Being Awarded To Their Former Spouse.

Everyone knows that breakups are hard, however they occur, and whether they are from short-term, medium, or long-term relationships. It is important to take a step back for perspective on what RCW 26.16.140 does, what it means, and what it can do for a newly-separated person who is no longer part of a couple and may well be at loose ends.

Viewed from that vantage it is easy to see one purpose is to give a form of aid and financial comfort to the newly-single in a time of distress. Their money will be their own – what they buy cannot be taken and given

[17] *See, e.g., Watters v. Doud,* 95 Wn.2d 835, 631 P.2d 369 (1981) (holding that all net equity on the parties property arising after divorce is separate in character and thus not available to community creditors after a divorce to satisfy a community debt). *See* James Musselman, "Rights of Creditors to Collect Marital Debts After Divorce In Community Property Jurisdictions," 39 PACE L. REV. 309, 333–34 (2018), analyzing *Watters* and Washington law as related to creditors rights. The same rationale applies to all property acquired after separation under RCW 26.16.140.

to the soon-to-be-ex, whether that is a car, boat, home, condo, or a new dresser. From that basic financial perspective, they are free to move on and immediately put their future financial life out of reach of the old relationship and look forward, even if the emotional part lingers long. It is a first step to finality and moving on.

When its precursor was passed in 1881 as Code 1881 § 2413,[18] one sees that it was aimed at giving comfort and relief to women, since by its terms, only women got its benefit. Case law essentially broadened the concept to include men when a marriage was defunct, and the statute was amended as part of the 1972 revisions to the more inclusive form we know today. But the salient point, and why review is important, is this statute is an important part of helping separated couples move on with their lives. As such it should be interpreted as a clear fault line which the bench and bar recognize is not readily crossed. Post-separation acquisitions can and should be "taken into account" when the court makes its allocation of divisible property, or orders child support or maintenance. But the earnings or acquisitions should not be at risk, in part so there is a cut-off point. Otherwise, a divorce never ends, one party is continually worried the other will come after later-acquired property. The finding on the separation date in this case says it is exactly that – "the parties stopped acquiring community property and incurring community debt on this date." CP 13, ¶ 5. It was not honored here. Review should be granted.

[18] The provision stated: "The earnings and accumulations of the wife and of her minor children living with her, or in her custody while she is living separate from her husband are the separate property of the wife."

VI. CONCLUSION

Petitioner Mike Sevigny asks the Court to grant review of the property division and schedule argument at the earliest opportunity.

Dated this 28th day of September, 2020.

CARNEY BADLEY SPELLMAN, P.S.

By */s/ Gregory M. Miller*
Gregory M. Miller, WSBA No. 14459
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Attorneys for Petitioner Michael G. Sevigny

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 28th day of September, 2020.

/s/ Elizabeth C. Fuhrmann
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APPENDIX A

Page(s)

FILED
JUNE 16, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Marriage of BEVERLY SEVIGNY, Respondent/Cross Appellant, and MICHAEL G. SEVIGNY, Appellant/Cross Respondent.	)	No. 36393-7-III UNPUBLISHED OPINION

ANDRUS, J. — After 33 years of marriage, Beverly and Michael Sevigny separated, and two years later, Beverly[1] filed for divorce. The trial court awarded Michael the marital community's interest in two ongoing businesses, a construction company and a real estate investment limited liability company (the "LLC"), that Michael and his oldest son started during the marriage and continued to manage after the parties' separation. Michael challenges the trial court's valuation of the LLC, arguing it was inappropriate to include real estate investments the LLC acquired after separation. Michael contends this error led to an excessive transfer

[1] Because the parties share the same last name, we use their first names for clarity. No disrespect is intended.

payment of $707,485 to Beverly, an amount he argues is an unfair and inequitable distribution of community and separate property. Finally, Michael maintains that, in light of the large property award Beverly received, the trial court abused its discretion in ordering him to pay her maintenance of $6,500 a month for 10 years. Beverly cross appeals the trial court's determination that her judgment against Michael will accrue interest at 4 percent.

We affirm the trial court's characterization of the couple's property, the property distribution, and the post-judgment interest rate. We reverse the award of maintenance and remand for reconsideration of the amount awarded.

FACTS

Michael and Beverly married in 1979. Beverly briefly worked in retail before becoming a full-time, stay-at-home mother after their first child was born. In 1995, when their youngest child was in first grade, Beverly became a part-time substitute teacher, and five years later, she began working as a full-time paraprofessional, helping in the classroom with students. She also worked as a secretary for the school district.

Michael worked construction in his father's business until 2007, when he and his oldest son, Matthew, started their own construction company, M. Sevigny Construction Inc. In mid-2012, Michael and Matthew formed 16th Avenue Properties LLC (the "LLC") as equal partners and began acquiring income-producing real estate.

Michael and Beverly separated in February 2013, and Beverly filed for divorce in 2015. After a bench trial, the trial court divided $2.1 million in net assets as follows: Beverly received the family home in Zillah, a Hawaii timeshare, a vehicle, specific household goods, various bank accounts, deferred compensation accounts, and the parties' IRA accounts and life insurance policies. The trial court valued these assets at $572,911.

Michael received the community's 50 percent interest in M. Sevigny Construction, valued at $775,000, and its 50 percent interest in the LLC, valued at $341,332. Michael also received the family's vacation cabin in Yakima, valued at $200,000. Finally, the court deemed two distributions Michael had received from the LLC in 2016 and 2017, totaling $240,000 after taxes, as predistributions of community assets. The total value of these assets was $1,561,082.

The trial court adopted Michael's recommended asset split of 60/40, favoring Beverly. The result was a final distribution to Michael of $853,597 and to Beverly of $1,280,396. To effectuate this division of assets, the court required Michael to make a transfer payment of $707,485 to Beverly. The trial court entered a judgment against Michael for this amount, plus an additional $10,000 in fees awarded to Beverly, and set the interest rate on the judgment at 4 percent per annum. In addition, the court awarded Beverly spousal maintenance of $6,500 a month until her 70th birthday.

Michael appeals, raising three main challenges to the trial court's division of assets. First, he argues the trial court erred in characterizing the LLC and the income-producing real estate the LLC purchased after the parties' separation as community property. He further argues the trial court erred in awarding Beverly any portion of the LLC's post-separation acquisitions. Second, he maintains the trial court erred in valuing the LLC as of the date of trial, rather than the date of separation. Finally, he contends the maintenance award is unjust and inequitable in light of the large transfer payment and the fact that Beverly received all the liquid assets in the divorce. He asserts that he is unable to pay Beverly $6,500 each month, fulfill his own obligations, and satisfy the money judgment.

ANALYSIS

Characterization of the LLC as Community Property

Michael assigns error to the trial court's characterization of the LLC as community property. Because Michael formed and capitalized the LLC before the couple separated, the trial court did not err in concluding Michael's interest in the LLC was community property.

Under RCW 26.09.080, in any dissolution proceeding, the court must dispose of the parties' property and liabilities, whether community or separate, as is just and equitable. In performing its obligation to make a just and equitable distribution of property, the trial court must characterize the property as either community or separate. *In re Marriage of Kile*, 186 Wn. App. 864, 875, 347 P.3d 894 (2015).

"Property is characterized as of the date of its acquisition." *In re Marriage of Sedlock*, 69 Wn. App. 484, 506, 849 P.2d 1243 (1993). "The test of character is 'whether it was acquired by community funds and community credit, or separate funds and the issues and profits thereof.'" *Id.* (internal quotation marks omitted) (quoting *Katterhagen v. Meister*, 75 Wash. 112, 115, 134 P. 673 (1913)). "A trial court's characterization of property as separate or community presents a mixed question of law and fact." *Kile*, 186 Wn. App. at 876. The time and method of acquisition are questions for the trier of fact. *Id.* We review the factual findings supporting a trial court's characterization for substantial evidence. *Id.* "'Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.'" *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002) (quoting *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)). The ultimate characterization of the property as community or separate based on the trial court's findings of fact is a question of law that we review de novo. *Kile*, 186 Wn. App. at 876.

The LLC was formed and capitalized during the marriage. Michael testified he and Matthew started the LLC sometime in 2012 and each owns a 50 percent share of that entity. The 2012 tax return for the LLC identified the date of business formation as June 26, 2012. The LLC's assets on the date of formation were a

commercial building located at 1212 N. 16th Avenue, in Yakima, Washington[2] with a cost basis of $544,250, and a separate parcel of land valued at $429,660. There is no evidence in the record as to the source of funds Michael and Matthew used to capitalize the LLC or to purchase these two initial assets.

The LLC then acquired a parcel in Yakima with three rental houses located at 1607, 1611, and 1703 River Road on December 11, 2012.[3] The LLC's 2013 tax return identified the cost basis of this parcel as $378,744. This acquisition also occurred during the marriage. Again, Michael presented no evidence as to the source of funds he and Matthew used to make this acquisition.

Finally, Michael admitted Beverly had a 25 percent ownership interest in the LLC, stating, "I've never disputed that." Beverly testified she and Michael planned to use the purchase of these properties as their retirement plan to compensate them over and above their wages. She also testified that she was asked to sign sale documents every time the LLC purchased or changed properties because she was part of that company. This evidence supports the trial court's conclusion that the marital community's 50 percent interest in the LLC was community property.

Valuation of the LLC Including Post-Separation Acquisitions

Michael next argues the trial court erred in valuing the LLC as of the date of trial, rather than the date of separation. He contends the LLC acquired several

[2] The LLC held this property at the time of trial, where it was identified in Steve Korn's appraisal report, obtained by Beverly, as Parcel 1.

[3] The appraisal identified the River Road property as Parcel 3.

parcels of real estate after the couple's separation, emphasizing the trial court's finding that "the parties stopped acquiring community property and incurring community debt" when they separated in February 2013. He maintains the appreciation in the LLC's value should have been characterized as his separate property under RCW 26.16.140. We reject this argument because Michael did not prove he used separate property to enhance the value of the LLC.

All property acquired during marriage is presumptively community property. RCW 26.16.030; *Kile*, 186 Wn. App. at 876. "The burden of rebutting this presumption is on the party challenging the asset's community property status, and [the presumption] 'can be overcome only by clear and convincing proof that the transaction falls within the scope of a separate property exception.'" *Dean v. Lehman*, 143 Wn.2d 12, 19-20, 18 P.3d 523 (2001) (citation omitted) (quoting *Estate of Madsen v. Commissioner*, 97 Wn.2d 792, 796, 650 P.2d 196 (1982), *overruled in part on other grounds by Aetna Life Ins. v. Wadsworth*, 102 Wn.2d 652, 659-60, 689 P.2d 46 (1984)). RCW 26.16.140 provides one such exception: when spouses are living separate and apart, their respective earnings and accumulations shall be their separate property.

After Michael and Beverly separated in February 2013, the LLC bought and sold several parcels of real estate. In July 2013, the LLC purchased property located at 503 S. Elm Street in Toppenish, Washington for $337,000. According to Beverly, the LLC later sold this parcel for $500,000.

In September 2013, the LLC acquired commercial property located at 1928 Rudkin Road, in Union Gap, Washington, for $1.2 million.[4] Then in November 2014, the LLC purchased commercial property located at 1177 W. Lincoln Avenue, in Yakima, for $594,377.[5] And at the time of trial, the LLC also owned a piece of undeveloped land at 1725 River Road in Yakima, although the record does not indicate when it was acquired or its purchase price.[6]

Michael had the burden of proving by clear and convincing evidence that the LLC's acquisitions involved an investment of his separate property. *Sedlock*, 69 Wn. App. at 509; *see also In re Marriage of Schwarz*, 192 Wn. App. 180, 189, 368 P.3d 173 (2016). While Michael is correct that RCW 26.16.140 characterizes earnings and assets accumulated after separation as separate property, he produced no evidence that he used his separate earnings to purchase any of real estate the LLC holds.

> The requirement of clear and satisfactory evidence is not met by the mere self-serving declaration of the spouse claiming the property in question that he acquired it from separate funds and a showing that separate funds were available for that purpose. Separate funds used for such a purpose should be traced with some degree of particularity.

[4] The appraisal identified the Rudkin Road property as Parcel 5.

[5] The appraisal identified the Lincoln Avenue property as Parcel 4.

[6] The appraisal identified this undeveloped land as Parcel 2.

Berol v. Berol, 37 Wn.2d 380, 382, 223 P.2d 1055 (1950). Michael did no tracing to establish that he used separate funds to acquire any of the properties the LLC purchased after separation and, thus, failed to meet his burden of proof.

Moreover, throughout their separation, Michael and Beverly filed joint tax returns declaring income from the LLC as community income. In the tax years 2013 through 2016, the marital community reported income from the LLC of $15,252, $93,310, $81,960, and $140,760, respectively. Michael and Beverly both treated the LLC as a community asset and the income generated from properties the LLC purchased both before and after separation as community income.

We further conclude the trial court did not abuse its discretion in valuing the LLC as of the date of trial, rather than the date of separation. The dissolution statutes give courts broad discretion to pick a valuation date that is equitable. *Lucker v. Lucker*, 71 Wn.2d 165, 167, 426 P.2d 981 (1967). Choosing to value a community asset on the date of trial, rather than the date of separation, is not an abuse of discretion. *Koher v. Morgan*, 93 Wn. App. 398, 405, 968 P.2d 920 (1998).

Beverly presented expert testimony from real estate appraiser Steve Korn as to the value of the LLC's assets as of February 2017, some four years after separation and one year before trial. The appraisal identified six parcels in which the LLC held an ownership interest: Parcel 1 and Parcel 3, properties purchased before separation, and Parcels 2 and 4 through 6, properties in which the LLC obtained an interest after separation.

Michael presented no expert testimony regarding the value of the LLC on the date of separation. Instead, he testified he believed the community interest in the LLC as of December 2012, and therefore at the time of separation, was $153,228. It appears he pulled this number from the LLC's 2012 tax return identifying the value of each partner's capital account. But Michael did not explain why his valuation approach was preferable or a more reliable method of valuing the LLC than Korn's appraisal.

The trial court chose to adopt Korn's valuation. It found the community interest in the real estate held by the LLC had a value, as of the appraisal date, of $2,355,250. After subtracting the outstanding debt of $2,013,918, the court found the LLC business had a net value to the community of $341,332.

We cannot conclude the trial court abused its discretion in valuing the marital community's interest in the LLC as of February 2017 rather than December 2012. There is no evidence showing Michael invested any post-separation earnings to enable the LLC to acquire any of the three parcels it purchased after February 2013. And it is also unclear whether the LLC used rental income from parcels it acquired before the parties' separation to buy parcels post-separation. Although Michael testified he could produce paperwork to demonstrate he had used post-separation earnings, he failed to present any such evidence.

Michael relies on *In re Marriage of Elam*, 97 Wn.2d 811, 650 P.2d 213 (1982), for the proposition that the marital community cannot share in the increase

in value of separate property unless community funds or "efforts" went into increasing the value of that property. But the LLC was community property, not Michael's separate property, as Michael admitted at trial. And Michael presented no evidence at trial to establish that the LLC increased in value because of his investment of separate funds or his separate efforts after the parties separated. Thus, *Elam* is of no assistance to him here.

Under these circumstances, the trial court did not err in concluding that Michael's 50 percent interest in the LLC was community property, as was any appreciation in value to that interest based on the acquisition of properties after separation.

Property Division

Next, Michael contends the trial court erred in awarding Beverly a disproportionate share of the parties' property.[7] Trial courts have broad discretion in dividing parties' property in a dissolution, and we will disturb a distribution of property only if the trial court manifestly abuses its discretion. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999); *see also In re Marriage of Rockwell*, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007). A trial court's decision

[7] Michael also contends the property division should be reversed because it was influenced in part by Beverly's intimation that Michael was living with another woman. There is absolutely nothing in the record or the trial court's ruling to support this argument. Michael's living arrangements became relevant when he contested Beverly's request for spousal maintenance, claiming he could not afford to pay it. The court correctly needed to assess Michael's ability to pay maintenance, and this analysis made his monthly living expenses relevant.

is manifestly unreasonable if it is outside the range of acceptable choices considering the facts and applicable legal standard, is unsupported factually by the record, or is based on an incorrect legal standard. *In re Parenting & Support of L.H.*, 198 Wn. App. 190, 194, 391 P.3d 490 (2016).

All of the parties' property, both community and separate, is before the trial court for distribution. *In re Marriage of Shannon*, 55 Wn. App. 137, 141, 777 P.2d 8 (1989). And the trial court's characterization of property as either community or separate is not controlling. *Id.* Instead, the trial court must ensure the final division is fair, just and equitable under all the circumstances. *In re Marriage of Groves*, 10 Wn. App. 2d 249, 254, 447 P.3d 643 (2019), *review denied*, 195 Wn.2d 1005, 458 P.3d 781 (2020).

In dividing property, the trial court must consider: (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the division of property is to become effective. RCW 26.09.080; *Groves*, 10 Wn. App. 2d at 254. No factor is afforded greater weight than any other. *In re Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985). Other relevant factors include "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 ownership of the

property is attributable to the inheritance or efforts of one or both spouses." *In re Marriage of Gillespie*, 89 Wn. App. 390, 399, 948 P.2d 1338 (1997).

A trial court is not required to divide community property equally. *Rockwell*, 141 Wn. App. at 243. In a long-term marriage, "the trial court's objective is to place the parties in roughly equal financial positions for the rest of their lives." *Id.* "'[T]he trial court must ensure that the final division of property is fair, just and equitable under all the circumstances.'" *Groves*, 10 Wn. App. 2d at 254 (internal quotation marks omitted) (quoting *In re Marriage of Olivares*, 69 Wn. App. 324, 329, 848 P.2d 1281 (1993)). Furthermore, this is a highly deferential standard, and Michael, as the spouse challenging the decision, "'bears the heavy burden of showing a manifest abuse of discretion.'" *Id.* at 255 (quoting *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985)).

Michael argues that under *In re Marriage of Doneen*, 197 Wn. App. 941, 391 P.3d 594 (2017), and *In re Marriage of Kaplan*, 4 Wn. App. 2d 466, 421 P.3d 1046 (2018), there is no mandate of lifetime equal financial circumstances for ex-spouses of long-term marriages. He contends the trial court, in an attempt to provide this financial security for Beverly, settled on a property division that was unfair to him. But neither case supports the proposition that it is an abuse of discretion to award 60 percent of a couple's assets to the more economically disadvantaged spouse in a long-term marriage. Rather, the courts reaffirmed the proposition that trial courts must exercise their discretion in considering the statutory factors of RCW 26.09.080

in reaching a "fair, just and equitable division of property." *Kaplan*, 4 Wn. App. 2d at 475-76; *Doneen*, 197 Wn. App. at 948-51.

Substantial evidence supports the trial court's property distribution. Michael and Beverly had been married more than 33 years. Beverly did not finish college because she married Michael and remained out of the workforce to raise their five children. Both parties were 60 at the time of trial and in good health. The parties had very disparate earnings histories. Beverly, working as a paraprofessional and secretary for the local school district, earned between $15 per hour and $17 per hour in the two positions. The trial court found that her gross wages in 2017 were $26,530. Given Beverly's lack of a college degree, it was reasonable for the trial court to assume her prospects for any substantial wage increases before she reaches retirement age are low.

Michael did not produce any income documentation for 2017, but the 2016 corporate tax return indicated Michael received a salary of $86,320 from his construction company that year, and he testified his salary in 2017 was about the same as in 2016. In addition, the LLC's Schedule K-1 reflected a $150,000 distribution to Michael, and he testified he expected a similar distribution in 2017. Thus, by awarding Michael the LLC, it was reasonable for the trial court to conclude that Michael's annual income would likely exceed $200,000 compared to Beverly's $26,530. And the financial documents showed a strong history of profitability both for the construction company and the LLC, making it likely that Michael would

continue to receive the same level of earnings into the foreseeable future. Finally, Michael proposed a 60/40 split with Beverly obtaining the larger share of the marital estate.

The court awarded the family home to Beverly and the vacation cabin to Michael. It awarded the IRAs, bank accounts, and life insurance policies to Beverly. It awarded the marital community's interest in the two businesses to Michael. Because Michael received the two assets with the highest values—the construction company and the LLC—the only way to achieve an equal property division was to require a transfer payment from Michael to Beverly. Given the significant disparity in the parties' ability to generate income in the future, the award of income-producing property to Michael, and Michael's request for a 60/40 split in favor of Beverly, we cannot conclude that a 60 percent award to Beverly was an abuse of discretion.

Maintenance

Michael next assigns error to the trial court's award of spousal maintenance. Michael argues the trial court failed to consider the property awarded to Beverly in assessing her need for maintenance and failed to take into account Michael's obligation to pay Beverly $707,000 when evaluating his ability to pay.

RCW 26.09.090 outlines a nonexclusive list of factors the court should consider in determining whether to order maintenance and in what amount:

> (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 . . . ;
>
> (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 . . . ;
>
> (d) The duration of the marriage . . . ;
>
> (e) The age, physical and emotional condition, and financial obligations of the spouse . . . seeking maintenance; and
>
> (f) The ability of the spouse . . . from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse . . . seeking maintenance.

In a long term marriage, maintenance can help equalize the post-dissolution standard of living of the parties, particularly where the superior earning capacity of one spouse is one of the few assets of the community. *In re Marriage of Sheffer*, 60 Wn. App. 51, 57, 802 P.2d 817 (1990).

At trial, Beverly sought maintenance of 50 percent of their combined incomes for the remainder of her life. Michael paid Beverly $3,000 a month in support after they separated in February 2013 until the date of trial. He asked the trial court to reduce that amount to $2,500 and to require him to pay maintenance for no more than five years. The trial court found that Beverly was in need of maintenance and that Michael had the ability to pay it. It then determined the couple's net combined income was $16,534. It appears the court divided the

couple's total net income in two and awarded Beverly a sufficient amount of maintenance to ensure she received 50 percent of the couple's total net earnings.[8]

This court reviews an award of spousal maintenance for an abuse of discretion. *In re Marriage of Zahm*, 138 Wn.2d 213, 226, 978 P.2d 498 (1999). An abuse of discretion exists only if the trial court bases its award of maintenance on untenable grounds or for untenable reasons. *In re Marriage of Wright*, 78 Wn. App. 230, 237, 896 P.2d 735 (1995). A paramount concern is the economic position in which a dissolution decree leaves the parties. *In re Marriage of Washburn*, 101 Wn.2d 168, 181, 677 P.2d 152 (1984).

The record supports the trial court's finding that Beverly has a need for maintenance. She testified to monthly expenses of approximately $3,000 and only $1,701 in earnings to cover those expenses. And the record supports Michael's ability to pay $6,500 in maintenance to Beverly if the court considered only Michael's personal living expenses. He has monthly expenses of $5,000. After paying maintenance and his monthly expenses, Michael would have approximately $3,300 in disposable income.

But the record does not support a finding that he has the ability to pay both the $707,000 judgment entered against him and this level of maintenance at the same time. RCW 26.09.090(1)(f) requires the court to consider not only the

[8] Total net income of $16,534, divided by two is $8,267. Subtracting Beverly's net income of $1,701 results in $6,566.

spouse's ability to meet his own needs but also his ability to meet his other "financial obligations" while paying spousal maintenance. As Michael indicated, he was awarded interests in two income-generating companies but none of the parties' liquid assets. In order to pay the $707,000 judgment, Michael would have to either use a substantial portion of his earnings, sell his interests in his businesses, or convince his son to sell real estate held by the LLC. But Michael's interest in the LLC was valued at under $350,000, and even if the LLC sold all of the properties it held, it would not cover the judgment Michael owes to Beverly. And Michael's main source of income would disappear. He would no longer have an adequate monthly income to pay the $6,500 in maintenance.

Even if the LLC sold one or more properties to assist Michael in paying off some, but not all, of Beverly's judgment, it would still negatively affect his total income, making the court's 50/50 split of total net income unfair. It is unclear from this record whether the trial court fairly assessed this issue. Its failure to give fair consideration to RCW 26.09.090(1)(f), or to make findings to support a determination that Michael can both service his debt to Beverly without a significant loss of income and afford to pay $6,500 a month in maintenance is an abuse of discretion. *See In re Marriage of Mathews*, 70 Wn. App. 116, 123-25, 853 P.2d 462 (1993) (reversing maintenance award and remanding for trial court to reconsider factors to ensure obligor had ability to meet own expenses in addition to financial obligations imposed by court).

For this reason, we reverse the maintenance award and remand to the trial court with directions to consider maintenance in light of the monetary judgment Michael owes to Beverly and his ability to simultaneously pay off that judgment and pay reasonable maintenance.

Post-Judgment Interest

Beverly argues the trial court erred by imposing only a four percent interest rate on the equalizing payment and attorney fee judgment. We reject this argument.

We review a trial court's decision setting the interest rate on a judgment for an abuse of discretion. *In re Marriage of Knight*, 75 Wn. App. 721, 731, 880 P.2d 71 (1994). Trial courts must enter judgments in compliance with RCW 4.56.110, which requires interest on judgments to accrue at the maximum rate permitted under RCW 19.52.020—12 percent. *In re Marriage of Harrington*, 85 Wn. App. 613, 630-31, 935 P.2d 1357 (1997). "Although the trial court has discretion to reduce the rate of interest on deferred payments under a property distribution decree, the court abuses its discretion if it fixes an interest rate below the statutory rate without setting forth adequate reasons for the reduction." *Id.* at 631 (citations omitted). "'Failure to do so constitutes error meriting remand for correction of the judgment's interest rate to the statutory rate.'" *Id.* (quoting *Knight*, 75 Wn. App. at 731).

Michael asked the court to set the interest on any monetary judgment at 3 or 3.5 percent given the size of the judgment and the monthly maintenance he had to pay. Beverly requested the 12 percent statutory rate because Michael's businesses

were so profitable. The trial court stated, "I'm going to set the interest rate at 4 percent. That's reasonable under the circumstances given the uneven distribution as well as the . . . maintenance."

Beverly argues the trial court's reference to the disproportionate property division and maintenance is an insufficient justification for a reduced interest rate. We disagree. The trial court found persuasive Michael's argument that setting post-judgment interest at 12 percent would impose too great of a financial burden on him given the amount of judgment and maintenance. This is an adequate reason to depart from the statutory post-judgment interest rate.

Beverly also argues the low interest rate creates a disincentive for Michael to pay the judgment. But Beverly relies on evidence outside the trial court record to make this argument. There is nothing in the record before the trial court to substantiate this assertion.

Moreover, Beverly has methods under the law for collecting the judgment, even if Michael refuses to pay. She has the right to initiate collection proceedings through which she can garnish wages or proceeds he may hold in bank accounts, or attach and sell other assets. *See* chapter 6.25 RCW (attachment); chapter 6.27 RCW (garnishment); chapter 6.32 RCW (supplemental proceedings against judgment debtor). She is not without a legal remedy here. Because the trial court provided an adequate reason for reducing the interest rate, we conclude the trial court did not abuse its discretion by reducing the interest rate to four percent.

AFFIRMED in part; REVERSED in part, and REMANDED for reconsideration of maintenance in a manner consistent with this opinion.[9]

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Andrus, J.

WE CONCUR:

Lawrence-Berrey, J.

Pennell, C.J.

[9] Beverly has requested an award of attorney fees and costs as allowed by RAP 18.1 and RCW 26.09.140. RCW 26.09.140 provides, "Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." "A party to a dissolution action is not entitled to attorney fees as a matter of right." *In re Marriage of Harrington*, 85 Wn. App. 613, 635, 935 P.2d 1357 (1997), *as amended on reconsideration* (May 5, 1997). In addition, when deciding whether to award attorney fees, we must balance Beverly's needs against Michael's ability to pay. *Id.* Because we remand for reconsideration of the maintenance award based on Michael's ability to meet his financial obligations and otherwise affirm the trial court, we exercise our discretion under RCW 26.09.140 and deny Beverly's request for attorney fees on appeal.

FILED
AUGUST 5, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Marriage of	)	**No. 36393-7-III**
	)	
BEVERLY SEVIGNY,	)	
	)	
Respondent,	)	**ORDER DENYING**
	)	**MOTION TO**
and	)	**PUBLISH**
	)	
MICHAEL G. SEVIGNY,	)	
	)	
Appellant.	)	

THE COURT has considered appellant's motion to publish the court's opinion of June 16, 2020, and the record and file herein, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion to publish is denied.

PANEL: Judges Andrus, Lawrence-Berrey, and Pennell

FOR THE COURT:

REBECCA PENNELL
CHIEF JUDGE

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

August 26, 2020

Gregory Mann Miller
Carney Badley Spellman PS
701 5th Ave Ste 3600
Seattle, WA 98104-7010
miller@carneylaw.com

Sidney Charlotte Tribe
Carney Badley Spellman
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jon@washingtonappeals.com

CASE # 363937
In re the Marriage of: Beverly Sevigny and Michael G. Sevigny
YAKIMA COUNTY SUPERIOR COURT No. 153004134

Counsel:

The court received a timely reply to response to the motion to publish on August 5, 2020 in the above referenced matter. However, the judicial panel entered their decision prior to and without realizing a reply had been filed. The judicial panel has now reviewed the reply filed and determined the order filed on August 5, 2020 which denied the motion to publish stands.

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:jcs

No. 36393-7

WASHINGTON STATE COURT OF APPEALS, DIVISION III

BEVERLY SEVIGNY,

Petitioner,

v.

MICHAEL G. SEVIGNY,

Respondent

ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT

MIKE SEVIGNY'S FINANCIAL DECLARATION

Gregory M. Miller, WSBA No. 14459
Sidney C. Tribe, WSBA No. 33160

CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
(206) 622-8020

Attorneys for Appellant Michael G. Sevigny

1. My name is Michael G. Sevigny. I am the appellant in this matter and was the respondent below. I make this declaration based on my personal knowledge and declare, under penalty of perjury under the laws of Washington State, that the following is true and correct to the best of my knowledge.

2. Attached hereto as Ex. A is my updated financial declaration, as of February 20, 2020, and which includes all my income for calendar 2019.

3. This narrative supplements the superior court form of financial disclosure to update the Court on two payments I made in the past year on the transfer payment required by Judge Harthcock's property division.

4. Attached hereto as Ex. B is the unsigned partial satisfaction of judgment from July, 2019, for the payment I made of $179,546.70 in August, 2019. I made this payment, but Mr. Hazel's office never had the partial satisfaction signed. Even so, I made the payment, which paid down the principal on the "equalization" judgment entered by Judge Harthcock, reducing it to $527,938.30. I was only able to make this payment after selling one of the properties in the 14th Ave. LLC – thus, I had to sell part of the

property division awarded to me in order to pay down the judgment against me, reducing my share of the property division in order to fund Bev's share.

5. Attached hereto as Ex. C.is the partial satisfaction of judgment for $200,000, dated October 18, 2019, and entered in court October 23. This payment, like the July payment, was made to pay down part of the "equalization judgment" of Judge Harthcock. I was able to make this payment only after liquidating another of the assets awarded me in the dissolution, the vacation cabin.

6. In other words, to fulfill the judge's property division award to Beverly by the transfer payment, I had to liquidate a second property that was awarded to me, in this case the vacation cabin; I had to reduce my share of the property in order to make a payment of her property share which she got at full value.

7. In sum, by the end of October, 2019, I had paid off $379,546.70 of the revised and final transfer payment of $707,485, still leaving a "balance" owing for the transfer payment of $327,938.30 of Judge Harthcock's decision.

8. I was only able to do this by converting some of the property awarded to me to cash, which I then gave to Beverly to pay

down the transfer payment. I thus had to use property awarded to me to fulfill the property award to her, reducing my share from what the trial court awarded by the amount I paid. In short, my property award was ***reduced*** by these payments of $379,546.70.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Signed this 2nd day of March, 2020, at Seattle, Washington.

/s/ Michael G. Sevigny
Michael G. Sevigny

Read and authorized via telephone; formal signature to follow via supplemental filing.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Attorneys for Petitioner/Respondent Beverly Sevigny Catherine Wright Smith Valerie A. Villacin SMITH GOODFRIEND, PS 1619 8th Ave N Seattle WA 98109-3007 cate@washingtonappeals.com; valerie@washingtonappeals.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal
Attorneys for Petitioner/Respondent Beverly Sevigny David Hazel HAZEL & HAZEL INC., PS 1420 Summitview Ave Yakima WA 98902-2941 daveh@davidhazel.com; frontdesk@davidhazel.com; debbieb@davidhazel.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal
Attorneys for Appellant/Respondent Michael Sevigny Howard N. Schwartz Law Office of Howard N. Schwartz 413 N 2nd St Yakima WA 98901-2336 howard@rbhslaw.com; shannon@rbhslaw.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal

DATED this _2nd__ day of March, 2020.

/s/ Elizabeth C. Fuhrmann
Elizabeth C. Fuhrmann, PLS, Legal Assistant/Paralegal to Gregory M. Miller

EXHIBIT A

Superior Court of Washington, County of YAKIMA

In re: Petitioner: BEVERLY SEVIGNY And Respondent: MICHAEL G. SEVIGNY	**No.** 15-3-00413-4 **Financial Declaration of Name:** Michael G. Sevigny (FNDCLR)

Financial Declaration

1. Your personal information

Name: Michael G. Sevigny
The highest year of education completed: 13
Your job/profession is: Self-employed contractor
Are you working now?
Yes. List the date you were hired *(month / year)*: 8/2009
No. List the last date you worked *(month / year)*:
What was your monthly pay before taxes: -
Why are you not working now?:

2. Summary of your financial information

*(Complete this section **after** filling out the rest of this form.)*

1. Total Monthly Net Income *(copy from section 3, line C. 3.)*	$18,668.15
2. Total Monthly Expenses After Separation *(copy from section 7, line I.)*	$5,103.53
3. Total Monthly Payments for Other Debts *(copy from section 9)*	-
4. Total Monthly Expenses + Payments for Other Debts *(add line 2 and line 3)*	$5,103.53

Gross Monthly Income of Other Party *(copy from section 3. A.)*	$8,900.00

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413 N. Second Street
Yakima, WA 98901
509-248-1100
Fax 509-248-2519

3. Income

List monthly income and deductions below for you and the other person in your case. If your case involves child support, this same information is required on your Child Support Worksheets. If you do not know the other person's financial information, give an estimate.

Tip: If you do not get paid once a month, calculate your monthly income like this:
Monthly income = Weekly x 4.3 **or** 2-week x 2.15 **or** Twice a month x 2

A. Gross Monthly Income (before taxes, deductions, or retirement contributions)		
	Michael	**Beverly**
Imputed income	-	-
Monthly wage / salary	$35,763.00	$2,400.00
Income from Interest and dividend Income	-	-
Income from business	-	-
Spousal support / maintenance **received** (Paid by: Mike)	-	$6,500.00
Other Income - Sevigny Construction	-	-
Total Gross Monthly Income (add all lines above)	**$35,763.00**	**$8,900.00**
Total gross income for this year before deductions *(starting January 1 of this year until now)*	-	-

B. Monthly Deductions		
	Michael	**Beverly**
Income taxes (federal and state)	$9,004.97	$147.54
FICA (Soc.Sec. + Medicare) or self-employment taxes	$1,401.88	$183.60
State Industrial Insurance (Workers' Comp.)	$18.00	$6.00
Mandatory union or professional dues	-	$45.00
Mandatory pension plan payments	$170.00	$200.00
Voluntary retirement contributions (up to the limit in RCW 26.19.071(5)(g))	-	-
Spousal support / maintenance **paid**	$6,500.00	-
Normal business expenses	-	-
Total Monthly Deductions (add all lines above)	**$17,094.85**	**$582.14**

C. Monthly Net Income	**Michael**	**Beverly**
1. Total Gross Monthly Income (from A above)	**$35,763.00**	**$8,900.00**
2. Total Monthly Deductions (from B above)	**$17,094.85**	**$582.14**
3. **Net Monthly Income** (Line 1 minus Line 2)	**$18,668.15**	**$8,317.86**

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Fax 509-248-2519

4. Other Income and Household Income

Tip: If this income is not once a month, calculate the *monthly* amount like this:
Monthly income = Weekly x 4.3 **or** 2-week x 2.15 **or** Twice a month x 2

A. Other Income *(Do not repeat income you already listed on page 2.)*

	Michael	Beverly
Child support received from other relationships	-	-
Other Income From: ( )	-	-
Other Income From: ( )	-	-
Total Other Income (add all lines above)	-	-

B. Household Income *(Monthly income of other adults living in the home)*

	Michael's Home	Beverly's Home
Other adult's gross income Name: (Daughter- teacher)	-	$4,200.00
Other adult's gross income Name: (Son-in-Law- fire fighter)	-	$8,300.00
Total Household Income of other adults in the home (add all lines above)	-	**$12,500.00**

5. Disputed Income - If you disagree with the other party's statements about anyone's income, explain why the other party's statements are not correct, and your statements are correct:

My son-in-law who is a fire fighter and my daughter who is a teacher with an estimated combined income of over $150,000 a year live with my former spouse and have for the past several years. I believe they contribute to the household.

6. Available Assets

List *your* liquid assets, like cash, stocks, bonds, that can be easily cashed.	
Cash on hand and money in all checking & savings accounts	$27,050.00
Stocks, bonds, CDs and other liquid financial accounts	-
Cash value of life insurance	-
Other liquid assets	-
Total Available Assets (add all lines above)	**$27,050.00**

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7. Monthly Expenses After Separation

Tell the court what your monthly expenses are (or will be) after separation. If you have dependent children, your expenses must be based on the parenting plan or schedule you expect to have for the children.

A. Housing Expenses SEE PARAGRAPH 10		F. Transportation Expenses	
Rent / Mortgage Payment	-	Automobile payment *(loan or lease)*	-
Property Tax (if not in monthly payment)	$436.73	Auto insurance, license, registration	$150.00
Homeowner's or Rental Insurance	$128.35	Gas and auto maintenance	$500.00
Other mortgage, contract, or debt payments based on equity in your home	-	Parking, tolls, public transportation	-
Homeowner's Association dues or fees	-	Other transportation expenses	-
Total Housing Expenses	**$565.08**	Total Transportation Expenses	**$650.00**

B. Utilities Expenses		G. Personal Expenses (not children's)	
Electricity and heating (gas and oil)	$506.61	Clothes	$200.00
Water, sewer, garbage	$16.84	Hair care, personal care	$250.00
Telephone(s)	-	Recreation, clubs, gifts	$950.00
Cable, Internet	$90.00	Education, books, magazines	$45.00
Other *(specify):*	-	Other Personal Expenses	-
Total Utilities Expenses	**$613.45**	Total Personal Expenses	**$1,445.00**

C. Food and Household Expenses		H. Other Expenses)	
Groceries for *(# of people)* 2:	$700.00	Life insurance (not deducted from pay)	$30.00
Household supplies (cleaning, paper, pets)	$300.00	Other *(specify):*	-
Eating out	$500.00	Other *(specify):*	-
Other *(specify):*	-	Other *(specify)* :	-
Total Food and Household Expenses	**$1,500.00**	Total Personal Expenses	**$30.00**

D. Children's Expenses		List all Total Expenses from above:	
Childcare, babysitting	-	A. Total Housing Expenses	$565.08
Clothes, diapers	-	B. Total Utilities Expenses	$613.45
Tuition, after-school programs, lessons	-	C. Total Food and Household Expenses	$1,500.00
Other expenses for children	-	D. Total Children's Expenses	-
Total Children's Expenses	-	E. Total Health Care Expenses	$300.00
		F. Total Transportation Expenses	$650.00
E. Health Care Expenses		G. Total Personal Expenses	$1,445.00
Insurance premium (health, vision, dental)	-	H. Total Other Expenses	$30.00
Health, vision, dental, orthodontia, mental health expense not covered by insurance	$300.00	**I. All Total Expenses** (add A - H above)	**$5,103.53**
Other health expenses not covered by insurance	-	*Use section **11** below to explain any unusual expenses, or attach additional pages.*	
Total Health Care Expenses	**$300.00**		

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8. Debts included in Monthly Expenses listed in section 7 above

Debt for what expense *(mortgage, car loan, etc.)*	Who do you owe *(Name of creditor)*	Amount you owe this creditor now	Last Monthly Payment made
		-	
		-	
		-	
		-	

9. Monthly payments for other debts (not included in expenses listed in section 7)

Describe Debt *(credit card, loan, etc.)*	Who do you owe *(Name of creditor*	Amount you owe this creditor now	Last Monthly Payment *(Date and Amount*	
		-		-
		-		-
		-		-
		-		-
		-		-
		-		-
			Total Monthly Payments for Debts	-

10. Explanation of expenses or debts (if any needed):

11. Lawyer Fees

List your total lawyer fees and costs for this case as of today.

Amount paid	$70,000.00	**Source** of the money you used to pay these fees and costs: Income
Amount still owed	-	Describe your agreement with your lawyer to pay your fees and costs:
Total Fees/Costs	**$70,000.00**	As due

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at *(city and state)*: Yakima Date: 2-20-20

Michael Sweigart — MICHAEL SWEIGART

Sign here *Print name*

Financial Records – You must provide financial records as required by statute and state and local court rules. These records may include:

Law Office of
Howard N. Schwartz
413 N. Second Street
Yakima, WA 98901
509-248-1100
Fax 509-248-2519

- Personal Income Tax Returns
- Pay stubs
- Partnership or Corporate Income Tax Returns
- Other financial records

Important! Do not attach financial records to this form. Financial records should be served on the other party and filed with the court separately using the *Sealed Financial Source Documents* cover sheet (FL All Family 011). If filed separately using the cover sheet, the records will be sealed to protect your privacy (although they will be available to all parties and lawyers in this case, court personnel and certain state agencies and boards.) See GR 22(c)(2).

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413 N. Second Street
Yakima, WA 98901
509-248-1100
Fax 509-248-2519

EXHIBIT B

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

Beverly Sevigny

vs.

Michael Sevigny

NO. 15-3-00413-4

ORDER on motion to endorse check over to Petitioner

THIS MATTER HAVING COME ON for hearing before the undersigned judge/commissioner of the above-entitled court, it is hereby ORDERED THAT:

Petitioner's motion to endorse check over to her is granted. It is a personal order of the court that Respondent shall secure proper endorsement of the cashier's check in Mr. Schwartz' safe in favor of Petitioner which shall be done not later than 5:00 pm (at Mr. Hazel's office) and delivered to or picked up by: on Monday, August 29, 2019

DONE IN OPEN COURT this 25th day of July, 2019.

Elizabeth Tutor
JUDGE/COURT COMMISSIONER

Presented by:
(Copy received)

Attorney for R. Gibney

Approved as to form:
(Copy received)

Attorney for

SUPERIOR COURT OF WASHINGTON
COUNTY OF YAKIMA

In re the Marriage of:	)	NO. 15-3-00413-4
	)	
BEVERLY SEVIGNY	)	
	)	PARTIAL
Petitioner	)	SATISFACTION OF JUDGMENT
	)	
MICHAEL G. SEVIGNY	)	
	)	
Respondent	)	

Petitioner, BEVERLY SEVIGNY, hereby acknowledges partial payment and satisfaction of that certain judgment heretofore entered on September 13, 2018 in her favor and against Respondent, MICHAEL SEVIGNY, in the sum of $179,546.70, and hereby authorizes and directs the clerk of the above entitled Court to partially satisfy of record the said judgment.

Dated this ____ day of July, 2019.

_____
BEVERLY SEVIGNY

State of Washington)
) ss.
County of Yakima)

On this day personally appeared before me BEVERLY SEVIGNY to me known to be the individual, or individuals, described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Law Office of
HOWARD N. SCHWARTZ
413 North Second Street
Yakima, Washington
(T) 509-248-1100
(F) 509-248-2519

Given under my hand and official seal this _____ day of July, 2019.

_____
NOTARY PUBLIC in and for the State
of Washington, residing at _____
Commission expires:_____

Law Office of
HOWARD N. SCHWARTZ
413 North Second Street
Yakima, Washington
(T) 509-248-1100
(F) 509-248-2519

WALLA WALLA, WA 99362
(800) 272-9933

864847

REMITTER: MICHAEL G SEVIGNY

Date 2/27/19

PAY TO THE ORDER OF MICHAEL G SEVIGNY

$ *****179,546.70

EXACTLY **179,546 AND 70/100 DOLLARS

CASHIER'S CHECK

THE PURCHASE OF AN INDEMNITY BOND WILL BE REQUIRED BEFORE ANY CASHIER'S CHECK OF THIS BANK WILL BE REPLACED OR REFUNDED IN THE EVENT IT IS LOST, MISPLACED, OR STOLEN.

AUTHORIZED SIGNATURE

Janice Blanchard

⑈864847⑈ ⑆323371076⑆ 0100450021⑈

PLEASE ENDORSE HERE

Mutual Savings
to Beverly Savings

DO NOT WRITE STAMP OR STI[illegible]

THIS DOCUMENT INCLUDES THE FO[illegible]
SECURITY FEATURES; EXCEEDING [illegible]

- [illegible] FLUORESCENT FIBERS
- [illegible] SOLVENT STAINS
- [illegible]
- [illegible]
- ARTIFICIAL WATERMARK

ATTEMPTS TO COPY OR OTHERWISE [illegible]
ACTIVATE VALUGUARD SECURITY FE[illegible]

THIS DOCUMENT MAY NOT BE [illegible]

FEDERAL BANKING ACT 1981 [illegible]

EXHIBIT C

SUPERIOR COURT OF WASHINGTON
COUNTY OF YAKIMA

In re the Marriage of:	)	NO. 15-3-00413-4
BEVERLY SEVIGNY	)	
	)	PARTIAL
Petitioner	)	SATISFACTION OF JUDGMENT
MICHAEL G. SEVIGNY	)	
Respondent	)	

Petitioner, BEVERLY SEVIGNY, hereby acknowledges partial payment and satisfaction of that certain judgment heretofore entered on September 13, 2018 in her favor and against Respondent, MICHAEL SEVIGNY, in the sum of $200,000.00, and hereby authorizes and directs the clerk of the above entitled Court to partially satisfy of record the said judgment.

Dated this 18 day of October, 2019.

Beverly Sevigny
BEVERLY SEVIGNY

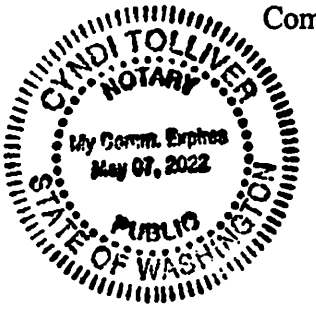
State of Washington)
) ss.
County of Yakima)

On this day personally appeared before me BEVERLY SEVIGNY to me known to be the individual, or individuals, described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Law Office of
HOWARD N. SCHWARTZ
413 North Second Street
Yakima, Washington
(T) 509-248-1100
(F) 509-248-2519

Given under my hand and official seal this 18th day of October, 2019.

NOTARY PUBLIC in and for the State of Washington, residing at Yakima
Commission expires: 5/07/22



Law Office of
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Yakima, Washington
(T) 509-248-1100
(F) 509-248-2519

CARNEY BADLEY SPELLMAN

March 02, 2020 - 4:15 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36393-7
Appellate Court Case Title:	In re the Marriage of: Beverly Sevigny and Michael G. Sevigny
Superior Court Case Number:	15-3-00413-4

The following documents have been uploaded:

- 363937_Financial_20200302153016D3495789_2203.pdf
  This File Contains:
  Financial - Affidavit of Financial Need
  The Original File Name was Financial Declaration of Mike Sevigny.pdf

A copy of the uploaded files will be sent to:

- andrienne@washingtonappeals.com
- cate@washingtonappeals.com
- fuhrmann@carneylaw.com
- jon@washingtonappeals.com
- jonathan.bruce.collins@gmail.com
- miller@carneylaw.com
- tribe@carneylaw.com
- valerie@washingtonappeals.com
- zagdawg.dh@gmail.com

Comments:

Sender Name: Elizabeth Fuhrmann - Email: fuhrmann@carneylaw.com
Filing on Behalf of: Sidney Charlotte Tribe - Email: tribe@carneylaw.com (Alternate Email:)

Address:
701 5th Ave, Suite 3600
Seattle, WA, 98104
Phone: (206) 622-8020 EXT 149

Note: The Filing Id is 20200302153016D3495789

No. 36393-7-III

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

In re the Marriage of: BEVERLY SEVIGNY, Respondent/ Cross-Appellant, v. MICHAEL G. SEVIGNY, Appellant/ Cross-Respondent.	FINANCIAL DECLARATION OF RESPONDENT/CROSS-APPELLANT

Beverly Sevigny hereby declares and states as follows:

1. I am the respondent/cross-appellant in this matter. I make this financial declaration in support of my motion for fees and costs on appeal.

2. I am currently employed as a para-pro/secretary in Zillah, WA.

3. My gross income per month is $2,589.64 in wages and salary. In addition, appellant has been ordered to pay me maintenance of $6,500 a month. I have the following deductions and estimated tax obligations on my income:

Income tax (deductions and estimated taxes)	$ 1,440.17
FICA	$ 161.98
Professional dues	$ 47.05
Retirement Plan	$ 1,697.36
Medicare	$ 37.88
Insurance/ Worker's Compensation	$ 64.43
Total Deductions	**$ 3,448.87**
NET INCOME	**$ 5,640.77**

4. I have the following monthly expenses:

Housing:

Rent, 1st Mortgage or Contract	$ 1,287.25	
Total Housing		**$ 1,287.25**

Utilities:

Electricity	$ 186.33	
Water, Sewer, Garbage	$ 12.00	
Telephone	$ 76.32	
Cell Phone	$ 95.00	
Cable	$ 24.14	
Irrigation	$ 35.98	
Total Utilities		**$ 429.77**

Food and Supplies:

Food for 1 Person	$ 300.00	
Supplies (paper, tobacco, pets)	$ 50.00	
Meals eaten out	$ 100.00	
Total Food Supplies		**$ 450.00**

Transportation:

Vehicle insurance and license	$ 73.25	
Vehicle gas, oil, ordinary maintenance	$ 300.00	
Total Transportation		**$ 373.25**

Health Care:

Insurance	$ 7.00	
Uninsured dental, medical, eye care	$ 250.00	
Other uninsured health expenses (i.e. mental health)	$ 50.00	
Total Health Care		**$ 307.00**

Personal Expenses:

Clothing	$ 200.00	
Clubs and Recreation	$ 45.00	
Hair Care/Personal Care	$ 85.00	
Church	$ 25.00	
Gifts	$ 25.00	
Books, Newspapers, Magazines, Photos	$ 20.00	
Total Personal Expenses		**$ 400.00**

Miscellaneous Expenses:

Life Insurance	$ 147.66	
Charitable contributions	$ 20.00	
Home repair (2019, amortized)	$ 897.00	
Timeshare\Vacation fund	$ 296.00	
Total Miscellaneous Expenses		**$1,360.66**

Other Debts and Monthly Expenses:

	BALANCE	PAYMENT	
Credit Cards			
VISA	$ 2,169.25	$ 180.77	
Costco	$ 250.00	$ 20.83	
NYL Policy Loan	$ 13,000	$ 67.08[1]	
Total Other Monthly Debts			**$ 268.68**
TOTAL MONTHLY EXPENSES			**$4,876.61**

5. Appellant was ordered to pay me an equalizing judgment of $707,485 when the decree from which he has appealed was entered. He has not voluntarily made any payments on this judgment to date, and despite assuring this Court (in obtaining extensions of time to file his opening brief) that he intended to supersede the judgment, he never did so. As a result of the sale of a piece of property and only after I was forced to file a motion in superior court, I received $179,546.00 in July 2019. Appellant then partially satisfied the judgment in the sum of $200,000 in October 2019, when appellant needed my signature to remove the judgment lien so he could sell another piece of property.

[1] I was awarded the New York life insurance policy in the Decree, but before it was signed over to me appellant had taken out a $13,000 loan that New York Life considers my responsibility. This is the monthly payment.

6. I have paid $31,225.97 for attorney's fees and costs in the trial court. Appellant was ordered to pay $10,000 of my trial court attorney fees, but to date has paid nothing, even though he also has not stayed enforcement of that award. I have incurred approximately $30,000.00 in fees and costs in the appellate court action to date.

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

Dated this 19th day of February, 2020 at Zillah, Washington.

Beverly Sevigny

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on March 2, 2020, I arranged for service of the foregoing Financial Declaration of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division III 500 N. Cedar Street Spokane, WA 99201	___ Facsimile ___ Messenger ___ U.S. Mail X E-File
David P. Hazel Hazel & Schwab 1420 Summitview Ave Yakima WA 98902-2941 zagdawg.dh@gmail.com	___ Facsimile ___ Messenger ___ U.S. Mail X E-Mail
Gregory M. Miller Carney Badley Spellman PS 701 5th Ave Ste 3600 Seattle, WA 98104-7010 miller@carneylaw.com	___ Facsimile ___ Messenger ___ U.S. Mail X E-Mail

DATED at Seattle, Washington this 2nd day of March, 2020.

V. Vigoren

Victoria K. Vigoren

SMITH GOODFRIEND, PS

March 02, 2020 - 3:14 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36393-7
Appellate Court Case Title:	In re the Marriage of: Beverly Sevigny and Michael G. Sevigny
Superior Court Case Number:	15-3-00413-4

The following documents have been uploaded:

- 363937_Financial_20200302151253D3427466_7244.pdf
  This File Contains:
  Financial - Affidavit of Financial Need
  The Original File Name was 2020 03 02 Financial Decl of Respondent.pdf

A copy of the uploaded files will be sent to:

- jon@washingtonappeals.com
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Seattle, WA, 98109
Phone: (206) 624-0974

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No. 36393-7-III

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

In re the Marriage of: BEVERLY SEVIGNY, Respondent/ Cross-Appellant, v. MICHAEL G. SEVIGNY, Appellant/ Cross-Respondent.	RESPONSIVE FINANCIAL DECLARATION OF RESPONDENT/CROSS-APPELLANT

Beverly Sevigny hereby declares and states as follows:

1. I am the respondent/cross-appellant in this matter. I make this financial declaration solely to correct two misstatements in appellant Mike Sevigny's RAP 18.1(c) financial declaration. The limitation of this response should not be construed as acceptance of other statements in appellant's financial declaration.

2. Appellant claims that I have not signed the partial satisfaction of judgment for the equalizing judgment payment made pursuant to the July 25, 2019 order attached as Ex. B to appellant's declaration. (M. Sevigny Dec. ¶ 4) That is not true. The signed partial satisfaction is attached to my July 31, 2019 trial court declaration, attached as Exhibit A to this response declaration. The original signed partial satisfaction was delivered to appellant's trial counsel by my trial counsel the same day I signed it. If appellant or his counsel misplaced the satisfaction or otherwise needs another partial satisfaction signed, I would certainly accommodate that request, but they never asked.

3. Appellant also claims that my household income includes that of our adult daughter and her husband, who temporarily reside with me. (M. Sevigny Dec. Ex. A at 3) I do not know their income, but they do not pay rent, we do not share expenses, and they do not "contribute to the household." Having lost their previous home, owned by my son-in-law's parents, when it was sold, they came to live with me. Our daughter and son-in-law have been saving money to build their own home in Zillah on real property that must be developed by the end of 2021 while living in my home.

4. The trial court was aware of these living arrangements and why our daughter and her husband came to live with me when it made its property distribution and maintenance award. Attached to this response declaration as Exhibit B are the relevant portions of my trial testimony on this topic, RP 44-45 and RP 70.

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

Dated this 4th day of March, 2020 at Zillah, Washington.

Beverly Sevigny

Beverly Sevigny

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on March 9, 2020, I arranged for service of the foregoing Responsive Financial Declaration of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division III 500 N. Cedar Street Spokane, WA 99201	____ Facsimile ____ Messenger ____ U.S. Mail __✓__ E-File
David P. Hazel Hazel & Schwab 1420 Summitview Ave Yakima WA 98902-2941 zagdawg.dh@gmail.com emily@davidhazel.com debbieb@davidhazel.com	____ Facsimile ____ Messenger ____ U.S. Mail __✓__ E-Mail
Gregory M. Miller Carney Badley Spellman PS 701 5th Ave Ste 3600 Seattle, WA 98104-7010 miller@carneylaw.com	____ Facsimile ____ Messenger ____ U.S. Mail __✓__ E-Mail

DATED at Seattle, Washington this 9th day of March, 2020.

Sarah N. Eaton

Certificate of Transmittal
I hereby certify that we sent a copy of this to the attorneys for the ~~petitioner~~/respondent by ~~facsimile, by mail (prepaid postage)~~ by attorney messenger service or by e-mail. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

(Date) 7-31-19 Yakima, WA

Cheri Root

FILED
TRACEY M. SLAGLE, CLERK

'19 JUL 31 P3:55

SUPERIOR COURT
YAKIMA CO WA

Superior Court of Washington, County of YAKIMA

In re: Petitioner: BEVERLY SEVIGNY And Respondent: MICHAEL G. SEVIGNY	No. 15-3-00413-4 Declaration of: Beverly Sevigny (DCLR)

Declaration of: Beverly Sevigny

1. I am 61 years old and I am the Petitioner.

2. I declare:

After court on July 25, 2019 the Respondent waited for me in the courthouse parking lot and started to yell profanities at me. He told me I was "fat and Ugly" and called me "the town whore" and other abusive and vulgar names. I was shaken up, and was in fear that the Respondent would physically attack me.

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form (and any attachments) are true.

Signed at: Yakima, WA Date: 7/30/19

Beverly Sevigny

Sign here *Print name*

Warning! Documents filed with the court are available for anyone to see unless they are sealed. Financial, medical, and confidential reports, as described in General Rule 22, must be sealed so they can only be seen by the court, the other party, and the lawyers in your case. Seal those documents by filing them separately, using a *Sealed* cover sheet (form FL All Family 011, 012, or 013). You may ask for an order to seal other documents

Hazel & Schwab
ATTORNEYS & COUNSELORS AT LAW
1420 Summitview
Yakima, Washington 98902
(509) 453-9181 Facsimile 457-3756

Certificate of Transmittal
I hereby certify that we sent a copy of this to the attorneys for the ~~petitioner/respondent by facsimile, by mail (prepaid postage)~~ by attorney messenger service or by e-mail. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

(Date) 7-31-19 Yakima, WA

Cheri Root

SUPERIOR COURT OF WASHINGTON
COUNTY OF YAKIMA

In re the Marriage of:	)	NO. 15-3-00413-4
BEVERLY SEVIGNY	)	
Petitioner	)	PARTIAL SATISFACTION OF JUDGMENT
MICHAEL G. SEVIGNY	)	
Respondent	)	

Petitioner, BEVERLY SEVIGNY, hereby acknowledges partial payment and satisfaction of that certain judgment heretofore entered on September 13, 2018 in her favor and against Respondent, MICHAEL SEVIGNY, in the sum of $179,546.70, and hereby authorizes and directs the clerk of the above entitled Court to partially satisfy of record the said judgment.

Dated this 30 day of July, 2019.

Beverly Sevigny
BEVERLY SEVIGNY

State of Washington)
) ss.
County of Yakima)

On this day personally appeared before me BEVERLY SEVIGNY to me known to be the individual, or individuals, described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Law Office of
HOWARD N. SCHWARTZ
413 North Second Street
Yakima, Washington
(T) 509-248-1100
(F) 509-248-2519

Given under my hand and official seal this 30 day of July, 2019.

Diana Rangel
NOTARY PUBLIC in and for the State
of Washington, residing at Yakima
Commission expires: 4-30-23

Diana Rangel
Notary Public
State of Washington
My Appointment Expires 04/30/2023
Commission Number 207408

Law Office of
HOWARD N. SCHWARTZ
413 North Second Street
Yakima, Washington
(T) 509-248-1100
(F) 509-248-2519

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

In re the Marriage of: BEVERLY SEVIGNY, Petitioner, and MICHAEL G. SEVIGNY, Respondent.	Court of Appeals No. 363937 Yakima County Cause No. 15-3-00413-4 VERBATIM TRANSCRIPT OF TRIAL HELD ON APRIL 30, 2018 , MAY 1, 2018, JULY 6, 2018 and AUGUST 31, 2018

Proceedings had before the HONORABLE GAYLE HARTHCOCK, Judge, Yakima County Superior Court, Yakima, Washington, on **April 30, 2018**.

APPEARANCES:	FOR:
David P. Hazel Attorney at Law 1420 Summitview Avenue Yakima, WA 98902-2941	Petitioner
Howard N. Schwartz Dauber & Schwartz 413 North 2nd Street Yakima, WA 98901-2336	Respondent
Transcriber:	Bell Transcription & Typing Services Patricia I. Bell P.O. Box 2122 Yakima, WA 98907 belltts2122@aol.com

store or if I was to put what I spent eating out.

Q With regard to utilities, did you do that?

A Yes.

Q What do you spend per month on utility expenses on average?

A $770.53.

Q You list food and household expenses for one person. Has there been a change in the number of people living in your house recently?

A There has.

Q And tell the Court how that came to be.

A My daughter, Emily and her husband now live with me. They have been living with me since the end of May last year. They were living in a home owned by her husband's parents and due to his father's health they needed to sell the home, so they were asked to leave so that the home could be sold and he needs to live in the area where his business is. He's a firefighter and so they asked if they could move in with me and they have been living there since the end of May last year. They are --

Q Do you charge them rent?

A No, I do not.

Q What is his business?

A He's a firefighter. He works for District 5. He --

Q Do you live within District 5?

A I do.

Q What's the plan for how long they're going to be there?

A They have purchased property in Zillah and are planning to build a house, so my guess would be they will live with me until this house is built and they will move to their own residence.

Q When did they move in?
A The end of May 2017.
Q Has their presence changed your expenses any?
A Not a lot, no. I mean, they wash their clothes, that I have a well, so my water is not changing. They purchase their own food.
Q Okay. Do you -- how is your health, Beverly?
A I like to hope that I'm okay. I do take certain medications on a daily basis but I'm able to go to work.
Q Do you have any health issues which pose a threat to your continued employment?
A I would say no.
Q Do you have a concern about that?
A I'm getting older.
Q How old are you?
A I'm 60.
Q When will you be 61?
A In November.
Q How long do you plan to keep working?
A Until retirement.
Q Did you and Mike discuss retirement when you were married?
A Yes.
Q Tell the Court what the plan was.
A The plan was to buy property such as what we did with 16th Avenue Properties and I was told that it would compensate us over and above our current wages for retirement.
Q Did you and he discuss an age at which you would both stop working to enjoy this retirement?

used at all, very, very seldom and so I chose to make better use of them and bring them to my house.

Q When did you remove the furniture?

A I do not have a specific date. I don't know.

Q In the last six months?

A Probably within the last year and a half.

Q Is your daughter and son-in-law utilizing any of the cabin furniture at your home?

A If they're in the living room then they sit on those couches, yes.

Q And they don't share any expenses with you?

A No.

Q Okay, and they've been there about a year now?

A That's correct.

Q Okay. Together they gross more than a 100.000 a year?

A I've not seen their income.

Q Okay, he's a fireman, correct?

A Yes.

Q And what does she do?

A She teaches.

Q Okay. Now during the marriage you would rent out the Hawaii condo?

A As stated previously, yes.

Q And you would use the rent to pay the condo fees?

A It would sometimes cover the condo fees.

Q Now have you rented the condo since separation?

A I believe so.

Q Has Mr. Sevigny received any of those monies?

SMITH GOODFRIEND, PS

March 09, 2020 - 4:22 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36393-7
Appellate Court Case Title:	In re the Marriage of: Beverly Sevigny and Michael G. Sevigny
Superior Court Case Number:	15-3-00413-4

The following documents have been uploaded:

- 363937_Financial_20200309162101D3419150_6086.pdf
  This File Contains:
  Financial - Other
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- valerie@washingtonappeals.com
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Comments:

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Filing on Behalf of: Catherine Wright Smith - Email: cate@washingtonappeals.com (Alternate Email: andrienne@washingtonappeals.com)

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Phone: (206) 624-0974

Note: The Filing Id is 20200309162101D3419150

No. 36393-7-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

BEVERLY SEVIGNY,

Petitioner,

v.

MICHAEL G. SEVIGNY,

Respondent

ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT

DECLARATION OF MIKE SEVIGNY IN SUPPORT OF OBJECTION TO FINANCIAL DECLARATION OF BEVERLY SEVIGNY

Gregory M. Miller, WSBA No. 14459
Sidney C. Tribe, WSBA No. 33160

CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
(206) 622-8020

Attorneys for Appellant Michael G. Sevigny

1. My name is Michael G. Sevigny. I am the appellant in this matter and was the respondent below. I make this declaration based on my personal knowledge and declare, under penalty of perjury under the laws of Washington State, that the following is true and correct to the best of my knowledge.

2. I have reviewed Beverly's financial declaration filed in this Court and I have the following observations as to its accuracy, particularly given the $6,500/month maintenance and additional payments of $379,546.70 that I made to her in 2019. It looks to me like she is trying to inflate and maximize her monthly expenses for purposes of her financial declaration to this Court, which distorts the reality of her very comfortable financial situation following the property division and maintenance award.

3. Most important, Beverly's sworn statement that I have not voluntarily made any payments on the judgment is misleading and incorrect. It tries to hide the fact that the payments I made in 2019 means that my share of the overall property division was cut almost in half.

4. First, any payments under the property division are hardly "voluntary". They are all required by the Court. Since Beverly was given all the liquid assets, I had no readily available means to make the "required" payments until I had future earnings or sold properties awarded to me. My attorney had a check for $179,546 in his trust account from the

sale of one of the 16th Ave LLC income-producing properties I had been awarded, which I paid to Beverly in August, 2019, by court order. However, the $200,000 I paid in October 2019 was entirely "voluntary" in the sense it was made without any threat of court action.

5. The $200,000 payment came from selling the vacation cabin I was awarded at trial. I had an offer on the cabin from a willing buyer and decided to accept it, then paid Beverly the entire amount. I sold the cabin "voluntarily" to pay her the $200,000 as part of paying down the transfer payment.

6. As I stated in my March 2 declaration, this illustrates how I had to transfer to Beverly over $379,500 of the property nominally awarded to me by the judge in the property division. Because of the transfer payment, I did not get to keep everything I was awarded. I should have been able to keep that income-producing property instead of having to give it to Beverly. These are properties I will never get back. I think this is double-dipping in Beverly's favor.

7. Requiring the immediate transfer payment decreased my share of the property division while keeping Beverly's share at full value. It cut nearly in half my percentage of the property division. After transferring the $379,500 to Beverly from selling income-producing properties I had been awarded, I net $474,097 of our property instead of

the $853,597 stated by the judge after reconsideration. That net is only **22% of the total estate** the judge valued at $2,133,993, barely half the stated goal of a 60-40 per cent division. This is the result of the trial judge's decision of the large transfer payment that was to be made immediately, despite the fact I could only make payments from future earnings (after paying $6,500 per month maintenance), or selling what I was "awarded," like the cabin and the income-producing property from the LLC. These are properties I was awarded, but will never get back.

8. Finally, Beverly's statement that she did not receive the $10,000 of attorney fees awarded is also incorrect. She received $379,446 in 2019, and $10,000 of that is properly allocated to the attorney's fees award, which were part of the overall judgment.

9. I find it surprising that Beverly is taking out of her income nearly $1,700 a month for a retirement plan when she received all the retirement plans and investment funds that we had, several hundred thousand dollars' worth. That seems like a large deduction from her monthly income in her newly-changed circumstances.

10. Likewise, it is also surprising that Beverly lists a house payment as yet another monthly expense, since she's in a position where the home she lives in could easily be paid off. Further, the fact that she owes money on credit cards and lists a loan against her NY Life insurance

policy makes no sense either, especially since the trial judge already considered that debt in the valuation and division of assets.

11. The rest of her monthly living expenses (such as food) seem exaggerated, probably due to the fact that she has two other adults living in the home, and even though both of them are in good earning jobs, totaling over $12,000/month, as documented in my financial declaration.

Signed this 9 day of March, 2020, at Yakima Washington.

Michael G. Sevigny

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record as noted:

Attorneys for Petitioner/Respondent Beverly Sevigny Catherine Wright Smith Valerie A. Villacin Jonathan B. Collins SMITH GOODFRIEND, PS 1619 8th Ave N Seattle WA 98109-3007 cate@washingtonappeals.com; valerie@washingtonappeals.com jon@washingtonappeals.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal
Attorneys for Petitioner/Respondent Beverly Sevigny David Hazel HAZEL & HAZEL INC., PS 1420 Summitview Ave Yakima WA 98902-2941 daveh@davidhazel.com; frontdesk@davidhazel.com; debbieb@davidhazel.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal
Attorneys for Appellant/Respondent Michael Sevigny Howard N. Schwartz Law Office of Howard N. Schwartz 413 N 2nd St Yakima WA 98901-2336 howard@rbhslaw.com; shannon@rbhslaw.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal

DATED this 9th day of March, 2020.

Elizabeth C. Fuhrmann, PLS, Legal Assistant/Paralegal to Gregory M. Miller

CARNEY BADLEY SPELLMAN

March 09, 2020 - 4:18 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36393-7
Appellate Court Case Title:	In re the Marriage of: Beverly Sevigny and Michael G. Sevigny
Superior Court Case Number:	15-3-00413-4

The following documents have been uploaded:

- 363937_Affidavit_Declaration_20200309142802D3412860_2835.pdf
  This File Contains:
  Affidavit/Declaration - Other
  The Original File Name was Mike Sevigney Declaration Objecting to Beverly Sevigny Financial Declaration.pdf
- 363937_Answer_Reply_to_Motion_20200309142802D3412860_8244.pdf
  This File Contains:
  Answer/Reply to Motion - Objection
  The Original File Name was Objection to Financial Declaration of Beverly Sevigny.pdf

A copy of the uploaded files will be sent to:

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- howard@rbhslaw.com
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- jonathan.bruce.collins@gmail.com
- shannon@rbhslaw.com
- tribe@carneylaw.com
- valerie@washingtonappeals.com
- zagdawg.dh@gmail.com

Comments:

Sender Name: Elizabeth Fuhrmann - Email: fuhrmann@carneylaw.com
Filing on Behalf of: Gregory Mann Miller - Email: miller@carneylaw.com (Alternate Email:)

Address:
701 5th Ave, Suite 3600
Seattle, WA, 98104
Phone: (206) 622-8020 EXT 149

Note: The Filing Id is 20200309142802D3412860

No. 36393-7-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

BEVERLY SEVIGNY,

Petitioner,

v.

MICHAEL G. SEVIGNY,

Respondent

ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT

OBJECTION TO FINANCIAL DECLARATION OF BEVERLY SEVIGNY

Gregory M. Miller, WSBA No. 14459
Sidney C. Tribe, WSBA No. 33160

CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
(206) 622-8020

Attorneys for Appellant Michael G. Sevigny

I. OBJECTION TO FINANCIAL DECLARATION OF BEVERLY SEVIGNY

Appellant Mike Sevigny objects to the financial declaration filed on March 2, 2020, by Respondent/Cross-Appellant Beverly Sevigny because of its material inaccuracies. They are set out in the Declaration of Mike Sevigny In Support of Objection to Financial Declaration of Beverly Sevigny ("MS Dec."). Mike asks the Court take his points into account for all parts of the appeal, *i.e.,* vacating the property division and rejecting Beverly's request for appeal fees given the overall assets she was awarded and the payments of $379,500 she received in 2019. MS Dec. ¶¶ 2.

Beverly stated Mike did not "voluntarily" make payments to her on the judgment of the transfer payment of $707,485, which was to be made immediately. Mike points out that is inaccurate because he made two payments to Beverly in 2019 totaling over $379,500 after selling properties awarded him in the divorce. MS Dec., ¶¶ 3-5.

But those payments could only be made by Mike after selling properties awarded to him in the divorce, ***thus reducing the share of the property Mike received by nearly half***. MS Dec. ¶¶4-7. Those payments and their effect on the property division illustrate that, by having to make the transfer payments from selling properties he had been awarded, instead of the 40-60 split specified by the trial judge (*see* CP 53 (attached) "Final

Community Distributions 40H/60W"), the split is actually 22H/78W.

Mike gets barely half of what the trial court stated it intended him to get.

He explained:

> 6. As I stated in my March 2 declaration, this illustrates how I had to transfer to Beverly over $379,500 of the property nominally awarded to me by the judge in the property division. Because of the transfer payment, I did not get to keep everything I was awarded….
>
> 7. Requiring the immediate transfer payment decreased my share of the property division while keeping Beverly's share at full value. It cut nearly in half my percentage of the property division. After transferring the $379,500 to Beverly from selling income-producing properties I had been awarded, I net $474,097 of our property instead of the $853,597 stated by the judge after reconsideration. That net is only 22% of the total estate the judge valued at $2,133,993, barely half the stated goal of a 60-40 per cent division. This is the result of the trial judge's decision of the large transfer payment that was to be made immediately, despite the fact I could only make payments from future earnings (after paying $6,500 per month maintenance), or selling what I was "awarded," like the cabin and the income-producing property from the LLC. These are properties I was awarded, but will never get back.

MSD ¶¶ 6-7.

The 22-78 split is both facially inequitable and not what the trial court stated it intended. *See* CP 53.

Exacerbating the transfer of those properties to Beverly is the fact Mike had to sell an ***income-producing property*** from the 16th Street LLC in order to make that payment. MS Dec. ¶¶ 4, 6. Not only did Mike lose the asset itself, he lost the ability to receive future income from it, making

it more difficult for him to chip away at the remaining transfer payment in future years.

Thus, Beverly's inaccurate complaint that Mike had not made voluntary payments on the judgment, when corrected, gives a clear demonstration of why the property division has to be reversed and remanded. It also shows why her request for fees on appeal should be denied.

Finally, Mike's declaration notes that Beverly's financial declaration appears to have used inflated or inaccurate figures to try and make her look more needy for purposes of both her fee request on appeal and to maintain the property division and maintenance award. *See* MSD ¶¶ 2, 8-11. Mike's payments of over $379,500 during 2019, along with the monthly maintenance of $6,500, show that her financial picture is not in accord with reality.

II. CONCLUSION

Mike Sevigny objects to the material inaccuracies in Respondent Beverly's financial declaration which he pointed out to the Court in his declaration. When those inaccuracies are corrected, it is readily seen why the property division must be reversed and why there is no need to award Beverly fees on appeal – she has ample resources to pay her own fees.

DATED this 9th day of March, 2020.

CARNEY BADLEY SPELLMAN, P.S.

By */s/ Gregory M. Miller*
Gregory M. Miller, WSBA No. 14459
Sidney C. Tribe, WSBA No. 33160

701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
Telephone: (206) 622-8020
Attorneys for Appellant/Cross-Respondent Michael G. Sevigny

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Attorneys for Beverly Sevigny Catherine Wright Smith Valerie A. Villacin Jonathan B. Collins SMITH GOODFRIEND, PS 1619 8th Ave N Seattle WA 98109-3007 Tel: (206) 624-0974 Fax: (206) 624-0809 cate@washingtonappeals.com; valerie@washingtonappeals.com; jon@washingtonappeals.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal
Attorneys for Beverly Sevigny David Hazel HAZEL & HAZEL INC., PS 1420 Summitview Ave Yakima WA 98902-2941 Tel: (509) 453-9181 Fax: (509) 457-3756 daveh@davidhazel.com; frontdesk@davidhazel.com; debbieb@davidhazel.com; zagdawg.dh@gmail.com	☐ U.S. Mail, postage prepaid ☐ Messenger ☐ email ☒ Other – via Portal

DATED this 9th day of March, 2020.

/s/ Elizabeth C. Fuhrmann
Elizabeth C. Fuhrmann, PLS, Legal Assistant/Paralegal to Gregory M. Miller

	Vehicles								
CA-16	2012 Buick Enclave			5/1/2018	$23,000		$23,000		$23,000
CA-17	2000 Blazer			5/1/2018	$500		$500	$500	
CA-18	3 snowmobiles/trailer			5/1/2018	$3,000		$3,000	$3,000	
CA-19	utility trailer			5/1/2018	$750		$750	$750	
	Total Vehicles				**$27,250**		**$27,250**	**$4,250**	**$23,000**
	Personal Property/Other								
CA-20	Household goods/sewing machine				$15,500		$15,500	$500	$15,000
CA-21	2016-17 distributions from 16th Ave LLC			2016-17	$240,000		$240,000	$240,000	
	Total Person Prop/Other				**$255,500**		**$255,500**	**$240,500**	**$15,000**
TOTALS					**$4,275,378**	**$2,141,385**	**$2,133,993**	**$1,561,082.00**	**$572,911**
TRANSFER PAYMENT								($707,485)	$707,485
FINAL COMMUNITY DISTRIBUTIONS 40H/60W								**$853,597**	**$1,280,396**
*Value of 10% community interest in MBM Land LLC is not accounted for otherwise									

CARNEY BADLEY SPELLMAN

March 09, 2020 - 4:18 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36393-7
Appellate Court Case Title:	In re the Marriage of: Beverly Sevigny and Michael G. Sevigny
Superior Court Case Number:	15-3-00413-4

The following documents have been uploaded:

- 363937_Affidavit_Declaration_20200309142802D3412860_2835.pdf
  This File Contains:
  Affidavit/Declaration - Other
  The Original File Name was Mike Sevigney Declaration Objecting to Beverly Sevigny Financial Declaration.pdf
- 363937_Answer_Reply_to_Motion_20200309142802D3412860_8244.pdf
  This File Contains:
  Answer/Reply to Motion - Objection
  The Original File Name was Objection to Financial Declaration of Beverly Sevigny.pdf

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- shannon@rbhslaw.com
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RE 2.3

COMMUNITY ASSET	VALUE	DEBT	NET	TO HUSBAND	TO WIFE
1251 Lucy Lane Residence	376,000	121,390			254,610
6431 North Fork Cabin	200,000				200,000
Hawaii Condo				Split	Equally
Lucy Lane Furnishings	25,000				25,000
North Fork Cabin Furnishings	10,000				10,000
Sewing Room & Machine	10,000				10,000
2012 Buick Enclave	25,250				25,250
One-Half Sevigny Construction	359,520			359,520	
One-Half 16th Avenue Property	153,228	196,479		153,228	
Wife's Veba Account - 5201	3,606				3,606
Wife's SERS Plan 3	32,645				32,645
Solarity IRA - 8670	40,796				40,796
Bank of America CD - 9377	2,286				2,286
American Funds - 4416	2,774				2,774
Wife's Deferred Compensation	31,263				31,263
New York Simple IRA 3305	74,967				74,967
Ed Jones/Federated/Goldman SachsIRA 5006-1-2/2310/1093	21,767				21,767
New York Life Insurance - 928	39,418				39,418
Lafayette Husband's Whole Life Insurance - 5288	10,299			10,299	
Lafayette Wife's Whole Life Insurance - 5289	12,473				12,473
Totals	**1,431,292**	**317,869**		**523,047**	**786,855**

HUSBAND'S SEPARATE ASSETS	VALUE	DEBT
One-half Interest in 1607/1611/1703 River Rd., Yakima	$135,650	$147,652
One-half Interest in 1928 Rudkin Rd., Yakima	$456,000	$421,680
One-half Interest in 1117 W. Lincoln Ave., Yakima	$224,638	$275,999
10% Interest in 61st Avenue Property, Yakima	$380,000	$349,810
Totals	**$1,196,288**	**$1,195,141**

CARNEY BADLEY SPELLMAN

September 28, 2020 - 4:44 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98990-7
Appellate Court Case Title:	In the Matter of the Marriage of: Beverly Sevigny and Michael G. Sevigny
Superior Court Case Number:	15-3-00413-4

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- 989907_Briefs_20200928164110SC328457_4835.pdf
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