

64514-5

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No. 64514-5-I

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

SEKIKO SAKAI GARRISON, Respondent,

v.

PETER GARRISON, Appellant

BRIEF OF RESPONDENT

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COURT OF APPEALS
STATE OF WASHINGTON



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I. INTRODUCTION

Appellant, Peter Garrison disagrees with the trial court's findings of fact regarding his income and the value of the family home. Coloring his claims is the overarching accusation the unfavorable findings constitute a finding of marital fault.

However, substantial evidence supports all the court's findings. Where husband claims legal errors, e.g. that the trial court used an appraisal instead of a realtor's opinion, he misstates the law. And the only party focusing on marital fault, before and during trial, was Mr. Garrison.

The trial court found husband Garrison intransigent because throughout the litigation he wasted other people's time, by delay, by insisting on presentation of irrelevant information regarding marital blame, and by refusing to abide by trial procedures and rules, even when they were explained to him repeatedly. This appeal continues his intransigence.

II. STATEMENT OF THE CASE

A. Family Background

Sekiko Garrison and Peter Garrison were married in 1994 (RP 09/15 at 47). They moved to Seattle two years later, where they raised their children, Andrew (age 13) and Christina (age 11) (RP 9/15 at 47).

Ms. Garrison filed for divorce and the two parties separated on March 3, 2008 (CP 1-6). The court entered temporary orders in March (CP 15-17).

Until 1995, Ms. Garrison worked for Bloomberg, L.P., a financial software, news and data company. In 1995 she left Bloomberg and received a settlement as a plaintiff in a pregnancy discrimination case against the company (CP 760). She stayed at home for six years as primary caretaker for Andrew and Christina and returned to work in 2003 (RP 9/15 at 48). She currently works full time in sales for Andrew Davidson & Co., Inc., from home.

Mr. Garrison graduated from Yale University with a B.A. degree in combined literature and business (CP 325). He acquired his M.B.A. from Columbia Graduate School of Business (CP 325, 855). He has over thirty years of experience in finance. His experience includes providing successful investment advice for the board of Evergreen school, where his children attend (RP 09/21/09 at 64-65). For much of the marriage, Mr. Garrison worked for Oppenheimer & Co., Inc. In late 2005, Mr. Garrison left Oppenheimer & Co. From January 1, 2006 to trial, he worked as a financial consultant, first for himself, and then in the fall of 2007 for Stonebridge Securities, Inc. where he is a key employee (CP 855).

On May 21, 2009, Mr. Garrison was convicted of 4th degree assault/domestic violence against his wife based on an incident occurring in

April 2008. At sentencing, the court entered a suspended sentence, issued a no-contact order and required husband participate in domestic violence treatment and anger management classes. The dissolution decree contains no additional restraining orders or restrictions on parenting (CP 855).

B. Financial History

1. Parties' Income

Until 2000, Mr. Garrison earned upwards of \$175,000 annually working for Oppenheimer and Co., Inc. From 2001 to 2005, his income dropped. It is not clear why (CP 855). His income continued to be low while working for himself and for Stonebridge Securities, Inc.

In his initial financial declaration, filed March 24, 2008, Mr. Garrison claimed income of \$2,500/month and an anticipated income stabilizing at \$5,000/month (CP 78-84). The court's order of temporary child support stated income was \$5,000/month. (CP 104-115). In a declaration filed June 25, 2009, while represented by counsel, Mr. Garrison stated his monthly income was \$5,000/month, "anticipated, not actually received" (CP 287). In a declaration filed July 8, 2009 Mr. Garrison stated he anticipated \$60,000/year based on the outcome of business deals then pending (CP 590-91). At trial, Mr. Garrison changed his mind and no longer claimed \$5,000/month in anticipated or actual

income. Instead, he claimed “close to” \$1,000/month in income and sought \$4,000/month in maintenance (RP 9/21/09 at 76).

At trial, Mr. Garrison’s boss, the head of Stonebridge Security praised Mr. Garrison’s abilities. Mr. Garrison was one of his senior employees performing the same work as Mr. Hendrickson (apart from supervision) (RP 9/17/09 at 57-58). Based on this testimony, the court found Mr. Garrison was a key employee, a finding Mr. Garrison does not specifically deny (CP 855).

Mr. Hendrickson also stated the investment group was going through some bad times now, which he dated from the market crash of the fall of 2008, but had hopes for the future (RP 9/17/09 at 59, 89). “...it’s a very good business to be in, but it has some very low lows and very nice highs” (RP 9/17/09 at 59). He testified Mr. Garrison would prosper if Stonebridge prospered and worked on many projects (RP 9/17/09 at 58, 76). Mr. Garrison has not sought permission from Stonebridge to do additional work with another broker (RP 9/17/09 at 74).

Asked by Mr. Garrison if he was a “full-time” employee, Mr. Hendrickson replied:

Far as I’m concerned, it’s full-time except that you’ve been spending an awful lot of time on legal stuff, and, you know, I tend to think that hurts the organization, too.

(RP 9/17/09 at 59-60). Asked to clarify Mr. Garrison's work schedule,

Mr. Hendrickson stated:

When we started out, you know, we were focused on pretty full-time on any of the projects that we had. We had a number of projects, and as the legal burden increased, I was seeing less and less of you, and we are a very small firm so it's very important that each of the people that are involved are there, and it has become probably going to 75% loss, 25% there.

(RP 9/17/09 at 61). Mr. Hendrickson stated husband's low

earnings were related to court matters (RP 09/17/09 at 78). He

elaborated later:

Q. How do you believe Mr. Garrison's work on his legal matters has impacted his pay or commissions, fees?

A. Well, we don't get as much work done, okay, 'cuz have a very small operation. Peter is very good at contracts and very good with the clients, okay, and has a depth of knowledge that I need, and so, consequently, it's been very impactful on the organization.

(RP 9/21/09 at 79).

Ms. Garrison continues to work fulltime in a sales position for Andrew Davidson & Co., Inc. The child support order in 2009 found her net income to be \$8,168/month (CP 855).

2. Marital Property

The chief asset of the parties is the family home in Shoreline, Washington, near Innis Arden. Testifying for Ms. Garrison was a licensed

appraiser with 35 years experience, Robert Chamberlin (RP 09/16/09 at 4). Chamberlin appraised the home in December, 2008, using comparables from the previous summer, and valued it at \$850,000 (RP 09/16/09 at 10, 18). Because of the plunging real estate market in 2008-09 Chamberlin did another appraisal in August 2009, using more recent comparables and changed the value to \$700,000. (RP 09/16/09 at 11-12). (The county's assessed value was \$821,000 in 2008 and \$668,000 in 2009 (RP 09/16/09 at 19)). While testifying, Chamberlin noted the market placed a premium on homes that were on bluffs inside Innis Arden, unlike the family home. (RP 09/16/09 at 17-18).

After performing the August appraisal, but before trial, Chamberlin saw an article in the Seattle Times implying the Seattle real estate market's plunge might be over. To check for recent trends, Chamberlin did a quick study of values in a neighborhood of comparable expensive homes, Magnolia, completed September 5. He found values had stabilized at a level substantially lower than a year or even six to seven months previously and were not rebounding (RP 09/16/09 at 23-25). He concluded the review reinforced his finding that the value of the home declined from December of 2008 (RP 09/16/09 at 25).

In response, Mr. Garrison provided market analysis by his realtor, Watkins, who initially sold the Garrisons their family home back in 1998

and who later helped Mr. Garrison find a new place to live after separation (RP 09/17/09 at 163, 185-87). Watkins valued the family home by taking a median price per square foot value for all homes sold in Shoreline, and multiplying it by the square footage of the family home, resulting in a value of \$986,000 (RP 9/17/09 at 185, 192). Watkins supported his opinion by citing sales of homes nearby that were on larger lots, or on bluffs, or two stories, or new construction, unlike the Garrison's home (RP 09/21/09 at 37, 40, 41, 43-44, 47).

On cross examination, counsel asked Watkins whether his valuation was an opinion or appraisal:

Q. Your opinion is not an appraisal, is it?

A. I don't understand your question.

Q. Your opinion, your letter, you [sic] CMR report dated August 27th, 2009, which is Exhibit 88, if you need to take a look at that—

A. I have it.

Q. – it's not an appraisal, is it?

A. Of course, it is.

Q. It's an appraisal?

A. Yes.

Q. Are you an appraiser?

A. No.

(RP 09/21/09 at 27). Watkins was handed a copy of RCW 18.140.020 and asked:

Q. Are you family [sic] with RCW 18.140.020?

A. Yes.

Q. And doesn't that statute say that, unless you're an appraiser, you cannot prepare an appraisal? In fact, what you gave us an opinion [sic]?

A. An appraisal is an opinion for a given date by anybody. That is the definition. That is the definition of an appraisal. It is a particular person's opinion for a given date. Mine was an opinion for a given date.

Q. Yours was an opinion, correct?

A. Yes.

Q. Not an appraisal?

A. I don't understand the question.

Q. Are you a certified, licensed or licensed appraiser in the State of Washington?

A. No.

Q. So this is a, you're a broker, an associate broker, right?

A. I am.

Q. And so this would be a broker's price opinion, correct?

A. You can call it whatever you like. It's an opinion for a given day on the value of their property.

(RP 09/21/09 at 28-29). Watkins then read, at counsel's request, RCW 18.140.020(6) out loud (RP 09/21/09 at 29-30). He followed by admitting the report he submitted did not contain the statement it was not

an appraisal: “No, it’s obviously not on there.” (RP 09/21/09 at 30). He did not retract the characterization of his opinion as an appraisal.

C. Mr. Garrison’s Intransigence

1. Pre-Trial

Ms. Garrison filed for dissolution in March, 2008 and trial was initially scheduled for February 2, 2009. He was represented by counsel from April 29, 2008 until July 31, 2009, 15 days before trial, spending by his own estimation \$75-80,000 for litigation (CP 170-71, CP 597, RP 09/17 at 26).

Mr. Garrison twice continued the trial date to April 6, 2009 and then to September 7, 2009. He sought delay to avoid speaking to the parenting evaluator until after his trial for fourth degree assault/domestic violence. However, that trial was itself delayed six times at Mr. Garrison’s request, thus requiring the continuances of the divorce trial date (CP 296). In the order delaying trial for the second time, the court required husband to fill out a parenting questionnaire and contact the parenting evaluator within 72 hours of his criminal matter being resolved (CP 204-05).

In May 2009, Pamela Edgar, the previously appointed evaluator, withdrew for personal reasons. On May 21, 2009 Mr. Garrison was found guilty of fourth degree assault/domestic violence (CP 296). Mr. Garrison

took no positive steps following the conviction to appoint another evaluator. Instead, on June 25, 2009 Mr. Garrison filed a motion seeking to borrow an additional \$60,000 from the home line of credit for his living expenses and his attorney's fees, adding to sizable existing debts against the family home he had previously incurred before separation (CP 280-84, CP 324-25). Because a parenting evaluation could not be accomplished prior to trial, Ms. Garrison moved the next day to remove the requirement an evaluator be appointed (CP 294-322).

After not previously pursuing a parenting evaluation Mr. Garrison responded by demanding appointment of a new evaluator (CP 461-494). In his response declaration Mr. Garrison focused on his conflicts with Ms. Garrison, at one point stating:

I hope this Court recognizes the perfidy Sekiko deploys against a backdrop of what some may describe as a cultural gender war that permeates dissolutions across the Land. The ferocity of her combative nature is unmitigated, as I can reveal in much more detail to an independent evaluator.

(CP 468). Though recognizing appointment of a new evaluator would require postponing trial again, husband stated "The parties are not bound by the movable date of the scheduled trial set for Sept. 7, 2009" (CP 469).

Commissioner considered the parties' two motions on July 10, 2009, declined to appoint a new parenting evaluator, and denied husband's request to borrow an additional \$60,000 against the home (CP 594, CP 595-96).

Mr. Garrison's deadline for revision was July 20, 2009. He missed it. Instead, on July 22 he filed a new motion before the trial court requesting: 1) \$60,000 be borrowed from the home equity line of credit and provided to Mr. Garrison, 2) appointment of a parenting evaluator and 3) postponement of the trial until sometime in January, 2010. (CP 600-608). The request for one more trial continuance came after the June 22 deadline for seeking a trial continuance. LCR 40(d)(2), (CP 629). Husband's other two requests for relief were identical to those previously denied twelve days before.

Large portions of Mr. Garrison's declaration in support of his new motion were identical to the response declaration he submitted in the earlier motion, including references to Ms. Garrison's perfidy (CP 609-625). New material included references to wife's "unmitigated treachery" (CP 611) and an explanation that the request for \$60,000 was reasonable because the house was worth at least \$950,000 (CP 617-18). In a reply declaration husband explained further why he needed a continuance and \$60,000:

...to preserve my Constitutional rights to appeal an unscrupulous criminal attack that has led to a gross

miscarriage of justice that was planned to be used against me in this Court.

(CP 678).

The court denied Mr. Garrison's motion to continue trial and stated the other relief requested was not properly before the court on revision. The court reserved fees for trial (CP 747-48). The same day, while he was represented by an attorney, the court signed a pre-trial order in which Mr. Garrison stated maintenance was not an issue (CP 742-46). At trial, Mr. Garrison asked for maintenance.

Prior to trial, Mr. Garrison listed as an exhibit a confidential settlement entered into by Ms. Garrison with her former employer Bloomberg, as intended to seek testimony by her former attorney, Neal Brickman. (CP 759-763). Admitting the evidence would have caused Ms. Garrison possible legal peril because the confidentiality provisions of the settlement prohibited her from discussing it. The settlement was, also, irrelevant to the proceedings. Ms. Garrison's counsel was forced to file a motion in limine. Mr. Garrison did not respond before trial, claiming lack of time (RP 09/15/09 at 7-8). At trial, he claimed it was critical to determine community property (Id.). After wife's counsel noted there was no separate property issue at trial, something previously clear from her trial brief, (CP 764-784) the exhibit was struck (RP 09/15/09 at 8).

2. Intransigence and Delay At trial

Some issues were resolved between parties immediately before and during trial. Neither party claimed restrictions under RCW 26.09.191 (RP 09/16/203). Mr. Garrison's trial brief conceded Ms. Garrison would be primary parent as he sought only 4 overnights out of a fortnight (RP 09/15/09 at 13-15).¹ Though he initially changed his mind on the first day of trial and sought "joint custody" (Id.), he changed his mind again and by end of trial agreed the dispute only concerned decision making and which day would be mid-week visitation and said he was comfortable with whatever the court decreed (RP 09/21/09 at 70-71).

In addition, neither party claimed there was separate property (RP 09/15/09 at 7-8). On the second day, wife stated a willingness to drop her request for a 60-40 asset split to 50-50 (RP 09/16/09 at 93). The significant disputed financial issues were valuing the family home, determining whether husband wasted community assets by making unauthorized withdrawals from retirement accounts and determining husband's income for purposes of calculating child support. Belatedly, husband also requested maintenance (RP 09/15/09 at 43).

¹ Although the court refers to Mr. Garrison's trial brief it appears it was never filed with the court clerk and does not appear on the docket.

Despite the relative simplicity of issues, trial proceedings were continuously delayed because of Mr. Garrison's behavior.

a) Pursuit of Irrelevant Topics

On numerous occasions, following objection or on its own volition, the court found questions by Mr. Garrison to be irrelevant. (Examples can be found at RP 09/16/09 at 33-35, 68-69, 107-111, 128-141, 165-67, 177-79, RP 09/17 at 21-28, 67-69, 85-86, 97-102, 112, RP 09/21/58-60.) On several occasions, having been told a question or line of questions was irrelevant, Mr. Garrison resumed examination by asking the same question (RP 09/16/09 at 68-69, RP 09/17/09 at 28, 67, 100).

The court noted entire lines of questioning pursued by Mr. Garrison were of little or no relevance. Thus Mr. Garrison spent 30 pages of transcript, more than an hour, asking his expert witness, Watkins, about general and neighborhood trends in real estate values before asking a question about the value of his home (RP 09/1709 at 153-183). Mr. Garrison's cross examination of his wife focused on several stipulated or irrelevant topics, including the exact level of her financial expertise (RP 09/16/09 at 107-124) , the wife's motives for getting a divorce (RP 09/16/09 at 128-131), Mr. Garrison's financial contributions to the community during the early years of marriage (RP 09/16/09 at 134-141, 177) and Mr. Garrison's contributions to chores around the home (RP 09/16/09 at 178-

79). The court attempted to guide Mr. Garrison back to questions relevant to parenting (RP 09/16/09 at 181) and concluded the day by noting husband's extended irrelevant questioning was "...spending a horrendous amount of money and we're making no progress" (RP 09/16/09 at 200-201). The next day husband resumed his cross-examination by focusing on conflict over the removal of his property from the family home a year before, which had not been subject to a motion for contempt of temporary orders. (RP 09/17/09 at 21-27, 31-34). Mr. Garrison defended by saying the issue was relevant "to me, her character and her respect for the orders of the court..." (RP 09/17/09 at 27). The court found the questioning irrelevant (RP 09/17/09 at 26-27).

b) Defiance of Legal Procedures

Mr. Garrison repeatedly ignored or misunderstood basic legal concepts leading to further delays. He persistently failed to use appropriate procedures even after repeated corrections from the court and opportunities to educate himself on basic procedures.

Mr. Garrison's unwillingness to lay a foundation for evidence, i.e. confirm a witness had knowledge of evidence before testifying regarding it, caused the most delay. Repeatedly, Mr. Garrison ignored objections on that basis, instead repeating arguments regarding relevance, requiring extended discussion (RP 09/17/09 at 39, 61, 103-04, 195-96). At one point the court

recessed for 10 minutes to allow Mr. Garrison to focus on what laying a foundation required (RP 09/17/09 at 105).

Mr. Garrison's recalcitrance regarding other legal rules also caused delay by leading to irrelevant questioning and requiring opposing counsel and court to interrupt. Thus Mr. Garrison repeatedly refused to learn the significance of RCW 26.09.191, and the implication of wife's failure to plead it (RP 09/16/09 at 203, RP 09/17/09 at 65). And he refused to grasp the problem of questioning a witness regarding privileged matters (RP 09/17/09 at 113-14, 121).

Mr. Garrison had the assistance of his brother, an attorney in Louisiana (RP 09/15/09 at 2-3). At times he received either direct help from opposing counsel, or greater lenience or judicial instruction than normal among attorneys, and from the first day was advised to learn trial procedures (RP 09/15/09 at 29-31, RP 09/16/09 at 70, 203-04, RP 09/17/09 at 131, 196-97, RP 09/21/09 at 80-81). At the same time, he was warned he would not be given special lenience with respect to the rules of procedure and the court would not instruct him on the law (RP 09/15/09 at 2, 31-32, RP 09/16/09 at 201). Mr. Garrison was instructed delays of trial were expensive (RP 09/15/09 at 31, RP 09/16/09 at 200-01, 09/17/09 at 105). Yet on several occasions, after being told questioning was incorrect, Mr.

Garrison returned to the same questions (RP 09/16/09 at 68-69, RP 09/17/09 at 28, 67, 100).

Mr. Garrison acknowledged the need to educate himself with respect to evidence rules and trial procedure (RP 09/17/09 at 125).

c) Delay of Trial

On several occasions, Mr. Garrison or his witnesses delayed trial simply by being late (RP 09/16/09 at 2, RP 09/17/09 at 153, RP 09/21/09 at 2, 55, 81). The last instance occurred while Mr. Garrison was on the phone prior to giving his closing statements and ignored the court's request he return to the trial (RP 09/17/09 at 81-83).²

d) Assorted Misbehavior

Mr. Garrison also engaged in other misbehavior during trial requiring additional delay and demonstrating intransigence. In initially describing his attorney brother, Mr. Garrison told the court the man was "acting as a paralegal". He was admonished by the court (RP 09/15/09 at 2-3). Later, the brother was observed providing advice to Mr. Garrison regarding possible objections, leading the court to admonish both persons (RP 09/17/09 at 41).

² The circumstances concerning the phone call are not in the record except for husband's own statements of a child emergency. However as noted by the court, the mother and her counsel were in the courtroom and not alarmed (RP 09/21/09 at 81-82).

Mr. Garrison also took opportunities to patronize both opposing counsel and the court. He taunted opposing counsel for not knowing how to conduct a proper cross-examination (RP 09/17/09 at 40-41)(following a successful objection for hearsay fed him by his brother). Referring to his attempts to elicit testimony that he had supported his wife during the marriage's early years Mr. Garrison told the court, "Let me confirm, Your Honor, that you have no interest in learning anything about that" (RP 09/16/09 at 137).

e) Delays Post-Trial

At the time of its oral decision, the court ordered a presentation date of October 16th. Ms. Garrison's counsel suggested she prepare final orders, provide them to husband on October 1 and have him respond by October 9, with reply by October 14 (RP 09/22/09 at 14). However, Mr. Garrison did not provide response until October 14 allowing wife's counsel little time for reply and requiring the court to address objections at length at presentation (RP 10/16/09 at 5-6). A second hearing was required October 23 to finish reviewing Mr. Garrison's objections. The court noted its frustration at the pace and stated this would be part of its decision on fees (RP 10/16/09 at 33).

During presentations, despite a career in finance, Mr. Garrison demonstrated he did not take the time to understand how an assets and

liabilities chart works (RP 10/16/09 at 32). He also attempted, for the first time, to introduce evidence a rug left in his house was separate property by providing a canceled check from 1993. This request required more discussion before counsel for Ms. Garrison simply agreed to accept husband's overall values for personal property (RP 10/23/09 at 32-35).

D. Findings of Fact and Conclusions of Law

The court's findings differ in one respect from the court's initial oral decision on September 22. At that time the court stated:

The Court, having looked at the statutory requirements for being an appraiser, and looking at the statutory prohibitions against a real estate broker sitting on the stand and making any legal—taking any legal position in terms of this—of a property, is really left with the valuation as presented by the appraiser and that value is \$700,000.

(RP 9/22/09 at 8). On October 23, the court clarified it considered the opinions of value provided by Mr. Garrison's witness before utilizing the appraisal instead: "...the Court heard the testimony of your evaluators and considered them" (RP 10/23/09 at 18). The findings state the court heard the broker's testimony (CP 853).

III. SUMMARY OF ARGUMENT

Substantial evidence supports the court's findings regarding the value of the family home. The court considered the testimony of a

licensed appraiser and a broker, even though the latter's opinion was inadmissible. Reliance on the appraiser's testimony was reasonable.

Mr. Garrison's brief abandoned any claim child support was in error. Regardless, substantial evidence supported imputing income to Mr. Garrison given testimony he did not work full time, instead spending the majority of his time in litigation. Imputing \$5,000/month was reasonable based on his salary while working part time, his financial declarations and previous work history. Mr. Garrison's substantial earning capacity supported denying him maintenance.

Finally, Mr. Garrison's behavior throughout the litigation was intransigent. Before trial he sought repeated delays, filed an invalid motion and used vindictive tactics. At trial and afterwards he wasted time by delay, irrelevant testimony, inappropriate objections, and refusal to abide by basic legal procedures. The court had good reason to award Ms. Garrison half of her attorney's fees.

IV. ARGUMENT

A. Where There is Substantial Evidence to Support the Trial Court's Findings of Fact, the Court of Appeals Must Affirm

Trial court decisions in dissolution proceedings are seldom changed on appeal. *In re Marriage of Stenshoel*, 72 Wash.App. 800, 803,

866 P.2d 635 (1993). The party who challenges a decision in a dissolution proceeding must demonstrate the trial court manifestly abused its discretion. *In re Marriage of Griffin*, 114 Wash.2d 772, 776, 791 P.2d 519 (1990). “A manifest abuse of discretion is a decision manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *In re Marriage of Thomas*, 63 Wash.App. 658, 660, 821 P.2d 1227 (1991) (quoting *In re Marriage of Tower*, 55 Wash.App. 697, 700, 780 P.2d 863 (1989), *review denied*, 114 Wash.2d 1002, 788 P.2d 1077 (1990)).

Appellate review of a trial court's findings of fact and conclusions of law for abuse of discretion is limited to determining whether the trial court's findings are supported by substantial evidence in the record and the conclusions of law supported by those findings. *Scott v. Trans-System, Inc.*, 148 Wash.2d 701, 64 P.3d 1, (2003).

B. Substantial Evidence Supports the Court’s Finding the Value of the Family Home Worth \$700,000

The most valuable asset for distribution between parties was the family home, located next to Innis Arden in Shoreline. After considering both parties’ evidence, the court found the value of the home to be \$700,000. Mr. Garrison now complains the valuation was in error

because the court failed to accept a higher value propounded by his witness.

The factfinder has great latitude in assessing expert opinion. When there is conflicting evidence on the value of an asset, the court may adopt the value asserted by either party or any value in between. Appellate courts disfavor weighing expert opinions. If a result is within the range of credible results than it will be upheld. *Marriage of Sedlock*, 69 Wn. App. 484, 491, 849 P.2d 1243 (1993).

1. The Finding the Home was Worth \$700,000 was Based on Substantive Evidence Provided by a Licensed Appraiser

Ms. Garrison introduced testimony by an experienced and licensed appraiser who performed two successive appraisals of the home and a market review. Chamberlin explained the value dropped from \$850,000 in December 2008 to \$700,000 in September 2009 because the earlier appraisal depended in part on comparables from May and June of 2008, prior to the recent housing bust. His August 2009 appraisal evaluated more recent sales.

Rather than simply depend on the August appraisal, Chamberlin went further by doing a quick review, immediately prior to trial, to determine whether upscale Seattle area neighborhoods were rebounding from their recent crash in values. By reviewing sales histories of homes in

Magnolia, a neighborhood with homes even more expensive than those near Innis Arden, Chamberlin could confirm prices were then stable, after the decline.

In short, Chamberlin's August 2009 appraisal went beyond normal requirements. Chamberlin was familiar with the home and tracked its change in values over eight months, while also doing a last minute double check of recent price trends in Seattle. It is a substantial basis for the court's finding.

Mr. Garrison's attack on Chamberlin consists of disagreements regarding the significance of various appraisal factors. Mr. Garrison contends the comparables used by Chamberlin for his appraisal were inadequate, because too far away, or involving houses of lesser quality. But these are arguments regarding the weight of evidence. Chamberlin visited his comparable sites and was familiar with them (RP 09/16/09 at 51-55). Mr. Garrison also claims the appraiser erred in characterizing the family home, e.g. not describing the basement as a "daylight" basement. But Chamberlin was willing to label it a "daylight" basement (RP 09/16/09 at 65) and there is no question Chamberlin was actually in the basement and considered it in valuing the home (RP 09/16/09 at 26-27).

Husband also now argues Chamberlin erred by setting his screen for comparables too low, only up to \$850,000. Husband failed to raise this

as an error or elicited testimony it was a mistake during trial, despite 42 pages of cross-examination of Chamberlin, 79 pages of direct and redirect examination of Watkins, and his own testimony or closing argument (RP 09/16/09 27-69, RP 09/17/09 at 153-217, RP 09/21/09 13-26, 48-54, 56-79, 90-94). He should not be able to make a new argument on appeal. RAP 2.5(a). Setting a \$850,000 screen for the second appraisal was, in any case, a reasonable decision by the appraiser given his valuation of the home at \$850,000 in the first appraisal and an additional eight months of a falling real estate market (RP 09/16/09 at 18-19).

Finally, husband misunderstands the significance of Chamberlin's last minute review of recent sales of Magnolia homes. The point was not to use them as direct comparables for the family home in Shoreline, i.e. as a third appraisal. Instead, Mr. Garrison wished to double check whether broader sales trends in Seattle and nearby changed appreciably since the August appraisal. They had not.

The choice of comparables and procedures for checking conclusions are professional judgments and husband provided no evidence Chamberlin's decisions were outside the range of an appraiser's discretion. Mr. Garrison's long cross-examination of Chamberlin gave him an opportunity to make his arguments to the court (RP 09/16/09 at 27-69). Determining the relative similarity of comparable sales is a classic

exercise of discretion by an expert, reviewed by trial court, and not to be set aside on appeal based on one party's disagreement with the result.

Marriage of Sedlock at 491.

2. Watkins' Competing Opinion Testimony was Both Inadmissible and Flawed

In addition to attacking Chamberlin, Mr. Garrison claims the trial court committed legal error and abused its discretion by not using a price opinion provided by his real estate broker, Watkins.

Watkins' opinion was inadmissible under RCW 18.140.020. However, the issue is moot because the court did consider Watkins' testimony as made clear in the court's statements during presentation and its findings of fact. The court's decision to use Chamberlin's appraisal instead was an exercise of its discretion. The decision was also a reasonable one, given the weaknesses of Watkins' methods and his inherent bias towards his once and present client.

a. Watkins' Testimony was Inadmissible Because Watkins Failed to Testify He was Providing an Opinion not an Appraisal

RCW 18.140.020 limits admission of price opinions by real estate brokers. It states:

This chapter does not preclude an individual person licensed by the state of Washington as a real estate broker or as a real estate salesperson from issuing a brokers price opinion. **However, if the brokers price opinion is**

written, or given as evidence in any legal proceeding, and is issued to a person who is not a prospective seller, buyer, lessor, or lessee as the only intended user, then the brokers price opinion shall contain a statement, in an obvious location within the written document or specifically and affirmatively in spoken testimony, that substantially states: "This brokers price opinion is not an appraisal as defined in chapter 18.140 RCW and has been prepared by a real estate licensee, licensed under chapter 18.85 RCW, who (is/is not) also state-certified or state-licensed as a real estate appraiser under chapter 18.140 RCW." However, the brokers price opinion issued under this subsection may not be used as an appraisal in conjunction with a federally related transaction.

(emphasis added).

The law thus allows a broker's price opinion to be evidence. But the broker must either note on the price opinion itself it is not an appraisal or make the same point "specifically and affirmatively in spoken testimony".

Here, Watkins admitted his price opinion carried no disclaimer (RP 09/21/09 at 30). And despite repeated questions, he refused to state his opinion was not an appraisal. Instead, Watkins said it was an appraisal and did not understand any question asking otherwise. (RP 09/21/09 at 27-30).

Mr. Garrison emphasizes Watkins read RCW 18.140.020 out loud. He fails to note that before reading Watkins stated he was familiar with the statute but denied any difference between an opinion and appraisal and after reading did not change his testimony. The statute requires a "specific

and affirmative” statement a broker doesn’t consider his or her opinion an appraisal. A compelled recital of statutory text is insufficient, particularly where it is clear the broker actually disagrees.

Mr. Garrison also states no disclaimer was needed because the price opinion was not directed at a seller or buyer. Mr. Garrison gets the statute backwards. A disclaimer is not required when the opinion is directed only at a buyer or seller (as might happen in a normal commercial transaction). It is required when, as here, it is issued to other parties, such as a litigant or to the court.

b. Regardless, the Court Considered the Broker’s Opinion

Mr. Garrison’s claim of legal error is moot. The trial court did consider Watkins’ opinion as stated at the presentation (RP 10/23/09 at 18), subsequent to its oral opinion. A court’s oral opinion is not its final decree. It is only a prediction and guideline to the final decree. Courts are cautioned against relying on a trial court’s oral opinion. *State v. Michielli*, 132 Wn. 2d 229, 242, 937 P.2d 587 (1997). The court’s words on September 22, to the extent inconsistent with its later language or findings, are not conclusive. The findings, as clarified by the court’s statements as they were finalized, confirms the broker’s testimony was considered.

**c. The Court Had Good Reason to Give Watkin's
Testimony Little Weight**

Watkins' opinion was of little value in any case. He was not a neutral expert. He was the Garrisons' real estate broker in 1998 when they bought their house and continued his relationship with Mr. Garrison prior to trial, helping him to find a lease. Moreover, as a long time broker working in the Shoreline area, Watkins had an institutional interest in insisting the real estate market is strong. At points his testimony consisted of hearty agreements to Mr. Garrison's leading questions about the excellence of the family home, requiring the court to interrupt (RP 09/17/09 at 190-91). At one point he agreed his job was to market houses in their best light (RP 09/21/09 at 42).

Watkins's method for determining value was suspect. He counted the square footage of the family home and multiplied it by the median price/square foot of sales in the area. Median price per square foot is a broad average that does not necessarily take into account other factors particular to a home, for example view and lot size. Cross examination demonstrated one defect of this method: Watkins' calculation of square footage required counting all of the area in a basement only partly open to daylight as the equivalent of the upstairs. He agreed this implied the 800

square foot basement was independently worth \$213,600 (RP 09/21/09 at 32)

Watkins' comparables were not relevant. Several had larger lots than the parties' home, or two stories or better view positions, i.e. on a bluff with no other intervening properties to obstruct or hinder the view. Testimony showed these to be significant differences. Chamberlin testified a bluff position inside Innis Arden could be independently worth \$200,-300,000 (RP 09/16/09 at 18). And on redirect, Watkins resisted Mr. Garrison's attempts to elicit testimony that lot size was not a significant variable, instead saying the privacy provided was "priceless" (RP 09/21/09 at 50-51).

Mr. Garrison's claim the family home must be worth a million is mostly an argument with other people's tastes. He believes a nice view of Puget Sound over the roofline of an intervening house should be just as good as a view of the Sound from a bluff. He argues a basement with some daylight access is just as good as a whole lower floor, a 15,000 sf lot is just as valuable as a 30,000 sf lot with steep slopes, and a house right next to Innis Arden is just as valuable as a house inside Innis Arden.

Because he believes all this to be true, Mr. Garrison claims his home should be priced just like two-story homes in Innis Arden with bluff positions on 30,000 sf lots. However, the only licensed real estate

appraiser at the trial, and sometimes Mr. Garrison's own witness, disagreed. The court did not err by failing to give weight to Mr. Garrison's witness and his arguments.

C. The Court did not Abuse its Discretion by Excluding Cumulative Evidence

Mr. Garrison claims the court erred by refusing to admit evidence from an additional real estate broker proffered by Mr. Garrison. A court has discretion to reject cumulative testimony. ER 403, *In re Marriage of Irwin*, 64 Wn. App. 38, 822 P.2d 797 (1992) (no abuse of discretion where wife does not claim trial court failed to receive vital fact), *See In re Marriage of Talley v. Fournier*, 3 Wn. App. 808, 819, 479 P.2d 96 (1970)(court has discretion over matters concerning conduct of court).

Husband's additional witness would have discussed local real estate market conditions and market trends (RP 09/21/09 at 3). Watkins discussed neighborhood conditions and general market trends for 1 hour and 15 minutes the previous trial day (RP 09/21/09 at 4, RP 09/17/09 at 158-185). The proposed additional evidence was cumulative. Mr. Garrison does not claim vital information was missed.

**D. Mr. Garrison's Claim the Court Acted Inconsistently
Involves Speculation and Assertions about Evidence not in
the Record**

Separately, Mr. Garrison raises an argument not presented in the trial court: the court's valuation of the family home is inconsistent with the decree's requirement of a cash transfer to Mr. Garrison. The argument is both speculative and requires new evidence not presented at trial.

Mr. Garrison speculates wife's only means of providing him with \$54,906 within 90 days was through refinance of the home. The decree allows a refinance but does not require it. He then asserts as fact, but without citation, that the refinance would have to be in the amount of \$639,000 to cover the existing and new debt **and** that the loan to value ratio must be in the range of 75-80%. His conclusion is the court's decree is inconsistent because the house would have to be worth more than \$700,000 to support such a refinance.

This court is not required to speculate how Ms. Garrison arranged the cash transfer to her husband or calculate reasonable loan fees or loan to value ratios. If Mr. Garrison believed the court's decree was inconsistent, he could have raised the matter at presentation or on reconsideration. He did not.

An argument attacking the details of the decree is, in any case, irrelevant to the value of the family home. The evidence regarding that value was provided at trial by Chamberlin and Watkins.

E. Although Mr. Garrison Abandoned His Argument Against the Child Support Order, Substantial Evidence Nevertheless Supports the Court's Imputing Income

1. Mr. Garrison Abandoned his Claim the Child Support Order is Incorrect

In his Assignments of Error, Mr. Garrison states the trial court erred by requiring he pay child support and finding he is voluntarily underemployed and should be imputed an income of \$5,000/month. However, neither his Issues Pertaining to Assignments of Error nor his brief further references the claimed errors. The only reference is in a section on maintenance where Mr. Garrison simply argues it was error to impute to him an income of \$5,000/month. This section does note imputed income is not relevant to maintenance but to child support. (Appellant's brief at 19). The section does not, however, independently argue against child support.

Because Mr. Garrison does not support his claim the child support order is in error, his assignment of error on that point is abandoned. *State v. Motherwell*, 114 Wn. 2d 353, 358 n. 3, 788 P.2d 1066 (1990).

2. Substantial Evidence Supports the Court's Decision to Impute Income

If this court does address child support, there is substantial evidence for imputing Mr. Garrison an income of \$5,000/month and setting child support accordingly. The court's finding husband was voluntarily underemployed and not working full time at time of trial was supported by testimony of husband's employer. The figure of \$5,000/month was supported by Mr. Garrison's income history, financial declarations, other declarations, and testimony at trial.

The court's authority for imputing income for purposes of child support is RCW 26.19.071(6) which states:

Imputation of income. The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

- (a) Full-time earnings at the current rate of pay;
- (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, general assistance-unemployable, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

The court thus makes a two part inquiry: 1) whether Mr. Garrison is voluntarily underemployed, and 2) whether he is, nonetheless, gainfully employed full time. The court may impute income if Mr. Garrison is voluntarily underemployed and not working full time, based on what his wages would be if working full time and taking into account historical earnings. *Dewberry v. George*, 115 Wn. App. 351, 366, 62 P.3d 525 (2003)(Income could be imputed to father based on previous earnings in sales and marketing who worked part time as UPS clerk), *see also Marriage of Didier*, 134 Wn. App. 490, 497, 140 P.3d 607 (2006)(Income may be imputed if parent is not gainfully employed full time and voluntarily unemployed).

In this case, Mr. Garrison is highly educated and has a significant earning capacity. His work history showed high earnings through 2001,

up to \$175,000/year, a declining income through 2007, and a modest income working for Stonebridge Securities since 2007. He takes pride in having taken a leading role in reorganizing Evergreen school finances. (RP 09/21/09 at 64-65). He is a key employee at Stonebridge Securities and works for them exclusively, never having sought permission to work elsewhere, or for other brokers. In short, to the extent he is currently underemployed, earning low wages, it is a voluntary choice.

Mr. Garrison claims he is working hard and his current poor income is because of the country's current financial troubles, such as Lehman Brothers' bankruptcy. However, there is substantial evidence to support finding Mr. Garrison's low income at trial was caused by his own failure to spend significant time at his work, thus confirming both that he is underemployed and not working full time. When asked if Mr. Garrison was working "full-time", his boss Mr. Hendrickson replied Mr. Garrison devoted most of his time to the divorce, compromising his ability to focus on work (RP 09/17/09 at 59-60, 78-79). The employer estimated Mr. Garrison was present only spent 25% of the time on work (RP 09/17/09 at 61).

It does not matter why Mr. Garrison chose to spend his time in 2008-09 litigating his divorce instead of working. *Cf. Marriage of Pollard*, 99 Wn. App. 48, 54, 991 P.2d 1201 (2000) (Mother's laudable decision to

stay home and take care of children no reason not to impute income). Mr. Garrison's choice to work on his divorce instead of the brokerage was a voluntary decision to prioritize his time. Notably, during nearly all this time, Mr. Garrison was represented by counsel (CP 132, 597).

Husband's financial background, training and experience show he is capable of earning a substantial wage. His voluntary decision to stick with a position that does not earn high wages shows voluntary underemployment. His unwillingness to spend significant time at his actual work demonstrates both voluntary underemployment and a failure to work full time.

The income imputed is also supported by substantial evidence. Mr. Hendrickson stated both that Mr. Garrison's wages were negatively affected by Mr. Garrison's diversion by divorce proceedings and he was only 25% there. Thus evidence supported imputing an increase of actual wages at a full time basis.

In addition, there was the evidence of Mr. Garrison's earning history and his own estimate of his earning capacity. He previously earned up to \$175,000/year. Mr. Garrison wrote two financial declarations. Both stated anticipated income of \$5,000/month (CP 78-84, 286-91). Mr. Garrison wrote a declaration before trial stating the \$5,000/month income depended on development deals then in the works

(CP 590-91). At trial, his employer testified he anticipated the firm doing better in the future and Mr. Garrison would share in the future success. The court had a substantial basis to find Mr. Garrison could make more than his current earnings and \$5,000/month was reasonable amount, husband's own testimony and his previous history of high earnings.

Notably, the court did take into account Mr. Garrison's then low income by delaying for six months imposition of the full amount of the child support transfer, allowing him time to transition to full employment. There is thus no question the court was balancing the relevant factors.

F. Substantial Evidence Supports Denying Maintenance

The trial court denied Mr. Garrison's belated request for maintenance, citing his earning capacity.³ Substantial evidence supports the denial.

RCW 26.09.090(1) lists the factors relevant to maintenance:

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

³ The pretrial order stated maintenance would not be an issue, and this should have controlled at trial absent a finding of manifest injustice. CR 16(b). Ms. Garrison's counsel objected to the claim for maintenance because of the violation of local rule (RP 09/21/09 at 88) however the court found against maintenance on other grounds. Ms. Garrison renews her objection to the request for maintenance on this ground.

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

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

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

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

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

In awarding maintenance, the court will consider both the parties' immediate post dissolution economic circumstances. *In re Marriage of Sheffer*, 60 Wn. App. 51, 802 P.2d 817 (1990). A key issue is the earning capacities of the parties. *Id.* at 57. *See also Brewer v. Brewer*, 137 Wn.2d 756, 774, 976 P.2d 102 (1999) (Court may consider future earnings when determining propriety and amount of maintenance award). Where one party has been awarded assets from the marriage, an award of maintenance is not required. *See Mansour v. Mansour*, 126 Wn. App. 1, 16, 106 P.3d 768 (2004).

RCW 26.09.090 does not require the court to make findings regarding voluntary underemployment, unlike with child support.⁴ Nor must the court make specific findings pursuant to every factor listed in RCW 26.09.090 if it is clear it considered the relevant factors, particularly the economic circumstances of parties. *Mansour* at 16.

Here the court noted Mr. Garrison's many years of education, earning history and his potential to make a significant income in the future, once he stops distracting himself with his divorce. The court did not leave Mr. Garrison in difficult circumstances. It awarded him 50% of community assets, including an immediate cash transfer payment, and deducted \$536/month from his child support for six months.

At trial Mr. Garrison requested five years of maintenance at \$4,000/month and now apparently seeks indefinite maintenance coupled with quarterly requirements parties report income to each other. (RP 09/21/09 at 76, Appellant's Brief at 30, n. 8). In short he wants to be guaranteed \$48,000/year and a chance to argue with his wife about money every three months. To make this argument he has to deny his own previous testimony regarding his earning capacity.

Mr. Garrison repeatedly stated prior to trial, under penalty of perjury, he expected to make \$5,000/month, including his declaration of

⁴ As previously stated, Mr. Garrison abandoned his argument with respect to child support.

July 9, 2009 in which he stated he had pending projects (CP 78-84, 380-86, 590-91). In his brief, he describes himself as “successful and bright” (Appellant’s Brief at 15) and testified to his responsibility for chairing Evergreen School’s investment committee (RP 09/21/09 at 64-65).

Mr. Garrison provided no evidence the securities industry would be permanently in crisis. To the contrary, his employer testified the industry had its ups and downs, the up period provided “very nice highs” and he was optimistic for the future (RP 09/17/09 at 59, 89). He also testified Mr. Garrison would prosper if Stonebridge prospered and worked on many projects (RP 9/17/09 at 58, 76). Thus, the court had substantial evidence to decide Mr. Garrison’s income would increase. Given a key issue in deciding maintenance is the earning “capacity” or potential of a spouse, the court’s look to the future was appropriate. *See Marriage of Sheffer*.

Meanwhile, Ms. Garrison is responsible for the care of two children and also for a significant cash transfer to Mr. Garrison. For at least six months she receives reduced child support. In balancing the economic considerations of two parties, the court did not err by refusing maintenance. The trial court’s discretion in this area is broad. The only limitation on the amount and duration of maintenance under RCW

26.09.090 is that, in light of the relevant factors, the award must be just. *In re Marriage of Luckey*, 73 Wash.App. 201, 209, 868 P.2d 189 (1994).

G. The Court Did not Find Marital Fault by Issuing Rulings Mr. Garrison Disagrees With

Mr. Garrison claims the court found him at fault, contrary to the no-fault status of divorce in Washington. He points to no specific findings or statement by the court. Instead he combines the court's separate findings regarding intransigence, maintenance, the exclusion of witnesses, and the value of the family home into an alleged accusation of blame. Mr. Garrison likens being denied maintenance as being called a "shirker", and being warned of the risks of litigating pro se as a veiled threat.

The several findings he objects to are supported by substantial evidence, as otherwise discussed. The findings do not include explicit or implicit findings of marital fault, disfavored by RCW 26.09.080 and *Marriage of Muhammad*, 152 Wn. 2d 795, 108 P.3d 770 (2005). A finding of "marital fault" under both the statute and *Muhammad* refer to a division of property influenced by one party's behavior toward the other. Thus *Muhammad* overturned a trial court which divided property disproportionately after criticizing a wife's decision to seek a protection order. The instances noted by Mr. Garrison of the court's disagreement do

not concern division of property. The disagreement with respect to the house concerns its value, not its distribution.

The court found Mr. Garrison intransigent because of behavior while litigating. The finding does not reference marital fault, i.e. placing blame for behavior between spouses prior to divorce and making blame a factor influencing the decree.

H. Substantial Evidence Supports Award of Fees for Intransigence

Whether an award of attorney fees should be allowed in a dissolution proceeding, and the amount thereof, is a matter within the sound discretion of the trial court. *In re Marriage of Thomas*, 63 Wn.App. 658, 671, 821 P.2d 1227 (1991). The trial court awarded Ms. Garrison half her attorney's fees because of Mr. Garrison's litigation tactics. Before trial, he delayed it unreasonably and caused expense by filing an invalid motion. He wasted time at trial by refusing to follow evidentiary rules regarding relevance and general norms of court behavior. After trial, he delayed final entry of orders. The court endured 6 days of husband's delay and misbehavior and had grounds to award fees for intransigence.

Intransigence is a recognized equitable ground for an award of attorney fees. *In re Marriage of Greenlee*, 65 Wash.App. 703, 708, 829 P.2d 1120 (1992). Intransigence exists where a party has created

unnecessary delay and obstruction, or makes the trial unduly difficult, files unnecessary motions, fails to cooperate with counsel or participates in other activities that make trial unduly difficult or increase legal costs unnecessarily. E.g. *Greenlee* at 708, 829 P.2d 1120, *In re Marriage of Foley*, 84 Wash.App. 839, 846, 930 P.2d 929 (1997); *In re Marriage of Crosetto*, 82 Wash.App. 545, 564, 918 P.2d 954 (1996).

In assessing behavior, pro se litigants are held to the same rules of procedure and substantive law as attorneys. *Westberg v. All-Purpose Structures, Inc.*, 86 Wash.App. 405, 411, 936 P.2d 1175 (1997).

A fee award will be affirmed so long as the award is made with a consideration of the relevant factors and reasons sufficient for review are given for the amount awarded. *Absher Constr. Co. v. Kent Sch. Dist.* 415, 79 Wn.App. 841, 848, 917 P.2d 1086, 905 P.2d 1229 (1995). Here, the court stated:

The Court orders Husband to pay half of Wife's attorney's fees due to his intransigence in this matter. Husband unnecessarily prolonged this litigation by failing to abide by the case schedule and court rules, and by filing unnecessary motions. Husband's conduct caused this litigation to be lengthier and more costly than necessary. Wife incurred \$49,075 in attorney's fees in this matter. These fees are reasonable.

(CP 855). This finding is supported by the facts.

1. Before Trial Mr. Garrison Caused Delay and Confusion

Mr. Garrison twice delayed his trial in the course of delaying his domestic violence trial six times. When delay made a parenting evaluation impractical, he sought an additional delay to accommodate a new found eagerness for an evaluation.

Mr. Garrison's response to wife's motion to rescind the evaluator showed his principle concern was blaming wife for her perfidy and treachery, not the children's welfare. When a commissioner granted wife's motion Mr. Garrison could not organize sufficiently to meet a 10 day deadline for reconsideration or revision but, undeterred, filed for exactly the same relief with the court, contrary to local rules forbidding successive motions. KCLR 7(b)(7) .

Despite the time granted by delays Mr. Garrison still made last minute reversals of position prior to trial that increased the difficulty for opposing parties and court. At the pre-trial conference his attorney agreed Mr. Garrison would not be seeking maintenance. By time of trial, Mr. Garrison changed his mind and submitted proposed orders demanding maintenance. His trial brief agreed to wife having primary custody. He changed his mind on the first day of trial and changed his mind again later.

Mr. Garrison emphasizes parties at the pretrial status conference estimated the trial would take 3-4 days, and it took four (along with an

additional two for presentation). However, before and during trial, potentially contentious issues were resolved. Ms. Garrison did not assert RCW 26.09.191 factors required limiting Mr. Garrison's decision-making. The parties substantially agreed to the existing residential schedule. Ms. Garrison abandoned a request for a 60-40 split, seeking only 50-50. Regardless, the trial still went four days.

Notably, at the time of the pretrial order, the trial judge had reviewed Mr. Garrison's failed motion seeking \$60,000, a parenting evaluator and a trial delay. Consequently, the court and counsel already had a chance to estimate Mr. Garrison's focus on his wife's perfidy might require additional time.

Mr. Garrison caused more trouble on the brink of trial. He threatened to submit a copy of a settlement agreement between Ms. Garrison and her previous employer, Michael Bloomberg which Ms. Garrison was contractually forbidden from discussing, making the commenting on it or having it in evidence legally perilous. Because funds derived from the settlement became commingled with community and had all been spent the information was irrelevant but his wife was still forced by her legal obligations to Bloomberg to file a motion in limine. Rather than provide a response, Mr. Garrison waited to trial to make his argument for relevance, again delaying trial.

In short, before trial, Mr. Garrison dragged his feet, flouted court rules and utilized hostile legal tactics and vocabulary.

2. Mr. Garrison's Obsessions, Recalcitrance and Foot-Dragging Extended Trial and Post-Trial

The trial required four days mostly because Mr. Garrison wasted everyone's time. Repeatedly the court was forced to redirect his questioning which veered off to irrelevant topics, such as his financial contributions during the early years of marriage or financial trends in the securities industry in 2001. Frequently Mr. Garrison would ignore the court's rulings and resume irrelevant lines of questioning, a classic type of intransigence.

Mr. Garrison failed to prepare himself on trial procedures before or during trial despite three weeks preparation as pro se. Thus after repeated corrections Mr. Garrison still professed ignorance of "laying a foundation", leading to extended colloquies and at one point a 10 minute recess for him to educate himself.

Mr. Garrison's misbehavior also wasted time. He implied the attorney with him was a paralegal and later took advice at the table from the attorney, requiring redirection on each occasion. And on several occasions Mr. Garrison delayed trial simply by being late. On the last day,

while the court waited, Mr. Garrison was on his cell phone and repeatedly brushed off the court's attempts to get his attention.

After trial Mr. Garrison delayed responding to draft final documents requiring two separate hearings before the court to work through his objections. His legal recalcitrance continued. At one point attempted to introduce new evidence, a 16 year old canceled check, to prove a carpet was separate.

Mr. Garrison is not stupid. He has a career in a highly demanding industry and was lauded by his employer for his understanding. He had the assistance of an attorney and the help of a court that bent over backwards attempting to guide him towards proper procedures.

Mr. Garrison's behavior before, during and after trial delayed and obstructed proceedings, requiring unnecessary expenditures by Ms. Garrison. Mr. Garrison's overarching concern was to counter any imputation of blame, both generally for the divorce or specifically regarding the assault conviction. He saw the divorce trial as a vehicle for redress. Regarding the assault conviction he stated "I will spend whatever money I need to, to clear my name for something that I did not do" (RP 09/21/09 at 74). He did not have a right to also spend Ms. Garrison's money while pursuing redemption.

Mr. Garrison also claims the court failed to segregate fees. (See Appellant's Brief at 15) Mr. Garrison did not present this issue to the trial court, instead claiming no intransigence, (RP 10/23/09 at 21-22) and therefore, this cannot be raised for the first time on appeal. RAP 2.5(a); *In re Marriage of Studebaker*, 36 Wn.App. 815, 818, 677 P.2d 789 (1984). Regardless, where the record demonstrates that intransigence permeates the entire proceedings, it is not necessary to segregate fees. *Burrill v. Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993 (2002). Here a review of the full record demonstrates how husband's behavior wasted time at every step.

The court is not required to make specific findings with respect to how much time was wasted. The court was present at motion hearings and trial and determined his behavior "throughout" was intransigent, that \$49,075 was a reasonable attorney's fee and husband should pay half, after hearing argument from husband that the amount was unreasonable. (RP 10/23/09 at 22). Notably, the fee referenced only work done through trial and did not include the additional work done by wife's counsel after trial to present final orders.

I. Mr. Garrison Should Pay Attorney's Fees on Appeal

This court may award fees on appeal if that appeal is frivolous. *Harrington v. Pailthorp*, 67 Wn. App. 901, 841 P.2d 1258 (1992). Mr. Garrison's appeal is frivolous. The standard of review with respect to trial court findings of property value is very clear, and he did not provide any reason to suggest the court abused its discretion. He failed to provide any argument stating why child support was in error. His attempt to bring up new evidence on appeal or claim there was a finding of marital fault were both completely baseless. Ms. Garrison should not have to pay to address Mr. Garrison's many frivolous arguments.

VI. CONCLUSION

This court should not overturn the reasoned judgment of a court that spent four days hearing both spouses explain their financial circumstances. The court's decisions to rely on the appraiser's testimony, not award maintenance, and find intransigence were all supported by the record.

July 20, 2010

Respectfully submitted,

 #40959
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Attorney for Respondent

COURT OF APPEALS DIVISION I OF THE STATE
OF WASHINGTON

PETER GARRISON,

Appellant,

and

SEKIKO SAKAI GARRISON,

Respondent.

COA #64514-5-I

**DECLARATION OF
SERVICE**

I hereby declare under penalty of perjury under the laws of the State of Washington that on the day of July 20, 2009, I caused a messenger with ABC Legal Services to personally deliver a copy of the Respondent's Brief, Cause No. **64514-5-I**, on behalf of respondent, Sekiko Garrison, to the following person:

Cleveland Stockmeyer, CLEVELAND STOCKMEYER PLLC,
8056 Sunnyside Avenue N., Seattle, WA 98103

Signed at Seattle, Washington on July 20, 2010.



Katie E. Bos
Legal Assistant, Stella L. Pitts & Associates

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