

06463-8

66463-8

NO. 66463-8

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

MICHAEL TIPPIE,

Appellant,

v.

MARY WILSON,

Respondent.

BRIEF OF RESPONDENT

Mary Wilson
 Pro Se
 WSBA No. 19534
 13318 31st NE
 Seattle, WA 98125
 (206) 595-5903

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I. INTRODUCTION

Mr. Tippie appealed the November 5, 2010 Snohomish County Superior Court Order affirming the Commissioner's Enforcement of the Divorce Decree, CR 70 Powers, and Contempt of Court under RCW Chapter 26.09 and RCW Chapter 7.21.

The Superior Court's ruling is reviewed by this Court for abuse of discretion. The Superior Court's ruling is supported by substantial evidence and findings of fact, and the ruling is well-grounded in law.

Mr. Tippie's Brief of Appellant ignores the evidence and mischaracterizes the imposed purge conditions and decision of the Court below. This Court should affirm the ruling below in full, and award Ms. Wilson attorney fees for her work in superior court and this Court.

II. COUNTERSTATEMENT OF THE ISSUES

1. Are the remedies granted by the Superior Court of contempt, civil penalty, CR 70 authority, and restrainers the proper options to enforce the dissolution decree under equity, statute, and case law?
2. Does the evidence establish that Mr. Tippie was able, but willfully refused to comply with the decree at the time it was issued and able to comply with the Commissioner's orders when they were issued two years later?

3. Is Mr. Tippie's bad faith established by his refusal to perform acts clearly stated by the Commissioner, who provided him with adequate steps to purge contempt?
4. Did the Commissioner reasonably exercise her discretion, and are her findings and orders reasonable and based on valid grounds?
5. Does Mr. Tippie's conversion and subsequent failure to correct the conversion provide additional grounds to support the Superior Court rulings?
6. Should Mr. Tippie's requests based on his filing for bankruptcy in federal court not be considered because they rely on evidence outside of the record and have no basis in law?

III. COUNTERSTATEMENT OF THE CASE

After giving Mr. Tippie several opportunities to remedy his failure to comply with the decree of dissolution, the trial court finally found the husband in contempt. In doing so, the trial court considered and rejected Mr. Tippie's claims that he lacked the ability to comply with the decree of dissolution, finding that "there's willful failure to take steps reasonable to comply with the decree," that any steps were taken only when Mr. Tippie's "back is against the wall," that "there continues to be substantial

reluctance to be pro-active [by Mr. Tippie] in taking the steps necessary [to comply with the decree],” and that there has been a “knowing and willful failure [by Mr. Tippie in] dealing with the decree.” RP (10/28/2010) at 13, 14, 15. It is undisputed that Mr. Tippie failed to comply with the decree of dissolution, and there is substantial evidence to support the trial court’s determination that he had the ability to comply with the decree.

A. Divorce in 2008

In March 2008, Michael Tippie filed for divorce from Mary Wilson. They had a mortgage on their family home with Chase and a line of credit with Flagstar Bank. In July 2008, without informing her, he removed approximately \$87,000.00 from their Flagstar line of credit, put it into his own personal account and changed the mailing address with Flagstar. CP at 235-238, 313. Ms. Wilson was not aware of the removal until months later. CP at 295-296, 313 In August 2008, he moved out of the family home, several months after their agreed date of his departure. CP at 294.

When the divorce was initiated, Mr. Tippie informed Ms. Wilson that the process would be amicable if Ms. Wilson agreed to acknowledge him as a legal father to her daughter, Julia Wilson. CP at 312-313. She did

not do so. He later told her several times that he would “break” her financially. CP at 126.

The court issued a dissolution decree in December 2008. CP at 139. The court was informed about Mr. Tippie’s removal of the money and incorporated the money into the division of property into a fifty-fifty division of property, with both parties retaining their individual debts. CP at 148.

Mr. Tippie was awarded the home that his own appraiser valued at \$550,000.00. CP at 146, 295. The dissolution order stated that Ms. Wilson was to quit claim the title of the home, which she did in January 2009, and Mr. Tippie was to make a good faith effort to take Ms. Wilson’s name off the two mortgages and to hold her harmless for any expenses resulting from the mortgages. CP at 142-143. He was also ordered to pay Ms. Wilson to equalize the disparity in their respective awards of community property. CP at 140, 146.

At the time of the dissolution decree, he was employed at a \$160,000.00 a year job and had just received \$25,000.00 in an insurance settlement. CP at 85.

B. Post-divorce Period Through September 2010 Motion to Enforce

Ms. Wilson inquired with Mr. Tippie several times in 2009 as to whether he was making efforts to refinance the mortgages. CP at 86. He responded that a more careful reading of the decree would reveal that he was not obligated to take a mortgage that was too high, and therefore, he did not have to release her. CP at 86. Ms. Wilson contacted the mortgage companies regarding short sale and provided the necessary forms for Mr. Tippie to refinance or negotiate partial payments, to no avail. RP (9/23/10) at 15; CP at 86-88.

Mr. Tippie's last payment on both mortgages was January 2010. CP at 79, 87. He continued to live in the house with his current wife and daughters until November 2010. CP at 18. He had listed the house at \$559,000.00 in March 2010. CP at 87. He later lowered it slightly, but there was little noticeable sales activity, as evidenced by the routinely empty flyer box and no noticeable open houses. CP at 87.

This left Ms. Wilson with two mortgages, yet no title or use of the family home. CP at 88-89. She received numerous calls from the mortgage companies, lost her long-time good credit rating and her own separate line of credit, and suffered related expenses. CP at 88-89. In the meantime in 2009, Mr. Tippie purchased a late model Ford, traveled

extensively, pursued another case against Ms. Wilson in superior court and the Court of Appeals, and fought a protection order obtained by Ms. Wilson to curtail his disruptive visits to her daughter's school and church. CP at 88.

After contact from Ms. Wilson's attorney, Mr. Tippie produced copies of e-mails and documents to demonstrate his efforts to refinance. CP at 86-87. They revealed a vague discussion of credit and how to obtain good rates, as well as a declined application for credit that had a checked box next to "insufficient credit file". CP at 86-87.

C. September 2010 Motion to Enforce the Decree and Contempt of Court, Three Hearings, and Superior Court Review

Ms. Wilson brought a Motion to Enforce the Decree, Restrainers, Contempt, and Other Relief in September 2010 that resulted in three hearings with the Commissioner in Snohomish County Superior Court. Ms. Wilson asked the Commissioner for Civil Rule 70 authority to terminate the existing sales agreement, initiate a short sale of the family home, and sell Mr. Tippie's cabin and musical instruments to protect her from the line of credit debt and other deficiencies that were caused by Mr. Tippie's actions. CP at 123-125. She also asked the court to order Mr. Tippie to reduce the Flagstar line of credit debt, restrain from damaging his assets, and to produce accounting of his childrens', Monika and Elliot,

GET accounts, as well as, arrange for the transfer of stock and stock options. CP at 123-125.

The **first hearing** was on September 23, 2010. In the course of the litigation, Ms. Wilson learned that Mr. Tippie withdrew funds from his own son's GET account, RP (9/23/10) at 30, and had a lien on his cabin for money he had borrowed from an old girlfriend. RP (9/23/10) at 46-48. The Commissioner put restraints on his assets. RP (9/23/10) at 43, 45, 46-48. The Commissioner required documentation of the GET transactions and that he cooperate in the initiation of a short sale. CP at 35. She also ordered that the funds he had removed from his son's GET account for his step-daughter, Natacha Butler-Gauthier, be transferred back to his son's account. CP at 36. The Commissioner ordered Mr. Tippie to reveal his assets. He claimed that he sold his piano to an aunt and his 2004 PT Cruiser for \$2,500.00 to his current housemate. She also ordered that funds receivable by Mr. Tippie from the piano sale be sent to the Snohomish County Court. CP at 37. The Commissioner ordered a short sale of the home, which began as a result of the September 23 hearing. CP at 31, 36.

The **second hearing** was on October 7, 2010. Mr. Tippie revealed that he signed short sale document two days prior, but some required documents had not been completed. RP (10/7/10) at 4-6. Mr. Tippie

refused to pay any portion of the short sale expenses. RP (10/7/10) at 14. Mr. Tippie revealed that the amount he borrowed on the cabin was \$18,193.00. RP (10/7/10) at 10. He presented a copy of his intent to homestead that he had recently recorded on September 21, 2010, two days before the first hearing. RP (10/7/10) at 10. He presented documents that revealed he had transferred his son's GET money to his step-daughter; \$8708.89 had been spent for her education. RP (10/7/10) at 11, 15. The Commissioner continued the restraints so Mr. Tippie would not deplete or encumber his assets. RP (10/7/10) at 16; CP at 38.

As Mr. Tippie was last-second in providing pleadings and documentation for both the September 23rd and October 7th proceedings, had not made full effort in the short sale process, and had not submitted documentation for the short sale and his assets, RP(10/7/10) at 3-4,7,9-10,14-15, the Commissioner chided Mr. Tippie: "I have little doubt that had this hearing been next week, [Mr. Tippie's activity] wouldn't have happened until next week, so keeping this on a short string seems, to me, to be the only way to make this actually happen, since it's been a long time coming" RP(10/7/10) at 16.

The **third hearing** was on October 28, 2010. Mr. Tippie revealed that his old girlfriend issued a notice of default on her loan to him and intended to foreclose on the lien filed on his cabin July 28, 2010. RP

(10/28/28) at 5. The Commissioner noted that her loan to Mr. Tippie while he was unemployed, coupled with the recent notice of foreclosure when he had current gainful employment, was “interesting”. RP (10/28/10) at 6, 9. The court learned that Mr. Tippie’s financial documentation for the short sale had not been provided, RP (10/28/2010) at 4, 5, and that he did not intend to use any of his employment income to cure any of the deficiencies. RP at 6.

The Commissioner found Mr. Tippie’s reasons for not complying with the dissolution decree to be not satisfactory. RP (10/28/28) at 10-11. The Commissioner found that, although the court gave Mr. Tippie a significant period of time, he made no appreciable effort to market the home, make payments to the line of credit mortgage, make interest payments on the cabin loan, and keep Ms. Wilson from harm. RP (10/28/10) at 14. The Commissioner found Mr. Tippie to be not credible RP (9/23/10) at 58; RP (10/28/10) at 11, and his explanations “interesting” RP (10/28/10) at 9-10. The Commissioner stated that “[Mr. Tippie is] a very smart man [and a] very accomplished man . . . every step is taken only when . . . [his] back is against the wall”. RP (10/28/10) at 10.

The Commissioner found him in **contempt** for failing to make any appreciable effort to remove Ms. Wilson from the home loans, RP (10/28/10) at 10-11,14, his substantial reluctance to limit liability to Ms.

Wilson, RP (10/28/10) at 14, for making no payments to Flagstar while employed, RP (10/28/10) at 14, for making no interest payments on his cabin loan, RP (10/28/10) at 9-10, and for knowingly and willfully not following the decree, RP (10/28/10) at 13, which went to the issue of support and maintenance of Ms. Wilson.¹ RP (10/28/10) at 15.

The Commissioner issued an order enforcing the decree by granting Ms. Wilson CR 70 power to execute the short sale, execute the stock documents, and sell Mr. Tippie's cabin to reduce her liability. CP at 16-18. The order also restrained Mr. Tippie from encumbering or disposing of his assets, CP at 18-19, found him in contempt, and awarded Ms. Wilson attorney fees. CP at 15-16. The order is supported by findings of fact, CP at 16, which are also supported by factual determinations in the Commissioner's minute entries, CP at 20-21, and in the Commissioner's bench rulings, RP (10/28/10) at 9-14.

The Commissioner listed **conditions to purge** the contempt order as: maintain Flagstar payments to avoid default, RP (10/28/10) at 15-16, make interest payments on the cabin debt to avoid foreclosure, RP (10/28/10) at 16, make full efforts to market the home, RP (10/28/10),

¹ Oral rulings may be considered by the Court of Appeals to the extent that, as here, the oral rulings are consistent with the written findings. *State v. Moon*, 48 Wn. App. 645, 653, 739 P.2d 1157 (1987).

complete paperwork to market the home, RP (10/28/10) at 17, and make funds available to Ms. Wilson to market the Edmonds home, RP (10/28/10) at 15-16; CP at 21.

Issues discussed, but not ruled on, were Mr. Tippie's reimbursement of the funds he transferred from his son's GET account, and stock option division. RP (10/28/10) at 13, 18-20.

Mr. Tippie appealed the October 28 ruling to Superior Court in November 2010. After the Superior Court affirmed the Commissioner's decision in November 2010, Mr. Tippie timely appealed to this Court.

D. Corrections to Mr. Tippie's Misstatements of the Record

The record contradicts several of Mr. Tippie's assertions in his June 17, 2011 Brief of Appellant to this Court. He states that the dissolution decree ordered him to withdraw \$87,000.00 to pay Ms. Wilson, AB at 4. Instead, as he admitted in a November 17, 2008 deposition, he withdrew \$87,000.00 before the divorce in August 2008, without informing Ms. Wilson, CP at 235-37, who learned of his actions only through formal discovery. CP at 294, 313.

Mr. Tippie states that the Commissioner found him in contempt because he could not make all back payments or refinance a jumbo mortgage in two weeks. AB at 19-22, 25. Instead, the Commissioner gave him specific small steps to purge his contempt, which, as described

above, were discussed in the hearings and stated in the orders. RP at (10/28/10) at 15-17, 19-21; CP at 22-25,35-39. His statement that he always complied with orders, AB at 20, is refuted by the increasingly frustrated comments by the Commissioner throughout the transcripts of the three separate hearings, particularly at RP at (10/28/10) at 10-11; (10/7/10) at 16.

Mr. Tippie refers to conclusions of a mortgage professional with only cites to his own statements at the hearings. AB at 15-16. The Commissioner did not find Mr. Tippie to be credible, RP at (9/23/10) at 58; RP (10/28/10) at 11. The Commissioner's statements regarding Mr. Tippie were supported by discrepancies in the record, such as his assertion that the divorce left him with a \$120,000.00 debt, RP at (9/23/10) at 16, which is contradicted by CP at 148; RP at (9/23/10) at 27.

Mr. Tippie states that the Superior Court declined to rule on the issue of contempt, AB at 7, but that is contradicted by the Judgment, CP at 9, and court minutes. CP at 8.

IV. STANDARD OF REVIEW

The standard for review of contempt is abuse of discretion by manifest unreasonable manner or untenable grounds or reasons. *State v. Berty*, 136 Wn. App. 74, 83-84, 147 P.3d 1004 (2006)

Property settlement cases are reviewed for an abuse of discretion. *In re Marriage of Thompson*, 97 Wn. App. 873, 877, 988 P.2d 499 (1999). The abuse of discretion standard is highly deferential to the trial court. *State v. Russell*, 154 Wn. App. 775, 784, 225 P.3d 478 (2010) (reversed on other grounds, 171 Wn.2d 118, 249 P.3d 604 (2011)). A trial court abuses its discretion when its decision is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *State v. Cross*, 156 Wn. App. 568, 580, 234 P.3d 288 (2010).

The standard of review for an award of attorney fees under RCW 26.09.140 is abuse of discretion. *In re Marriage of Sanchez*, 33 Wn. App. 215,218,654 P.2d 702 (1982). While the parties' needs are balanced with ability to pay, *Kruger v. Kruger*, 37 Wn. App. 329, 333, 679 P.2d 961 (1984), the court may also consider the extent to which one party's intransigence caused the other spouse to require legal services. Once intransigence is established, the financial resources of the spouse seeking fees ability to pay is irrelevant. *In re Crosetto*, 82 Wn. App. 545, 563-64, 918 P.2d 954 (1996).

Intransigence of the party at the trial court level carries over and thus will support attorney fees on appeal, as well, under RCW 26.09.140 and RAP 18.1. *In re Marriage of Mattson*, 95 Wn. App. 592, 606, 976

P.2d 157 (1999) (citing *Eide v. Eide*, 1 Wn. App. 440, 445-46, 462 P.2d 562 (1969)).

V. KEY STATUTES, COURT RULES, AND CASE LAW

This litigation is to enforce a judicial decree, as well as a contempt of court ruling, under RCW Chapter 26.09 and RCW Chapter 7.21. A trial court has inherent statutory and constitutional authority to impose contempt sanctions. *State v. Jordan*, 146 Wn. App. 395, 401, 190 P.3d 516 (2008); RCW 7.21.020.

RCW 7.21.010(1) defines contempt as an intentional disobedience of a court decree. A remedial sanction may be imposed for an omitted act when it is in the power of the person to perform. RCW 7.21.010(3). Sanctions are authorized under RCW 7.21.030, including attorney fees and costs recovery, RCW 7.21.030(3). Punitive sanctions are designed to uphold the authority of the court, RCW 7.21.030(2), and are not applicable to this case.

The court applies civil rules to issue dissolution decrees, which include property settlement, support, maintenance, and parenting plans. RCW Chapter 26.09. Title 26 authorizes attorney fees in dissolution, enforcement after entry of judgment, and on appeal. RCW 26.09.140.

The obligor in a contempt action under Title 26 has the burden of showing that he exercised “due diligence” finding employment, conserving assets, and rendering himself able to comply. RCW 26.18.050(4).

Ms. Wilson has no response to Mr. Tippie’s characterization of RCW 26.18.050(4) as improperly placing the burden on the obligor, except that the statute stands unless the legislature deems otherwise and amends it.

Civil Rule 70 provides a means for enforcing a judgment, such as conveying property if a party refuses to do so. *Marriage of Penry*, 119 Wn. App. 799, 802-03, 82 P.3d 1231 (2004).

VI. ARGUMENT

Mr. Tippie did not appeal the Court’s enforcement of the dissolution decree, imposition of restraints, or grant of CR 70 authority. His Assignment of Errors and Issues pertained only to the Contempt ruling. Nor did Mr. Tippie challenge the application of contempt to the facts of this case. He did not dispute the Commissioner’s statement that Mr. Tippie’s knowing and willful failure to follow the divorce decree was an issue of support and maintenance. RP 10/28/10 at 15. Thus, although he asked that the CR 70 be vacated at the end of the brief, those issues are

final , as they were not appealed. *Bennett v. Brandrug Mfg. Co.*, 1 Wn. App. 183, 184, 459 P.2d 977 (1969).

A. Contempt, Civil Penalty, CR 70 Authority, And Restrainers, Were The Proper Options To Enforce The Dissolution Decree Under Equity, Statute, And Case Law

A trial court may use its inherent constitutional or statutory authority to impose a contempt sanction. *State v. Jordan*, 146 Wn. App. 395, 401, 190 P.3d 516 (2008). The court may use any of its powers to enforce property settlements by any suitable process or mode of proceeding. RCW 26.12.010; *Marriage of Langham*, 153 Wn.2d 553, 560,106 P.3d 212 (2005).

Early Washington cases permitted contempt of court procedures to enforce alimony, child support and child custody orders, and not property divisions, E. g., *State ex rel. Lang v. Superior Court*, 176 Wash. 472, 30 P.2d 237 (1934). However, in *Decker v. Decker*, 52 Wn. 2d 456, 326 P.2d 332 (1958), our state Supreme Court retreated from its earlier position and declared that contempt of court can be used to enforce a provision of a property division so long as the provision has a reasonable relationship to the duty to support one's wife or children. Washington courts evolved further to determine that it would be inequitable to allot to a spouse property necessary for his or her support and then prevent him or her from

effectively enforcing the property division to obtain such property. *Matter of Marriage of Young* 26 Wn. App. 843, 615 P.2d 508 (1980).

More recently, the court recognized its authority to enforce property settlements. The court in *Marriage of Langham* affirmed the trial court's judgment in favor of the former wife post-dissolution motion to enforce a property distribution based on a conversion theory. *Marriage of Langham*, 153 Wn.2d 553, 106 P.3d 212 (2005) The trial court had jurisdiction over the subject matter and the parties via the equitable action to enforce the decree. 153 Wn.2d at 559.

Langham was followed by *In re Marriage of Angelo*, 142 Wn. App. 622, 175 P.3d 1096 (2008), in which the court's powers were clearly enunciated. The Angelo court explained,

The superior court unquestionably has authority to enforce property settlements. RCW 26.12.010. It further has the authority to use "any suitable process or mode of proceeding" to settle disputes over which it has jurisdiction, provided no specific procedure is set forth by statute and the chosen procedure best conforms to the spirit of the law. RCW 2.28.150. Indeed, "[w]hen the equitable jurisdiction of the court is invoked . . . whatever relief the facts warrant will be granted." *Ronken v. Bd. of County Comm'rs*, 313, (1977) (alteration in original) (quoting *Kreger v. Hall*, 70 Wn.2d 1002, 1008, 425 P.2d 638 (1967)).

The trial court had jurisdiction over the subject matter and the parties via an equitable action to enforce the decree.
142 At 640-642 (quoting *Langham*, 153 Wn. 2d at 560).

B. Mr. Tippie Was Able, But Willfully Refused To Comply With The Decree At The Time It Was Issued And Able, But Willfully Refused To Comply With The Commissioner's Orders When They Were Issued Two Years Later

Mr. Tippie's reliance on *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 113 P.3d 1041 (2005) and *State v. Phipps*, 174 Wash. 443, 24 P.2d 1073 (1933) to assert that he is excused by a current inability to comply with the court orders, is misplaced. The obligors in *Britannia* faced incarceration if they did not produce money that had been given to charity two years before the contempt action. The obligor in *State v. Phipps*, 174 Wash. 443, 42 P.2d 1073 (1933) had no property. Likewise, the obligor in *Snook v. Snook*, 110 Wash. 310, 118 P. 502 (1920) had no property after the property settlement awarded his wife property of considerable value. Mr. Snook's testimony was direct and positive.

In contrast, Mr. Tippie has property, CP at 45, and was described by the Commissioner to be not credible and obstructionist, RP 9/23/10 at 55, 58. The Commissioner required discrete tasks that were performable and financially feasible, given Mr. Tippie's income, vacation cabin, musical instruments valued at over \$30,000.00, two late model cars, PT Cruiser, and a van, and savings through nonpayment of rent or mortgage during most of 2010. CP at 87-88.

Additionally, Mr. Tippie could have complied with the original court decree with his lucrative employment and finances at the time of the dissolution decree. He instead, spent money on unnecessary travel and purchases while refusing to refinance the mortgages. CP at 87-88. His statement that his mortgage broker thought that he would not qualify for a loan is hearsay and not credible. He provided no evidence of the mortgage broker's opinions to this court. The meager exchanges between he and the mortgage broker are described at CP 86-87. The trial court found Mr. Tippie to not be credible. RP (9/23/10) at 58; RP (10/28/10) at 11. A trial court's credibility determinations will not be reviewed on appeal.

Marriage of Rideout, 150 Wn.2d 337, 350, 77P.2d 1174 (2003).

C. Mr. Tippie's Bad Faith Was Established By His Refusal To Perform Acts Clearly Stated By The Commissioner, Supported By Findings Of Fact Along With Adequate Steps To Purge Contempt

Mr. Tippie's assertion that the court failed to make findings that he refused to perform an act within his ability is contradicted by transcripts and orders. RP (10/28/10) at 9-11,14; CP at 16, 20-21. He states that he was required to make all back payments. AB 19, 21. He was not. He was asked to not encumber his assets, limit Ms. Wilson's liability, participate in the short sale, and verify accounts, loan on the cabin, and expenditures. CP at 23-24, 33, 35-39. He states that he always complied with the trial

court orders. AB at 19-20. He did not. CP at 20, 21. He states that he made bona fide efforts to refinance his mortgages. AB at 20. He did not. CP at 20-21.

Mr. Tippie's conclusory argument that the findings are inadequate, AB at 23, appears to seek a requirement for a level of specificity in the findings that no precedent requires. Mr. Tippie cites *Templeton v. Hurtado*, 92 Wn. App. 847, 852, 965 P.2d 1131 (1998) to support his conclusory argument. In *Templeton*, the trial court did not specify the alleged act of contempt and did not make any findings to support its order. Here, on the other hand, the Commissioner's order was supported by findings of fact, and those findings are supported by findings in minute entries, CP at 20, 21, as well as by the Commissioner's factual determinations announced from the bench. RP (10/28/20) at 9-11, 13-16.

Mr. Tippie also inexplicably argues that the Commissioner did not provide a reasonable purge clause in the contempt order. Mr. Tippie references *State ex Rel. Schafer v. Bloomer*, 94 Wn. App. 246, 973 P.2d 1062 (1999) and *Interest of Rebecca K.*, 101 Wn. App. 309, 2 P.3d 501 (2000). Those decisions do not apply here. In those cases, jail was an option and the obligors who had no option to purge themselves. Here, the path to purge was clearly enunciated and Mr. Tippie was allowed to speak and present pleadings in each of the three hearings.

D. The Commissioner Did Not Abuse Her Discretion, As Her Findings And Orders Were Reasonable And Based On Valid Grounds

Mr. Tippie's citation of *Moreman v. Butcher*, 126 Wn.2d 36, 891 P.2d 725 (1995) at AB 25 does not help his case, though *Moreman* is relevant. The obligor there, like Mr. Tippie, was not considered credible and failed to meet his burden of production and persuasion to show his inability to meet the court's order. *Id.* at 39. Thus, the Supreme Court remanded the case back to the trial court to reinstate the contempt order. *Id.* at 42.

Mr. Tippie also cites *Marriage of Littlefield*, 133 Wn.2d 39, 940 P.2d 136 (1997). AB at 25. *Littlefield* is a child custody case, where the Supreme Court determined that discretion is abused if it is based on untenable grounds, made for untenable reasons, or manifestly unreasonable. There was no abuse of discretion here. Mr. Tippie was awarded the family home and ordered to refinance it at a time when he was employed with a generous salary and in recent receipt of an insurance award. He lived in the home for the next year, but failed to refinance while he was employed. Then he lived in the home for another year without paying either mortgage. The Commissioner ordered him to reduce the harm to Ms. Wilson, not further encumber his assets, provide documentation, and fully participate in selling the property. The

Commissioner's request was not unreasonable. Mr. Tippie failed to comply.

E. Mr. Tippie's Conversion And Subsequent Failure To Correct The Conversion Gives This Court Additional Grounds To Uphold The Order Below

A court may redistribute both community and separate property or enter a judgment to account for wrongful transfers or conversion. *In re Marriage of Angelo*, 142 Wn. App. 622, 646, 175 P.3d 1096 (2008).

Mr. Tippie's conversion, willful failure to comply with the divorce decree, and subsequent failure to pay his mortgages have harmed Ms. Wilson.

Mr. Tippie committed conversion by taking out \$87,000.00 from his and Ms. Wilson's mutual line of credit, without Ms. Wilson's knowledge, and putting it into his own bank account, and then changing the billing address. Mr. Tippie gives reasons why he did so, but, in conversion, claims of good faith are irrelevant, *Marriage of Langham*, 153 Wn.2d 553, 560, 106 P.3d 212 (2005).

The parties did not argue about conversion and the trial court made no determination in that regard, but a trial court decision may be upheld by the Court of Appeals on a ground that was not addressed by the trial court on any theory supported, as here, by the pleadings and proof. *Huber v. Coast Inv. Co., Inc.*, 30 Wn. App. 804, 809, n. 2, 638 P.2d 609 (1981).

Mr. Tippie's conversion is especially egregious because of his fiduciary duty to Ms. Wilson. *Sievers v. Sievers*, 78 Wn. App. 287, 310, 897 P.2d 388 (1995). That duty extends beyond the contemplation of divorce. *In re Marriage of Sanchez*, 33 Wn. App. 215, 218, 654 P.2d 702 (1982); *Seals v. Seals*, 22 Wn. App. 652, 655, 656, 590 P.2d 1301 (1979). Harm to Ms. Wilson by Mr. Tippie's covert conversion of the \$87,000.00 would have been averted had he adhered to the divorce decree. He did not. Instead, he magnified the harm by not removing Ms. Wilson from the mortgages, and then, by his cessation of mortgage payments, or even a portion of the payments.

The short sale commenced **only after it had been ordered by the Commissioner** on September 23, 2010. By that time, Ms. Wilson had incurred substantial expenses and time in starting the enforcement process and trying to clear her credit. This has been especially difficult because she is at the end of her career and raising a young daughter on her own. In addition, Mr. Tippie failed to divide the divisible stocks and craft an agreement to allow Ms. Wilson access to the non-divisible stock. Mr. Tippie caused further harm by transferring his own son's GET account to his new step-daughter RP at 30-31; CP at 141, then, **only after the Commissioner's order**, returning only a portion of it. This was in spite of the dissolution decree's statement that the GET accounts were gifts for

the children, to be divided equally if they were terminated, closed or redeemed. CP at 141.

F. Mr. Tippie's Arguments In His Brief For Relief That Are Related To His Bankruptcy Pleadings Should Not Be Considered Because They Rely On Evidence Outside Of The Record And Are Not Supported By Authority

Mr. Tippie's Brief of Appellant goes outside the record when he notes that he filed for bankruptcy in federal court in California in December 2010 and re-filed that action in 2011. AB at 27-28. Then, with no citation to authority or supporting argument, he asserts: "In light of bankruptcy law, the contentions that [Ms. Wilson] has brought before the Washington state courts under the CR 70 action should be deferred to the Federal Court and should be vacated at this time WA State Court." AB at 28-29. Because Mr. Tippie's argument is outside the record and is unsupported by any authority or cogent argument, his argument should not be considered. *Bohn v. Cody*, 119 Wn.2d 357, 368, 832 P.2d 71 (1992) (appellate court will not consider inadequately briefed argument); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by citation to the record or supporting legal authority will not be considered); RAP 10.3(a)(5), (6). In addition, Mr. Tippie's request for partial relief relating only to the CR 70 remedy violates RAP 10.4(d), which precludes making a motion in an appellate

court brief unless that motion, if granted, would preclude hearing the appeal in its entirety on the merits.

Restrictions were placed on Mr. Tippie's property by the Commissioner in September 2010. In spite of those restrictions, Mr. Tippie filed Chapter 13 Bankruptcy in the eastern district of California December 2010 claiming he had been a resident of California for the two previous years. In his Chapter 13 bankruptcy, he could discharge Ms. Wilson's award under the divorce decree, CR 70 authority to mitigate her damages, attorney fees, as well as the unresolved GET and stock issues. He dismissed his bankruptcy in March 2011, then re-filed Chapter 13 again in the same district four days later. The scheduled hearing with the Commissioner was continued numerous times, then stayed pending the resolution or clarification of the bankruptcy.²

**VII. ATTORNEY FEES WERE PROPERLY AWARDED
BELOW AND SHOULD ALSO BE AWARDED BY THIS
COURT**

Costs may awarded to the prevailing party under RCW Chapter 4.84. and RAP 14.2.

Washington generally follows the "American rule" on attorney fees, which provides that attorney fees are not recoverable by the

² There have been recent developments in the case that are not in the record and not relevant to the merits of this case.

prevailing party as costs of litigation unless the recovery is permitted by contract, statute, or some recognized ground of equity. *E.g.*, *Dayton v. Farmers Ins. Group*, 124 Wn.2d 277, 280, 876 P.2d 896 (1994).

However, many statutes allow attorney fees to the prevailing party and a number of grounds of equity allow for the award of fees. *Leingang v. Pierce County Medical Bureau, Inc.*, 131 Wn.2d 133, 143, 930 P.2d 288 (1997).

An important factor under RCW 26.09.140, aside from relative abilities to pay, is the extent to which one spouse's intransigence caused the other spouse to require legal services. *Burrill v. Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993 (2002). Intransigence of the party at the trial court level carries over and supports attorney fees under RCW 26.09.140 and RAP 18.1 on appeal as well. *In re Marriage of Mattson*, 95 Wn. App. 592, 606, 976 P.2d 157 (1999), (citing *Eide v. Eide*, 1 Wn. App. 440, 445-46, 462 P.2d 562 (1969)). A trial court does not exceed its authority in awarding attorney fees if the losing party acted in bad faith. *Seals v. Seals*, 22 Wn. App. 652, 658, 590 P.2d 1301 (1979).

Here, the court enforced its dissolution order with restrictions and orders, including contempt. RCW 26.09.140 provides, "Upon any appeal [referring to a dissolution action], 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.” This statute provides the requisite authority for this Court to award fees and costs to Ms. Wilson. *See In re Marriage of Wilson*, 117 Wn. App. 40, 51, 68 P.3d 1121 (2003).

Ms. Wilson’s sole remedy to enforce the divorce decree was court action. Mr. Tippie has a history of harassing appeals and use of courts to evade his personal and financial responsibilities. The undersigned attorney, acting pro se in this matter, has been required to defend against numerous lawsuits and appeals relating to the dissolution of her marriage with Mr. Tippie, most of which she has defended with the assistance of counsel. Mr. Tippie was held in contempt of court for failing to comply with the trial court’s dissolution order. His actions harmed Ms. Wilson financially because the court actions resulted in large attorney bills and expenditures of time from her child and work. The litigation of this appeal is not completed and some issues have not been resolved at the lower court. Additional rulings by the Commissioner are anticipated regarding the GET and stock issues. As this is the second time Mr. Tippie has appealed a lower court’s ruling to this court, there is a good possibility that subsequent rulings will also be appealed.

Attorney fees are awarded, in part, according to needs of the parties. Mr. Tippie’s apparent need to file bankruptcy belies the real

financial circumstances of the parties. Through bankruptcy, Mr. Tippie will be able to discharge his mortgages and over \$200,000.00 of legal, medical, and credit card debts, allowing him, single man (he states he is separated in his Bankruptcy application)a fresh start with his current employment. The mother of his grown children, an anesthesiologist, has more than adequate means to support their financial needs. CP at 299. Moreover, he was able to live rent and mortgage free for the period he was not employed for most of 2010. CP at 87.

Ms. Wilson, a single mother towards the end of her career, has a twelve year old daughter and a daunting accumulation of legal bills. She has deepened her debts by financing permits and geological inspections required for the short sale of the community home, and payment of some of Mr. Tippie's bills. Since the divorce, she also carried the full expenses of establishing a new household and care for her daughter, as well as legal battles of the protection order, divorce, de facto parent issue to the appellate courts, divorce decree enforcement to the appellate courts, and Mr. Tippie's bankruptcy in California.

This Court has held that lawyers who incur fees representing themselves should be awarded attorney fees where fees are otherwise justified because they must take time from their practices to prepare and appear as any other lawyer would. *Leen v. Demopolis*, 62 Wn. App. 473,

486–87, 815 P.2d 269 (1991). The undersigned attorney has spent many hours of her time appearing in court, drafting motions and briefs, and responding to Mr. Tippie’s filings in Washington and California, including this appeal. This has been especially challenging, given her lack of expertise in family, bankruptcy, or appellate law.

For these reasons, the Court should award Respondent costs and reasonable attorney fees as will be outlined in the affidavit of need to be filed in accordance with RAP 18.1(c).

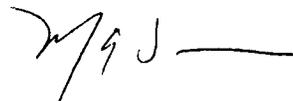
VIII. CONCLUSION

Ms. Wilson respectfully requests this Court to affirm the Snohomish County Court’s November 19, 2010 affirmation of the Snohomish County Court Commissioner’s October 28, 2010 rulings and to

award reasonable attorney fees for the case at Snohomish County Superior Court and award reasonable attorney fees for this case at the Court of Appeals.

RESPECTFULLY SUBMITTED this 14th day of September, 2011.

—
Respondent

A handwritten signature in black ink, appearing to read 'M J Wilson', followed by a horizontal line.

MARY WILSON
Pro Se
WSBA No. 19534