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No. 69242-9-1

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

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In re the Marriage of

DANIEL VALENTE  
Appellant/Cross-Respondent

and

FUKIKO VALENTE  
Respondent/Cross-Appellant

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ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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BRIEF OF RESPONDENT  
AND OPENING BRIEF OF CROSS-APPELLANT

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## I. INTRODUCTION

This 25-year marriage ended when the husband left his wife several years after she was diagnosed with multiple sclerosis and rheumatoid arthritis. According to the wife's doctors, the wife is presently disabled and her condition will worsen over time. The wife cannot work because of her medical condition and, in any case, had been a full-time homemaker. The husband runs an extraordinarily successful business, for which he is compensated almost \$1 million gross annually. The court valued the business at \$1.6 million, as the husband requested, and awarded it to him, as part of the 46% of the party's assets, separate and community. The wife received 54%. The court also awarded maintenance to the wife, though at a level less than necessary to meet her ongoing expenses. The court also declined to award to the wife an amount necessary to secure the anticipated costs of her ongoing health care because the court said the future was "unknown." The wife's diseases are incurable and progressive and it is certain she will incur enormous medical expenses for the rest of her life. As a result of the court's rulings, which overwhelmingly favored the husband, his fortunes will grow while the wife's will diminish as her health declines. This result is at odds with Washington law.

II. STATEMENT OF ISSUES IN RESPONSE

1. Where the wife suffers from two incurable and progressive diseases and where she spent the 25-year marriage working full-time in performance of the family's domestic labor, and where the husband grosses almost \$1 million annually in the family business, did the trial court have discretion to order lifetime maintenance to the wife?

2. Did the trial court order lifetime maintenance for the purpose of meeting the wife's anticipated needs, as it stated in its oral ruling?

3. Did the trial court also have discretion to order lifetime maintenance of \$100, to commence when the wife turns 72, as a vehicle to permit modification if the wife's condition worsened, given the substantial evidence that her condition would worsen and given the husband's income is 83%-95% greater than the wife's and his overall financial circumstances are vastly superior?

4. If it was error to order \$100 monthly maintenance to permit the wife to seek modification, did the husband invite this error?

III. ASSIGNMENTS OF ERROR AND STATEMENT OF ISSUES FOR CROSS APPEAL

1. Did the trial court err when it disregarded as “unknown” the evidence of the wife’s future medical needs as documented in the Life Care Plan, when most of the services were already needed and being used by the wife and where the evidence that additional services would be needed was more probable than not based on the opinions of her medical team and the expertise of the life care planner?

2. Did the trial court err when it believed itself constrained not to fund the Life Care Plan because the future is not certain, as opposed to probable, particularly as the court repeatedly expressed an intent to provide for the wife’s future needs? That is, did the court misapprehend the standard of proof and its legal authority?

3. Did the trial court abuse its discretion when it awarded inadequate maintenance under the circumstances of this case?

4. Did the court err by entering the following findings of fact and/or conclusions of law and to those portions of the decree implementing these findings and/or conclusions:

... The court finds that a factual basis was not presented to prove that the wife is in need of all

services detailed in the Life Care Plan at this time.  
(CP 88)

[Ordering maintenance of \$10,000 for seven years,  
\$1,000 for an additional ten years, and \$100  
thereafter.] (CP 87)

A division of 55% of the property to the wife and 45%  
to the husband is fair and equitable. (CP 90)

5. Should the husband, who initiated this appeal after prevailing on most of the trial issues and whose financial circumstances are far superior, pay the wife's attorney fees and costs on appeal?

#### IV. RESTATEMENT OF THE CASE

The parties separated in 2010 after twenty-five years of marriage. They have two children, both young adults. The parties met and married in Japan, and Japanese is the wife's native language. RP 295. She communicates in English with some difficulty, as her testimony demonstrates. With few exceptions, she has not worked outside the domestic arena. RP 297-299.

The husband, Dan, is an enormously successful business owner. RP 453-457. He is compensated exceedingly well, such that even one of the accountants testifying as an expert expressed envy. RP 487. Throughout the marriage and at the time of trial, the

husband worked long hours (i.e., 60-70). RP 59. He was not home much. RP 298-299.

The wife, known as "Nao," spent the marriage maintaining the home and family, which included rearing the children almost singlehandedly, given the husband's work involvement. RP 298. She performed all the domestic labor, including entertaining business associates and clients. RP 299-299. She worked briefly at the family business. RP 298-299. She also worked as a magazine display stocker for about six to twelve months. RP 305. In recent years, she volunteered with her spiritual organization (Byakko), hosting guests from Japan and elsewhere, conducting meditation workshops, etc. RP 306-320. The husband characterized this as employment, arguing that the organization's monetary donations to the wife beginning at the inception of her illness, were income. RP 78-89. For example, he claimed, she made \$15,000 from Byakko in 2010; his income that year was \$1.2 million. RP 88-89. Still, this was "a big issue" for Dan. RP 307.

At the time of trial, the assets available for distribution approximated \$7 million, most of which was community property. CP 105-106. There was about a million in separate property. *Id.*

Among the assets was the business, which produced an annual income stream of almost \$1 million. CP 88.

In 2005, Nao began to experience serious health problems. Attending physicians quickly diagnosed her as having multiple sclerosis and rheumatoid arthritis. RP 321, 434. Both diseases are incurable. RP 287. They are also rare diseases, so it is also rare for one person to have both of them. RP 532. The percentage of patients with both diseases was "pretty, pretty low," Dr. Bowen of the Neuroscience Institute at Swedish Hospital testified. RP 532.

Dan resisted the medical diagnosis. RP 321-325, 434; see, also RP 131 (husband testifying it took 2.5 years to get diagnosis). He was angry Nao could no longer do what she had done before. RP 324. He disputed the doctors' conclusions, based on a book he read, and did not think Nao needed treatment, so treatment was delayed several years. RP 321-324; Exhibit 63, at 75-79 (medical records confirming delay). During that time, Nao had at least four attacks in the brain and neck. RP 324-326. She grew a lot thinner and more drawn and walked with a cane. RP 521; Exhibit 63, at 54 (doctor recommended cane because of balance problems and need to avoid falls). She used the cane reluctantly, not wishing to draw attention to her disability, but her doctors insisted. RP 324-

325; Exhibit 63, at 64. She has also used a wheelchair and fears her future may include that necessity again. RP 348; Exhibit 63, at 118. A neighbor, seeing her again after these several years was “shocked really to see her change that much.” Id. After additional diagnostic efforts, several more doctors confirmed the initial diagnoses and Nao began treatments. RP 321-322.

The arthritis complicates the MS, and vice versa, including by aggravating the symptoms and limiting the treatments Nao can receive. RP 532-533. Currently, Nao presents with pain, joint pain, headache, weakness, especially in her legs, numbness in her legs, spasticity and vertigo (both impairing her balance), numbness in her shoulder, neurogenic bladder, and prominent fatigue. RP 320, 324-326, 543-544. She needs foot surgery, due to the rheumatoid arthritis. RP 328; Exhibit 63, at 52-53. She also suffers major depressive disorder. Exhibit 63, at 25. Her treatment team includes a neurologist, a rheumatologist, a podiatrist, a physiatrist, a psychologist, and pain management specialists. Exhibits 56 and 60.<sup>1</sup>

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<sup>1</sup> “Physiatrists, or rehabilitation physicians, are nerve, muscle, and bone experts who treat injuries or illnesses that affect how you move.”  
<http://www.aapmr.org/patients/aboutpmr/pages/physiatrist.aspx>

Some days are better than others, and, generally, her condition cycles from better to worse according to treatments she receives. RP 336; Exhibit 63, at 55. In particular, every four weeks, she receives an infusion at the hospital for the rheumatoid arthritis. RP 327. For the middle two of those weeks, she feels an 80% reduction in pain and manages well. RP 336. The other two weeks, on either side of the infusion, are difficult. Id. She also takes medication orally for the MS and for muscle pain and spasm. RP 326-327. She receives periodic steroid injections in her neck and feet. RP 327-328; Exhibit 63, at 54 (every three weeks in feet), 55 (twice annually in spine).

The main treatment components for the diseases themselves are immune suppression drugs, but the disabilities and pain that accompany the conditions also require extensive treatment, such as physical therapy, rehabilitation, massage, etc. RP 326-327, 336, 331-335, 534. Moreover, the treatments cause side effects, for example, blurred vision, which requires treatment by a neuro-ophthalmologist. RP 331.

Presently, the MS is relatively stabilized on treatment, which has the purpose and effect of slowing down the disease. RP 539-540, 543. The stability is temporary; the medication does not return

Nao to normal. RP 341. There is no return to normal with MS, as her doctor made clear. RP 543. Indeed, Nao already has some disabilities related to her MS. RP 534. As a consequence, and in the opinion of her doctors and the vocational counselor, she is unable to work. RP 544; Exhibit 63, at 46, 55-57.

Because MS is a progressive disease, she is likely to experience progressive disability, though the precise extent of the disease's toll can be hard to predict, given the nature of MS (i.e., it can strike different parts of the brain). RP 534-535; Exhibit 63, at 46, 55-57. Some of the most disabling symptoms are fatigue and cognitive impairment. RP 544. In particular, about ten years after contracting the disease, the majority of MS patients accumulates more symptoms, recover less well from the attacks they experience, and, therefore, accumulate "more and more disabilities." RP 536-537. Nao's doctor, part of a team of MS specialists, expects her to follow this pattern. RP 533, 535. Nao was six years from onset of the disease, so her condition will likely worsen in about four years (i.e., ten years from onset). RP 536-537.

The rheumatoid arthritis indirectly affects the MS "because any physical disabilities that you would get from multiple sclerosis

of course would be aggravated by joint problems.” RP 533. For example, if MS makes it difficult to walk, the rheumatoid arthritis makes it worse. Id. Unfortunately, the preferred treatment for rheumatoid arthritis is contraindicated in MS because it worsens the MS. Id.

At trial, the husband minimized the wife’s condition and claimed she exaggerated it. RP 135. Nao’s doctor saw no evidence of exaggeration. RP 534. Yet Dan insisted Nao was functioning just fine day-to-day, and hired a private investigator to produce surveillance videotape in support of this claim. RP 363-390; Exhibit 18. The private investigator covertly captured Nao on tape during about 20 minutes over a three-hour period of one morning (02/01/12) as she walked her small dog on a leash, ran two errands in her car, and ate lunch. Exhibit 18. The private investigator opined that she seemed normal to him. RP 363-367. He conceded he did not see her run or lift anything and that she returned home around noon and did not leave the house again. During the several hours he observed her, she was out of his view for over an hour, during which time, he agreed, she could have been resting. RP 370-371. She also sat as she ate her lunch. Exhibit 18.

As noted, at the onset of Nao's symptoms, Dan insisted Nao submit to examination by numerous doctors, seeking one who would agree with him about the MS diagnosis. For purposes of the divorce, Dan sought and was granted permission to have another doctor exam Nao. Dr. Likosky, a neurologist, performed the exam. The doctor had considerable experience with MS, but none with rheumatoid arthritis and most of his MS experience was 12 years old. Exhibit 23. His current practice focuses on stroke; he has been Director of the Stroke Program at the Neuroscience Institute since 2000, and, as such, enjoys a good reputation. RP 544; Exhibit 23.

He reviewed medical records, the surveillance videotape, and examined Nao at one office visit on March 2 (a month after the private investigator's surveillance). RP 246-250. As part of her usual treatment cycle, Nao had an infusion for her rheumatoid arthritis eight days earlier, and a cortisone injection in her foot, meaning she was at that point experiencing her best condition. RP 337. (She would have been at this same point in her treatment cycle a month earlier, when videotaped by the private investigator, meaning both the doctor and the private investigator saw Nao at the height of her functionality.)

Likosky testified that MS is “known for some uncertainty” in prognosis and lots of variability. RP 254, 287. So he testified in epidemiological terms, that is, in terms of percentages across the MS affected population. RP 254-258. He thought the likelihood of the worst-case scenario for Nao, meaning that everything that could go wrong does go wrong, was low. RP 257, 288; Exhibit 22.

At trial, the most-contested issues involved providing for Nao’s medical condition, maintenance, and valuation of the family business.<sup>2</sup>

The family business, Naodan, generates approximately \$1 million annually in compensation. Each party offered expert testimony on the value of the business. Dan’s expert, James Weber, came in at \$1,593,000, while Nao’s expert, Steven Kessler, came in at \$2,098,000. RP 151, 453; Exhibits 1 and 51.

The business occupies a small niche and, so, is hard to value. RP 59, 168, 458. It has little in the way of tangible assets because it charters the equipment it uses to ship timber around the globe. RP 457. It also has few operating costs. Nearly all the

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<sup>2</sup> Considerable attention also was consumed by the husband’s claim that the wife was employed by her spiritual organization, Byakko, and by the husband’s argument that children’s educational trust monies (about \$40,000) should be distributed in the manner he thought best, rather than to each of the children.

income generated by the business goes to the owner. RP 462. A fixed portion is distributed monthly to the owner and employees as salary. The remaining income accumulates and is distributed as a bonus at year's end. RP 60-61. For the two years before trial, the business paid income to Dan in the amounts of \$1,304,666 and \$1,190,417. He was on track to earn \$1 million in 2012. CP 88.

The experts differed mainly on how to account for this business model, as reflected in their choices of capitalization rate and earnings base. RP 173. Kessler saw the income accumulated by the business over the course of a year as "excess cash," meaning it had no business use other than as profit to the owner. Because this pattern (accumulation of cash, distribution of cash) repeats itself, it drove Kessler's valuation higher. RP 482-485. In other words, it was not the fact of the cash sitting in Naodan (\$819,00 in June 2011); rather, the cash represented an ongoing earnings expectation. RP 489-491. Because the cash will be replenished every year, and be paid to the owner every year, the value of the business should reflect this fact. RP 501.

Weber counted the \$819,000 as an "operating asset," though it was not used for operating anything but was paid out to the owner at the end of the year. RP 177-181. Weber argued

Kessler was “double counting” the cash when he figured it into the earnings base for purposes of deriving a capitalization rate. RP 553. Kessler disagreed, explaining that the cash itself had little effect on his value; rather, it was the expectation of that ongoing cash flow that drove his analysis, which Weber did not account for by designating the accumulated cash as an “operating asset.” RP 482-485. The husband won this battle when the court agreed with the “double counting” argument and valued the business at \$1,593,000. CP 89; RP (05/25/12) 3-4.

Another hotly contested issue involved the wife’s medical conditions. Nao expressed grave concerns about her future, including her future medical expenses. RP 348-353, 521. In addition to her doctor’s testimony about the conditions themselves and current treatments, Nao presented the testimony (by deposition) of Judith Parker, an expert in assessing the future cost of medical care for particular conditions. Parker is a Certified Disability Management Specialist, is a diplomat with the American Board of Vocational Experts, and designated as a Certified Life Care Planner. She is also certified by numerous state and federal agencies. Exhibit 63, at 6-12, 59; Exhibit 57 (Curriculum Vitae).

Parker prepared for Nao a “Life Care Plan,” which specified treatments and their costs based largely on review of the medical records and recommendations by Nao’s medical team. Exhibit 63, at 16-22. If a doctor indicated the treatment was not needed, Parker took it out of the plan. *Id.*, at 91-96. Based on Parker’s own expertise, she recommended some additional treatments and anticipated some additional expenses. Exhibit 63, at 104-105, 108-109, 111, 116-118, 126-130. Nao’s physicians, both for her MS and her rheumatoid arthritis, concurred in the plan, declaring that “[t]he medical and rehabilitation recommendations contained in the attached life care plan are necessary and appropriate for Nao Valente.” Exhibit 63, at 18-19; RP 535-536; Exhibit 56; see RP 543 (Dr. Bowen spent 2-2.5 hours reviewing plan; Exhibit 63, at 80-81 (Dr. Carkin included comments). The anticipated cost of Nao’s future care needs totaled \$7,476,986. CP 88. CPA Kessler calculated the present value of this expense, less the amount insurance would likely cover, for a total of \$486,531. CP 88. Nao asked the court to award her this amount to fund the Life Care Plan.

The majority of the expenses identified in the Life Care Plan are attributable to treatments, including medications that Nao

already is undergoing and receiving, as Dan himself observed post-trial. CP 25 (she is currently receiving all but 21 of the 63 services listed in the Life Care Plan).<sup>3</sup> The most costly components of Nao's routine treatment are the extraordinarily expensive drugs Nao must take for both of her conditions. Exhibit 63, at 6, 33-34, 52-53. The cost of these medications totals over \$8,000 monthly at present and is projected to cost \$3.9 million over her lifetime. Id. In short, these drugs alone account for 52% of the Life Care Plan.

The husband attacked the Life Care Plan, in terms of whether certain services would be necessary. Dr. Likosky testified that MS patients generally would not need all the services. RP 244-278 ("in most cases"). He conceded he was not an expert on rheumatoid arthritis and his generalizations addressed themselves to MS only. RP 267-269. He agreed Nao was being treated at an excellent program for MS and that her arthritis doctor also has an excellent reputation. RP 283-284. He conceded there was lots of variability in both diseases and that he could not say with certainty the diseases would not progress to a much worse scenario. RP 288. He thought the likelihood of that was "very low" because "most people don't." Id. He agreed Nao's current treatment is

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<sup>3</sup> These 21 services are mostly small-ticket items. Exhibit 56.

sensible and her current medications reasonable. RP 290-291.

Most of the anticipated cost of the Life Care Plan is attributable to the continuation of the current treatments.

After the four-day trial, the court distributed the separate and community assets such that each party received over \$3 million (approximately \$3.25 million for the husband and \$3.75 million for the wife). CP 99-106. See Appendix B (illustrative spreadsheet). Each party received a residence and substantial cash assets, as well as retirement income, though the wife's residence was encumbered by approximately \$475,000 and the court ordered her to refinance to get her husband off the loan. CP 99-106.

The court expressed considerable concern for the wife's medical condition. RP (05/25/12) 4. It declared the wife's "health in the future, specifically the likelihood of her physical condition declining, is a significant factor in my decision in this particular case." RP (05/25/12) 3. Her medical condition "is a significant concern for the Court." RP (05/25/12) 8. The court found she "may incur future medical expenses and have future rehabilitation costs due to her medical conditions." CP 88. However, the court felt constrained to deny the wife's request for a Life Care Plan payment, because "a factual basis was not presented to prove that

the wife is in need of all services detailed in the Life Care Plan at this time.” CP 88 (emphasis added). The court acknowledged “it must have been frightening [for Nao] to listen to this as a life care plan,” and the court opined the expert (Parker) “did an excellent and thorough job,” but, concluded “the medical testimony in this case does not support the Court’s ability to take that life care plan as something that’s necessary at this time.” RP (05/25/12) 8. The court felt it could not find “that this in fact will occur.” RP (05/25/12) 9. Repeatedly, the court noted it could not predict the future. RP (05/25/12) 18 (“things are unknown”); 19 (“unknown in terms of how [the diseases] will progress”); 19 (whether things will go well, as the court hopes, “is an unknown”). Accordingly, the court declined to fund the Life Care Plan.

The court also awarded Nao half as much maintenance, as she requested and for fewer years. However, the court indicated its intention that the wife be able to seek modification of maintenance should her condition deteriorate. RP (05/25/12) 17-19. He wanted her to have this “peace of mind.” RP (05/25/12) 19.

Within days of the court’s oral ruling, before entry of final orders, the wife moved for reconsideration on the issue of maintenance, asking the court to extend the duration of

maintenance from the seven years ordered to a minimum of twelve years, until, approximately, the husband retired (or, at least, became eligible for social security). CP 12-13. At this point, it was predicted by Nao's health care providers that her condition would likely have deteriorated to the point she would incur significant additional expenses for her care. CP 13. The wife pointed out that she could not seek modification if maintenance had terminated, contrary to the court's stated intent to allow for that possibility. CP 14. The husband objected, insisting that expenses for the anticipated worsening of the wife's condition "may never be needed." CP 25. The wife replied that the court intended to leave her in a position to seek additional maintenance if they were needed. CP 30.

The parties and the court participated in a conference call, which does not appear to have been recorded. CP 32. In that call, according to the husband, the judge orally granted the wife's motion, extending maintenance of \$1,000 monthly until the death of either party. CP 32-33. The husband moved for reconsideration. CP 31-33. The court partially granted this motion by reducing the maintenance to \$100 beginning when the wife turns 72. CP 88. Thus, the maintenance award is structured in three stages. The

wife is awarded \$10,000 monthly until she turns 62 years of age. From her age 62 until her age 72, she is awarded \$1,000 monthly. From her age 72 until her remarriage or the death of either party, she is awarded \$100 monthly. CP 88. Her life expectancy is 83 years. Exhibit 63, at 52. Thus, the maintenance totals:

\$10,000 x 84 months (\$840,000)

\$1,000 x 120 months (\$120,000)

\$100 x lifetime (\$13,200 from age 72 to 83)

As the judge made clear at the presentation of final orders, he extended the maintenance award not solely to allow for the wife to seek modification, but “also in recognition of the belief that there should be additional maintenance.” RP (07/27/12) 9. That is, the court extended the maintenance with “an intention to give some additional amount of money.” RP (07/27/12) 22; see, also, RP (07/27/12) 26 (reconsidered “in looking back over the medical needs and [in light of] concern about what insurance will cover”).

The husband called the maintenance a “yoke around his neck” (RP (07/27/12) 19-22) and appealed. CP 82-107. The wife cross-appealed. CP 108-131.

V. ARGUMENT IN RESPONSE TO THE APPEAL

A. THE STANDARD OF REVIEW FOR MAINTENANCE AWARDS IS ABUSE OF DISCRETION.

A trial court has the authority to award maintenance "in such amounts and for such periods of time as the court deems just." RCW 26.09.090(1). Thus, maintenance is "not just a means of providing bare necessities, but rather a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time." *In re Marriage of Washburn*, 101 Wn. 2d 168, 179, 677 P.2d 152 (1984).

This period of time may be a lifetime, particularly where one spouse – by reason of disability or poor earning potential – will be unable to contribute significantly to his or her own livelihood. See *In re Marriage of Sheffer*, 60 Wn. App. 51, 56-58, 802 P.2d 817 (1990); *In re Marriage of Bulicek*, 59 Wn. App. 630, 633-34, 800 P.2d 394 (1990); *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989), *review denied*, 114 Wn.2d 1002 (1990); *In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989). Thus, while "it is generally not the policy of this state to place a permanent responsibility for spousal maintenance upon a former spouse, there are circumstances which require a continuing obligation." *In re Marriage of Coyle*, 61 Wn. App. 653, 657, 811 P.2d 244 (1991).

In short, there are certain circumstances where a lifetime award of maintenance may be "just," which is the only real limitation on the trial court's discretion. *Washburn*, 101 Wn.2d at 178. The trial court is in the best position to determine what is "fair, just and equitable under all the circumstances." *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999) (internal citations omitted). Thus, the spouse who challenges the trial court's decision bears the heavy burden of showing an abuse of discretion. *In re Marriage of Zahm*, 138 Wn.2d 213, 226-27, 978 P.2d 498 (1999).

Here, because of the wife's incurable and disabling progressive medical conditions and her inability to work, and given the wealth of the community and the husband's extraordinary earnings, as well as the parties' standard of living during the long marriage, the court properly concluded it was just to award lifetime maintenance to the wife.

**B. THE MAINTENANCE AWARD WAS PROPER.**

Dan does not challenge the largest portion of the three-staged maintenance award. Br. Appellant, at 9. Rather, he confines his challenge to the second and third stages of maintenance, making three arguments, which Nao addresses as

follows. At the outset, she notes that Dan has neither the facts nor the law on his side. Indeed, the maintenance awarded here was inadequate, as the wife argues in her cross-appeal.

- 1) The trial court awarded maintenance based on need, not on speculation.

Dan challenges the second and third stages of maintenance as being “based solely on speculation that the wife’s physical condition might deteriorate in the future.” Br. Appellant, at 9. This is simply not accurate, as the court’s own words make plain. The court expressly said it extended the maintenance award beyond its original order not solely to allow for the wife to seek modification, but “also in recognition of the belief that there should be additional maintenance.” RP (07/27/12) 9. That is, in its oral ruling, the court declared “an intention to give some additional amount of money.” RP (07/27/12) 22; see, also, RP (07/27/12) 26 (reconsidered “in looking back over the medical needs and [in light of] concern about what insurance will cover”). When, as here, the findings do not contain the court’s reasons, this Court may look to the oral ruling. *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 127, 30 P.3d 446 (2001).

Dan misquotes the oral ruling, misleadingly. Br. Appellant, at 11. He describes the court as saying it was using the extended

maintenance as a “vehicle to allow maintenance to be adjusted.”

Br. Appellant, at 11. But Dan takes this clause completely out of context, that context being as follows, where the court said:

...there were other considerations that I made in coming up with a thousand dollars, other than simply being a simple *vehicle to allow maintenance to be adjusted*. And it was largely based on reconsideration of the materials that were presented by the respondent in this particular case.

RP (07/27/12) 9 (Dan’s quoted section in italics). Obviously, the court was doing something other than what Dan described.<sup>4</sup> The oral ruling clarifies the court’s intention to provide Nao with additional funds after she turns age 62, not just to provide a vehicle for seeking modification.

Basically, Dan’s argument is fatally flawed in its premise. The trial court increased the duration of the maintenance award because Nao needs the money; at least that was one reason, and a sufficient one. Thus, Dan’s discussion of *In re Marriage of Rouleau*, 36 Wn. App. 129, 672 P.2d 756 (1983), is beside the point. Br. Appellant, at 9-11.

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<sup>4</sup> Dan was not going to provide this Court with a report of these proceedings. See Statement of Arrangements.

2) Under the circumstances, the award of maintenance is just and equitable.

The court extended the maintenance to a lifetime award of \$1000 monthly after reconsideration. In a motion to reconsider, Dan urged the court either to eliminate the extended maintenance or to reduce it to \$1 a month from Nao's age 62 to Nao's age 67 (the year 2024). CP 31-33, 34-37. At the presentation hearing, the court declared it would not reconsider again. RP (07/27/12) 3. However, Dan pressed on, until, finally, the court reduced the maintenance, after ten years, to \$100. In light of the court's earlier statements that it was extending maintenance based, at least in part, on reconsideration of the wife's needs, and those needs are indisputable, then the \$100 award should likewise be upheld. If the court thought she needed \$1000 a month, then she needs at least \$100. There is no reason to reverse a reduced amount.

Moreover, if it was error to reduce it to \$100, then Dan invited the error by persistently urging the court to adopt a nominal amount. *State v. Recuenco*, 145 Wn.2d 156, 163, 110 P.3d 188 (2005), *rev'd on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S.Ct. 2546, 165 L. Ed. 2d 466 (2006); *State v. Erickson*, 146 Wn. 200, 189 P.3d 245 (2008). That is, the doctrine will bar review where the party asserting error affirmatively

assented to it, materially contributed to it, or benefited from it. *State v. Momah*, 167 Wn.2d 140, 154, 217 P.3d 321, 328 (2009). See, also, *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1996) (court “will deem an error waived if the party asserting such error materially contributed thereto”); accord *State v. Barnett*, 104 Wn. App. 191, 200, 16 P.3d 74 (2001). Here, the court found the wife needed an additional \$1000 monthly, but the husband continued, past being told the issue was over, to argue for a nominal amount. If there is a problem with \$100 (apart from the fact that it is far too little for Nao’s needs), then it is a problem Dan caused and profited from. He should not be able to argue it as the trial court’s error.

Finally, the maintenance is also justified by the court’s other reason, i.e., to provide an avenue for Nao to seek additional financial support should she need it. Contrary to Dan’s argument, Washington law does not prohibit this justification, particularly under the facts of this case. That is, *Marriage of Rouleau, supra*, simply does not stand for the proposition Dan asserts. The court there simply did “not decide whether a reservation of jurisdiction on the question of alimony is ever appropriate, i.e., where the evidence is such that a future change of circumstances is likely.” *Id.* at 132.

That was not the issue presented and it was not the issue decided, as the court expressly declared.

Rather, in *Rouleau*, the court found the husband, though disabled, did not have a present need for maintenance, that is, a financial need. 36 Wn. App. at 130. Concerned about a future financial need, the court ordered maintenance of \$1 monthly. The appellate court reversed because “Washington law mandates that a party seeking maintenance must demonstrate a need for support.” *Id.*, at 132.

Thus, the holding in *Rouleau* has no application here. Here, there is no dispute the wife has a present financial need for maintenance. The husband conceded so in his petition for dissolution and proposed an award at trial. CP 1-4; RP 225. She is disabled; she cannot work; she overwhelmingly demonstrated a need for support, a finding the husband does not challenge. Nor is there any evidence that at age 62, when the \$10,000 monthly maintenance ends, the wife will need the support any less than she does now. Simply, what was missing in *Rouleau* is not missing here.<sup>5</sup>

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<sup>5</sup> Notably, too, in *Rouleau*, the spouse ordered to pay maintenance (the wife) had a total inability to provide the other spouse (the disabled husband) with any

Further, this case presents a compelling reason to answer affirmatively the question reserved by the *Rouleau* court, i.e., whether a court can order a “place holding” maintenance award where there is evidence a future change of circumstances is likely.

One of the somewhat philosophical points troubling the trial court in this case was the extent to which the court may address the future with what it knows now. The court repeatedly balked at acting to address Nao’s future health-driven needs for lack of complete certainty. Nao elaborates on this point below in her cross-appeal, but for purposes of responding to Dan’s maintenance argument, it is clear a trial court can base its decision on probabilities to which the evidence points. Indeed, that is the court’s duty.

For example, that is just what the court did when it ordered a husband to pay maintenance despite that he was on medical leave (i.e., not working) at the time of trial. *In re Marriage of Donovan*, 25 Wn. App. 691, 697, 612 P.2d 387 (1980). The court properly considered “the probability” of the husband’s return to work. Likewise, here, no one can perfectly predict the future, nor does the law require the court to do so; but one look at Nao’s medical

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financial support. In fact, she was receiving child support from him. *Id.* at 129-130. Here, the husband is a millionaire, and his fortune is growing.

records, and the simple fact that she has two incurable and progressive diseases, more than amply supports an award of lifetime maintenance. While Dan may think of this as a yoke around his neck, for Nao it is a lifeline.

That is, here, the court's finding of need, financial and medical, is not based on mere conjecture as it was in *In re Marriage of Morgan*, 59 Wn.2d 639, 369 P.2d 516 (1962). See Br. Appellant, at 9-10. In that case, not only was the spouse awarded maintenance self-supporting, she was completely healthy. *Id.*, at 643. She speculated that the strain of the divorce might adversely affect her health, but she did not have two incurable diseases. She did not have an entire team of medical experts predicting her probable decline. She did not have a life planning expert translating her prognosis into a grim but inexorable "life care plan." As the court in *Morgan* made clear, "each case of this nature must necessarily depend upon its own facts and circumstances." *Id.*, at 641. Nao has had to face the facts and circumstances of her life, heartbreaking as they are, and even had to overcome Dan's persistent denial and obstruction to get the treatment she needs. His challenge to the trial court's maintenance award is as baseless as was his challenge to the diagnosis of her diseases.

3) The trial court did not abuse its discretion when it ordered maintenance to last for a lifetime.

Likewise, Dan's challenge to the maintenance award because of it being permanent flatly fails to establish an abuse of discretion. Br. Appellant, at 13-18. One defect in his argument is that he ignores key facts. He touts how much money Nao received in the distribution of assets (4% more than he received), but ignores the key comparison: income. Dan testified Nao could make \$5000 to \$6000 a month from her investments. RP 119-120. It will be less if she uses some of the investments to pay off the nearly half-million dollar mortgage on her house. RP 99. This compares to Dan's monthly business income of \$83,000. CP 88 (\$1 million/12). In other words, his business income is about 93% more than Nao's potential investment income, and this does not count his income from the \$1 million plus he received in invested assets (i.e., another \$2500-5000/month). CP 95-96; See Appendix B (illustrative spreadsheet).<sup>6</sup> Even when you add in the maintenance Nao will receive for seven years, the disparity remains stark: Dan's \$86,750 to Nao's \$15,500, a difference of 83%. He is in good health and has 13 to 20 years of income-producing years ahead of him. RP

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<sup>6</sup> Dan's expert, Weber, calculated Nao could receive \$60,000 to 120,000 in investment income on a couple million in assets. RP 207-208. By this same route, Dan could receive \$30,000 to \$60,000.

51. That is, for a decade or more, Dan will outpace Nao in income at rates of 83-95%.

Thus, without even considering the extraordinary costs Nao faces because of her medical conditions, the parties face a completely different economic future. That is, despite some similarity in the balance sheet as concerns the assets divided, any analysis that ignores a look into the future is necessarily inaccurate and at odds with Washington law, which makes the future economic circumstances of the parties the paramount concern. *In re Marriage of Bulicek*, 59 Wn. App. 630, 635, 800 P.2d 394 (1990). As every year passes, Dan's fortune will grow and Nao's will diminish. This is simple math. Her expenses exceed her income, while his income far exceeds his expenses. Exhibits 13, 50. She has no way to alter this equation. Granted, these parties are in better financial shape than most, but the relevant comparison is between them. It does not matter if Nao seeks a level of comfort commensurate with the parties' wealth, as Dan repeatedly criticized at trial. She should be able to visit her mother in Japan, and travel in comfort. She should have a service dog, if that would ease her life. She should have acupuncture, if that would relieve some of her pain, and counseling, if that would gain her some peace of

mind. These parties have wealth. Dan uses the wealth to obscure the main issue here, which is how they should share that wealth. See, e.g., Exhibit 63, at 92, 121, 125. Nao could enjoy a future as secure and comfortable as money can buy a person with two terrible diseases. Under Washington law, that is precisely the future she should enjoy.

Certainly, Washington law permits a permanent award of maintenance under these circumstances, particularly at the low levels awarded here. As a first and general principle, it bears noting that maintenance is strongly favored where, as here, the marriage is long; one spouse has been a “breadwinner” and the other a “homemaker;” and the parties have disparate earning potentials, leading to a stark difference in the standard of living they will be able to maintain post-dissolution.

Thus, this Court has repeatedly upheld maintenance awards that roughly equalized the parties’ income streams. See, e.g., *In re Marriage of Williams*, 84 Wn. App. 263, 269, 927 P.2d 679 (1996) (reducing husband’s to \$2,300 and raising wife’s to \$1900); *In re Marriage of Vander Veen*, 62 Wn. App. 861, 815 P.2d 843 (1991) (maintenance award upheld after 17 year marriage where the wife had not worked for 13 years outside the family farm and would

need to go to school to obtain suitable employment); *In re Marriage of Bulicek*, 59 Wn. App. at 634 (maintenance appropriate where husband's income was nearly three times the wife's). Pertinently, the court in *Bulicek* noted as "the reality":

... that [the wife] does not live on income close to the income that supported the couple's standard of living during marriage and will likely never achieve the post-dissolution economic level of [the husband, who] will be in a position to support a lifestyle more comparable to the lifestyle enjoyed by the couple during marriage than will [the wife], given their relative earning powers.

59 Wn. App. at 633-35. This exactly describes the Valentés' circumstances as well. As this Court in *Bulicek* observed, the proper focus of the court's analysis is "the post-dissolution relative economic positions of the parties." *Id.*, at 635. See, also, *In re Marriage of Marzetta*, 129 Wn. App. 607, 624, 120 P.3d 75 (2005) (after 13 year marriage, wife awarded 20 years of maintenance, based among other things, on limited future earning ability due to multiple sclerosis); *In re Marriage of Nicholson*, 17 Wn. App. 110, 116-117, 561 P.2d 1116 (1977) (award to 49 year old wife of maintenance for ten years where wife had few job skills or experience and husband earned good salary and had good earning potential).

Indeed, this Court has reversed trial court decisions that fail to focus properly on the reality of the parties' economic futures. For example, this Court reversed as inadequate an award of maintenance to the wife where she received 60% of the parties' assets but where, after a 30 year marriage, the parties faced very different economic futures. *In re Marriage of Sheffer*, 60 Wn. App. 51, 802 P.2d 817 (1990). This Court admonished that where "the disparity in earning power and potential is great, this court must closely examine the maintenance award to see whether it is equitable in light of the post-dissolution economic situations of the parties." 60 Wn. App. at 56.

Also on similar facts and reasoning, our Supreme Court reversed as inequitable and doubled an award of maintenance of \$100 monthly for five years (in 1966) where the 41 year old wife had no work experience, had stayed home during the 22 year marriage to care for the children, and the husband earned \$1000 a month, and despite that the wife received 75% of the net assets. *Stacy v. Stacy*, 68 Wn.2d 573, 577, 414 P.2d 791 (1966). Again, and importantly, the court focused on the relative earning potential of the parties and how that affected their economic futures. *Id.*, at 576.

In short, with this proper focus in mind, courts properly award maintenance to construct similar economic futures for parties separating after long-term marriages. Here, Dan challenges an award that falls far short of this desirable goal. If anything, the maintenance awarded here is inadequate to the task Washington law assigned the trial court. Certainly, the fact that it lasts a lifetime is no cause for reversal. Here, not only is Nao ill-equipped by training and experience to enter the job market, she is afflicted with two progressive and disabling diseases.

Thus, whereas in some of the cases cited above, the maintenance served to support the needy spouse while she rehabilitated as a worker, that option is not available here. No one disputed, really, that the wife had any earnings potential. She simply is not going to become self-supporting. When faced with this additional circumstance, courts have ordered maintenance for a lifetime.

For example, lifetime maintenance was proper where the wife's multiple sclerosis, a "progressively debilitating disease," impaired the wife's activities and where the award had the effect of roughly equalizing the parties' monthly income for an extended period. *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863

(1989), *review denied*, 114 Wn.2d 1002 (1990). Indeed, without the maintenance award, the 63% property award to the husband (his retirement account) would have been inequitable. *Id.*, at 701; see, also *In re Marriage of Hadley*, 88 Wn.2d 649, 651, 565 P.2d 790 (1977) (wife with multiple sclerosis after 13 years had suffered “a progressive deterioration of her physical condition and [was] totally disabled, requiring full-time nursing care and other medical attention”).

In *In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989), this Court upheld lifetime maintenance after a long-term marriage, where the standard of living had been high, where the wife had limited ability to earn income both because she had sacrificed opportunities to perform domestic labor but also because of a disabling medical condition, and where the husband had converted assets pretrial so they “were out of reach of distribution.” Thus, per statute and case law, the maintenance award involves a complex calculus, but, at the end, this Court held the wife’s “disability makes lifetime maintenance reasonable under the circumstances.” *Id.*, 53 Wn. App. at 588.

Likewise, here, Nao’s disability makes lifetime maintenance reasonable under the circumstances. She faces a double whammy

– no income earning ability and huge medical expenses. She will inevitably consume her assets in order to meet her daily needs. She will inevitably have to reduce her standard of living. At the same time, Dan's standard of living will only improve. This is the proper comparison, not the comparison of Nao to other MS patients. As Nao argues in her cross-appeal, this comparison requires an increase in the maintenance awarded. Certainly, this comparison justifies the trial court in awarding permanent maintenance.

Not a single of the cases Dan cites in support of his argument bears any pertinent resemblance to the unusual facts of this case. Br. Appellant, at 13-16. There is no credible argument that Dan lacks the ability to pay lifetime maintenance, as in *In re Marriage of Mathews*, 70 Wn. App. 116, 124, 853 P.2d 462 (1993). Nor did Dan assign error to the court's finding he had the ability to pay.

Rather, this is a case where "it is clear the party seeking maintenance will not be able to contribute significantly to his or her own livelihood." *Mathews*, 70 Wn. App. at 124. Not only is the wife unemployable, by lack of training and experience and by reason of disability, but she faces a grim – and expensive -- medical future.

Permanent maintenance would be justified by either of these economic realities.

#### VI. ARGUMENT ON CROSS APPEAL

On the three issues most consequential to the wife's future, the trial court ruled against her. The husband received a golden-egg-laying goose of a business at a bargain, at least half a million less than it's worth. That is, for \$1.6 million dollars, he received a business that will return \$1 million gross annually. No wonder CPA Kessler envied Dan.

Of course, no one envied Nao. Despite the overwhelming of her diseases and the toll they take and will take, she received relatively little maintenance, no funding of her Life Care Plan, and merely 4% more in assets. (If you consider the bargain Dan got in the valuation of Naodan, even this 4% disappears.) This does not make sense. Here, unlike most cases, the wealth accumulated over the long-term marriage, and the anticipated continued income from Naodan, permit the wife to be placed in a far better position. Under Washington law, there is every reason she should be, particularly as the judge here seemed to want to do just that. And therein lies the problem. The trial judge, self-acknowledged as lacking in the pertinent experience, did not seem to understand the

extent of the authority vested in him and expressed confusion at several points in the trial. Unfortunately, this confusion led to the following erroneous rulings.

While a trial court has considerable discretion in dealing with assets at marital dissolution, a trial court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; or it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). Here, the trial court decided two very important issues for untenable reasons.

**A. THE TRIAL COURT DISREGARDED THE LIFE CARE PLAN EVIDENCE FOR AN UNTENABLE REASON.**

The court rejected the evidence of Nao's future needs based on her medical conditions, the Life Care Plan, because the court found that "a factual basis was not presented to prove that the wife is in need of all services detailed in the Life Care Plan at this time." CP 88. While nothing is certain in life, there was a great deal more certainty about Nao's future health-related needs than almost anything else. For example, neither accountant could predict the

future with any certainty, but both confidently valued Naodan based upon estimate of its future income stream. RP 153, 485. Dan confidently predicted a great many things, including Nao's future living expenses and investment earnings. See, e.g., RP 119-120, 137. Courts routinely assess all manner of future-oriented possibilities such as when it compares relative detriment in relocation cases or future dangerousness or flight risks, etc. Some facts a court must find are necessarily speculative, but that is not the same as "merely speculative." Indeed, Washington law requires the court to evaluate potential earnings as part of its maintenance analysis. In fact, the future economic circumstances of the parties are the court's paramount concern in this setting.

The trial court seemed instead, with respect to Nao's maintenance and Life Care Plan requests, to evaluate them against a "beyond a reasonable doubt" standard. While it had the wrong measure in mind, the court's heart was in the right place. The court was justifiably concerned about the wife's future, rightly, since substantial evidence established she is already disabled and would get worse and was already incurring huge expenses. The court was searching for a way to address this circumstance. But the court also expressed uncertainty about the law in this area,

acknowledged and revealed a lack of experience, and faced vigorous advocacy from counsel for both parties, with sometimes conflicting opinions on the legal standards.

For example, the court wanted to make maintenance modifiable, given the court's hesitancy in finding the future needs sufficiently proved. This likely influenced the court's decision to award maintenance at a lesser amount and for a shorter duration than the wife requested. However, the court had to be advised that maintenance is modifiable only so long as it continues. CP 15. For this reason, and reflecting further on the wife's needs, the court extended maintenance for a lifetime, though at a level too low to meet Nao's needs.

Thus, Nao does not necessarily disagree with Dan describing the trial court as "punting" to a future judge the task of dealing with the reality today. See Br. Appellant, at 12. But, for Nao, unlike Dan, what this means is the court should have funded the Life Care Plan as the best evidence of what she will need for her health care security (and awarded her more maintenance).

In viewing the court's decisions, its intent is consistent. The problem is fulfilling that intent. The Life Care Plan is a key component to the wife's security. It proved her needs, not beyond

a reasonable doubt, perhaps, but that is not the standard. The testimony of the wife's doctors and their concurrence in the Life Care Plan was certainly sufficient. In fact, rarely does a trial court in a marital dissolution have evidence of this high quality, providing such a well-grounded basis for a particular monetary award. Even if some of the services were deemed unnecessary or "merely speculative," that would suggest a reduction, not a wholesale repudiation.

A court can abuse its discretion when it gets to a place by the wrong route. See, e.g., *In re Marriage of Spreen*, 107 Wn. App. 341, 349, 28 P.3d 769 (2001) (court "arbitrarily" limited maintenance to one year where the wife's health problems rendered her unable to work). Here, as in *Spreen*, the court's process was "flawed." *Id.* Basically, the court did not get where it wanted to go and where Washington law points.

**B. THE TRIAL COURT'S MAINTENANCE AWARD WAS INADEQUATE FOR UNTENABLE REASONS.**

For the same reasons, and those discussed in the response to the husband's appeal, the wife should have received the maintenance she requested. Under the proper analysis, mandated by statute and guided by case law, the award here is inadequate. Nao has extraordinary needs. RCW 26.09.090(1)(a). She cannot

provide for herself. RCW 26.09.090(1)(b). She and Dan enjoyed a very high standard of living. RCW 26.09.090(1)(c). Their marriage was long. RCW 26.09.090(1)(d). Nao has two incurable diseases. RCW 26.09.090(1)(e). Dan is rich and growing richer. RCW 26.09.090(1)(f).

When compared to the reported cases on maintenance, this case most resembles those where the court awarded substantial and, often, permanent maintenance and those where the appellate court reversed for inadequate awards. See, § V.B.3, above. Without repeating that discussion, Nao emphasizes that the court failed to focus, as it should have, on the future economic circumstances of the parties and to seek to equalize those circumstances. This is one of those cases where “the disparity in earning power and potential is great,” and, where, accordingly, “this court must closely examine the maintenance award to see whether it is equitable in light of the post-dissolution economic situations of the parties.” *Sheffer*, 60 Wn. App. at 56. Nao is entitled to enjoy a standard of living comparable to Dan’s, at least for as long as he continues to earn 90% more income than she does. Under the facts and circumstances of this case, the court’s award is unjust because it is inadequate.

## VII. MOTION FOR ATTORNEY FEES

Because of the disparity in financial resources, Nao seeks attorney fees on the authority of RAP 18.1 and RCW 26.09.140.

The statute provides that:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection there with, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

The parties' financial circumstances, including their very disparate earning capacities, are described in the Statement of Facts above.

The trial court expressly found Nao had a need for support in the form of maintenance. She already faces the prospect of consuming the assets she was awarded to maintain her physical health and her standard of living. Meanwhile, Dan's wealth will grow. He should pay her attorney fees for the appeal he initiated after winning the majority of the issues at trial.

## VIII. CONCLUSION

For the foregoing reasons, Fukiko ("Nao") Valente respectfully asks this Court to affirm the trial court's award of maintenance as to the husband's challenge, but to remand for

reconsideration of funding the Life Care Plan in light of the proper burden of proof, the substantial evidence supporting the expected costs of the wife's health-related needs, and the court's clear authority and intent to meet those needs. Nao also asks for remand to the court for re-evaluation of the maintenance award as being inadequate in light of Washington law and the wife's medical condition. The wife also requests her fees on appeal in light of the parties' disparate incomes.

Dated this 3rd day of May 2013.

RESPECTFULLY SUBMITTED,



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PATRICIA NOVOTNY  
WSBA #13604  
Attorney for Respondent

**INDEX TO APPENDIX:**  
**BRIEF OF RESPONDENT/CROSS-APPELLANT**

*In re Marriage of Valente*  
Court of Appeals, Division One, No. 69242-9-1

| <b><u>Number</u></b> | <b><u>Description</u></b>                     |
|----------------------|---|
| A                    | Findings of Fact & Conclusions of Law         |
| B                    | Spreadsheet Illustrating Court's Distribution |
| C                    | Statutory Provisions                          |

APPENDIX A

APPENDIX A

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KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

In re the Marriage of:

DANIEL VALENTE,

Petitioner,

and

FUKIKO VALENTE,

Respondent.

NO. 11-3-02827-9 SEA

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

(Marriage)

(FNFCL)

I. BASIS FOR FINDINGS

The findings are based on trial. The following people attended:

DANIEL VALENTE, Petitioner.  
JEFFREY L. BARTH, Petitioner's Lawyer.  
FUKIKO VALENTE, Respondent.  
KATHLEEN L. SANDERS, Respondent's Lawyer.

Other: James Weber, CPA; Michael Rassmussen; William Likosky, MD; Judith Parker M.E.D., CDMS, ABVE-D, CLCP, James Bowen, MD; Steven Kessler, CPA, ABV, CVA, MS Taxation, Nola Nevers,

II. FINDINGS OF FACT

Upon the basis of the court records, the court  *Finds*:

2.1 RESIDENCY OF PETITIONER

The Petitioner is a resident of the state of Washington.

1       2.2   NOTICE TO THE RESPONDENT

2           The respondent was served by signing an Acceptance of Service on 4/22/2011.

3  
4       2.3   BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT

5           The facts below establish personal jurisdiction over the respondent.

6                   The respondent is currently residing in Washington.

7  
8       2.4   DATE AND PLACE OF MARRIAGE

9           The parties were married on July 23, 1985 at Tokyo, Japan

10  
11      2.5   STATUS OF THE PARTIES

12           Husband and wife separated on August, 2010.

13  
14      2.6   STATUS OF MARRIAGE

15           The marriage is irretrievably broken and at least 90 days have elapsed since the  
16           date the petition was filed and since the date the summons was served or the  
            respondent joined.

17  
18      2.7   SEPARATION CONTRACT OR PRENUPTIAL AGREEMENT

19           There is no written separation contract or prenuptial agreement.

20  
21      2.8   COMMUNITY PROPERTY

22           The parties have real or personal community property as set forth in Exhibit A,  
23           Exhibit H and Exhibit W. These exhibits are attached or filed and incorporated by  
            reference as part of these findings.

1 2.9 SEPARATE PROPERTY

2 The husband has real or personal separate property as set forth in Exhibits A and  
3 Exhibit H and Exhibit W. These exhibits are attached or filed and incorporated by  
reference as part of these findings.

4 The wife has real or personal separate property as set forth in Exhibit A and Exhibit  
5 W. These exhibits are attached or filed and incorporated by reference as part of  
6 these findings.

7 2.10 COMMUNITY LIABILITIES

8 The parties have incurred the following community liabilities:

| <u>Creditor</u> | <u>Description</u>   | <u>Amount</u> |
|-----------------|--|---------------|
| ING             | Mortgage secured by property<br>located at 7053 Beach Drive<br>Seattle, WA 98136 | \$475,286     |

13 2.11 SEPARATE LIABILITIES

14 There are no known separate liabilities for the husband or wife.  
15

16 2.12 MAINTENANCE

17 Maintenance should be ordered because the wife has the need for spousal  
18 maintenance and the husband has the ability to pay.

19 The parties were married in 1985 and have a long term marriage.

20 Approximately 6 years ago the wife was diagnosed with and suffers from Multiple  
21 Sclerosis and Rheumatoid Arthritis and she is receiving treatment for both  
conditions.

22 Dr. James Bowen, one of the wife's physicians, testified ~~that the wife is not able to~~  
23 ~~be employed given her medical condition. He also testified that it is more probable~~  
24 ~~than not that the wife's condition will deteriorate in the future. The wife testified~~  
25 ~~she had her first attack in 2005 and she has had four attacks since then. In 2008 she~~  
26 ~~could not walk more than one block without a cane.~~

1 The wife may incur future medical expenses and have future rehabilitation costs  
2 due to her medical conditions. The Life Care Plan prepared by Judith Parker  
3 M.E.D., CDMS, ABVE-D, CLCP, with concurrences by the wife's physicians Julie  
4 Carkin, M.D. and James Bowen, M.D., attached to the evaluation and Life Care  
5 Plan, indicated that the future costs for the respondent as a result of her medical  
6 conditions may total \$7,476,986. Steven Kessler, calculated the present value to be  
7 \$468,531 assuming 15% of the medical costs will not be paid by insurance. The  
8 court finds that a factual basis was not presented to prove that the wife is in need of  
9 all services detailed in the Life Care Plan at this time. ~~Maintenance may be  
10 modified if the wife demonstrates her condition has deteriorated and medical and  
11 rehabilitative costs have increased.~~ *KS B*

The wife is not able to obtain health insurance through COBRA and she will need to look to WSHIP.

The husband is in good health. He is awarded the business NaoDan, Inc. Tax returns show income from the business was \$1,190,417.00 in 2010 and \$1,304,666.00 in 2011. He is on track to earn \$1,000,000.00 in 2012. He is awarded approximately \$3,000,000.00 from the property division.

12 The wife should be paid maintenance by the husband beginning May 1, 2012 in the  
13 sum of \$10,000.00 per month for 7 years until the wife turns 62 years of age. *in June*  
14 Thereafter, the wife should be paid maintenance by the husband in the amount of  
15 \$1,000 per month ~~until the death of the husband or the death or remarriage of the~~  
16 wife whichever occurs first. The wife shall be made the beneficiary on the  
17 husband's life insurance policy to secure the maintenance obligation until she is 62  
18 years of age. *72 In June*

*\* until the wife turns 72 yrs. of age. At that time maintenance shall be paid in*  
Maintenance shall be paid on the last day of each month directly to the wife. *KS B*

*Husband shall pay via direct deposit into Chase Bank.*  
2.13 CONTINUING RESTRAINING ORDER

Does not apply.

2.14 PROTECTION ORDER

Does not apply.

2.15 FEES AND COSTS

The husband and wife have the ability to pay his and her own attorney fees and costs incurred herein.

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2.16 PREGNANCY

The wife is not pregnant.

2.17 DEPENDENT CHILDREN

The parties have no dependent children of this marriage.

2.18 JURISDICTION OVER THE CHILDREN

Does not apply because there are no dependent children.

2.19 PARENTING PLAN

Does not apply.

2.20 CHILD SUPPORT

Does not apply.

2.21 OTHER

The wife is 55 years of age and the husband is 53 years of age. The wife testified her monthly expenses to be \$14,037 per month without any provision for savings. The husband testified his monthly expenses to be \$7,051 per month. He is on track to earn \$1,000,000 in 2012.

NaoDan, Chartering, Inc. should be awarded to the husband. Steven Kessler, CPA, ABV, CVA testified at trial that in his opinion the value of the business as of June, 2011 and December 2011 is \$2,098,000.00. James Weber, CPA testified the value of the business to be \$1,593,000. The court finds Mr. Weber's value to be credible and adopts this valuation.

The husband testified, as did his expert, James Weber CPA that the wife should be awarded \$209,233 as her share of the December 11, 2011 bonus in the amount of \$868,000.00 from NaoDan Chartering, Inc. This amount should be paid to the wife within 5 days of entry of the Decree of Dissolution. This amount is not taxable to the wife.

1 The husband has two inheritance accounts; Fidelity Account ending in 5411 with a  
2 balance of \$13,794 and Fidelity Account ending in 2419 with a balance of  
\$142,075.00. He also has \$665,657 in his Chase Bank Account.

3 The wife has a separate account at Chase Bank with approximately \$115,000.00  
4 and a separate account at Bank of America with approximately \$160,000.00.

5 The funds received from Byakko Shinko Kai by the wife are not considered income  
6 to the wife or part of the property division. *Tax, if any, paid by Respondent.*

7 *K B* The property in Exhibit A should be awarded as set forth therein. A division of  
8 55% of the property to the wife and 45% of to the husband is fair and equitable.

9 The wife filed her taxes as married filing separate for the tax year 2011. The  
10 husband shall file his taxes as married filing separate also for 2011.

11 Dr. William Likosky was hired by the husband to testify regarding the wife's  
12 medical condition. ~~He testified he saw her on one occasion and agreed with the  
13 wife's diagnoses of Multiple Sclerosis and Rheumatoid Arthritis. He is familiar  
14 with the wife's treating physicians and testified that they have an excellent  
15 reputation.~~ *CM*

16 *K B* The wife has been diagnosed with Multiple Sclerosis and Rheumatoid Arthritis.  
17 Dr. James Bowen from the Swedish NeuroScience Institute Multiple Sclerosis  
18 Center and Dr. Julie Carkin from the Seattle Arthritis Clinic are her treating  
19 physicans. ~~Dr. James Bowen testified that the wife is not employable. He also  
20 testified that individuals that have Multiple Sclerosis have numerous symptoms  
21 which affect their lives in negative ways such as balance problems, fatigue,  
22 cognitive problems, depression, isolation, numbness, spasticity and stiffness. The  
23 wife is suffering from these symptoms. Her condition will not improve and it is  
24 expected to decline even though she is taking medication and following the  
25 treatment plan.~~ *CM*

### 26 III. CONCLUSIONS OF LAW

The court makes the following conclusions of law from the foregoing findings of fact:

#### 3.1 JURISDICTION

The court has jurisdiction to enter a decree in this matter.

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3.2 GRANTING A DECREE

The parties should be granted a decree.

3.3 PREGNANCY

Does not apply.

3.4 DISPOSITION

The court should determine the marital status of the parties, make provision for a parenting plan for any minor children of the marriage, make provision for the support of any minor child of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.5 CONTINUING RESTRAINING ORDER

Does not apply.

3.6 PROTECTION ORDER

Does not apply.

3.7 ATTORNEY FEES AND COSTS

Each party shall pay his or her own attorney fees and costs.

Dated: July 27, 2012

  
\_\_\_\_\_  
THE HON. CHRIS WASHINGTON

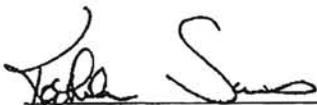
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Petitioner or Petitioner's Attorney:  
A signature below is actual notice  
of this order

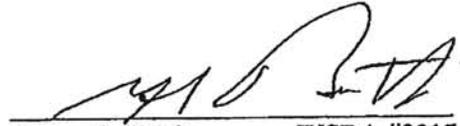
Respondent or Respondent's Attorney:  
A signature below is actual notice  
of this order

Presented by:

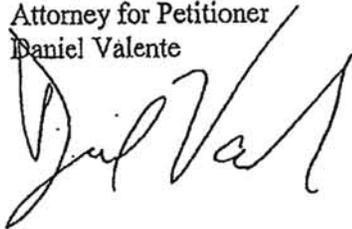
Approved for entry:  
Notice for presentation waived:



Kathleen L. Sanders      WSBA #14512  
Attorney for Respondent  
Fukiko Valente



Jeffrey L. Barth      WSBA #9017  
Attorney for Petitioner  
Daniel Valente



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EXHIBIT H

Property Awarded to Husband

The husband should be awarded as his sole and separate property free and clear from any claims of the wife, and wife hereby conveys, quit claims, relinquishes, and releases unto husband all of her right, title and interest in and to the following:

1. All personal effects and wearing apparel of the husband;
2. All household goods and furnishings in the possession of the husband;
3. All bank accounts in the name of the husband;
4. Any and all life insurance policies insuring the life of the husband, not specifically referred to herein, all insurance policies insuring any assets awarded to the husband herein or belonging to the husband; any and all insurance in the name of the husband not specifically referred to herein relating to medical, hospitalization and dental care. The wife is hereby divested of any beneficiary expectation thereon. Any and all rights and benefits derived as a result of his past or present employment, union affiliation, United States or other citizenship and/or residency within a state, all of which include, but are not limited to:

Various forms of insurance, rights to Social Security payments, welfare payments, unemployment compensation payments, disability payments, Medicare and Medicaid payments, retirement benefits, profit sharing benefits, contributed savings benefits, stock option benefits, sick leave benefits, educational benefits and grants, and all other legislated, contractual and/or donated benefits, whether vested or nonvested and/or directly or indirectly derived through the activity of that specific party.

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**EXHIBIT W**  
Property Awarded to Wife

The Wife shall be awarded as her sole and separate property, free and clear of any claims of the husband, and the husband, hereby conveys, quit claims, and relinquishes and releases unto the wife all of his right, title and interest in and to the following:

1. All personal effects and wearing apparel of the wife in the possession of the wife including the wife's jewelry;
2. All household goods and furnishings in the possession of the wife.
3. All bank accounts in the name of the wife;
4. Any and all life insurance policies insuring the life of the wife, not specifically referred to herein, all insurance policies insuring any assets awarded to the wife herein or belonging to the wife; any and all insurance in the name of the wife not specifically referred to herein relating to medical, hospitalization and dental care. The husband is hereby divested of any beneficiary expectation thereon. Any and all rights and benefits derived as a result of her past or present employment, union affiliation, United States or other citizenship and/or residency within a state, all of which include, but are not limited to:

Various forms of insurance, rights to Social Security payments, welfare payments, unemployment compensation payments, disability payments, Medicare and Medicaid payments, retirement benefits, profit sharing benefits, contributed savings benefits, stock option benefits, sick leave benefits, educational benefits and grants, and all other legislated, contractual and/or donated benefits, whether vested or nonvested and/or directly or indirectly derived through the activity of that specific party.

**AWARD OF PROPERTY (45% to Husband/55% to Wife)**

| ASSET                        | VALUE               | DAN<br>COMMUNITY | NAO<br>COMMUNITY |
|------------------------------|---------------------|------------------|------------------|
| NaoDan, Inc.                 | \$1,593,000.00      | \$1,593,000.00   |                  |
| 2325 Harbor Avenue           | \$485,000.00        | \$485,000.00     |                  |
| 7053 Beach Drive SW          | \$750,000.00        |                  | \$750,000.00     |
| 2007 Lexus                   | \$26,000.00         |                  | \$26,000.00      |
| Fidelity - 9350              | \$1,051,110.00 est. | 18.3%            | 81.7%            |
| Fidelity - 2751              | \$857,339.00 est.   | 18.3%            | 81.7%            |
| Fidelity Dan Sep IRA- 4637   | \$1,123,876.00 est. | 18.3%            | 81.7%            |
| Fidelity Nao Sep IRA - 8297  | \$35,000.00         |                  | \$35,000.00      |
| Airline Miles (50/50 Split): |                     |                  |                  |
| Dan United (478,894)         |                     | 85,707           | 393,187          |
| Dan Delta (259,814)          |                     | 259,814          |                  |
| Dan American (87,046)        |                     | 87,046           |                  |
| Nao United (39,380)          |                     |                  | 39,380           |

**DIVISION OF EDUCATION ACCOUNTS  
(CHILDREN'S)**

| ASSET                    | VALUE              | AWARD TO KEIKO     | AWARD TO GINO     |
|--------------------------|--------------------|--------------------|-------------------|
| 529 College Keiko (2052) | \$40,097.00        | \$40,097.00        |                   |
| 529 College Gino (2109)  | \$3,062.00         |                    | \$3,062.00        |
|                          |                    |                    |                   |
| <b>TOTAL</b>             | <b>\$43,159.00</b> | <b>\$40,097.00</b> | <b>\$3,062.00</b> |

**DAN & NAO SEPARATE PROPERTY**

| ASSET   | VALUE        | DAN SEPARATE | NAO SEPARATE |
|---|--------------|--------------|--------------|
| DAN   |              |              |              |
| Fidelity - Dan's Inherit #5411                                  | \$13,794.00  | \$13,794.00  |              |
| Fidelity - Dan's Inherit #2419                                  | \$142,075.00 | \$142,075.00 |              |
| Chase - Dan*<br>665,657.00<br>- 209,233 (2011 bonus)<br>456,424 | \$456,424.00 | \$456,424.00 |              |
| NAO   |              |              |              |
| Chase - Nao   | \$115,000.00 |              | \$115,000.00 |
| Nao   | \$160,000.00 |              | \$160,000.00 |
| Bonus 2011  | \$209,233.00 |              | \$209,233.00 |
|   |              |              |              |
|   |              |              |              |
| *after bonus paid to Dan and Nao of \$418,466                   |              |              |              |

BARBARA MINER, Clerk of the Superior Court of the State of Washington for King County, do hereby certify that this copy is a true and perfect transcript of said original as it appears on file and of record in my office and of the whole thereof IN TESTIMONY WHEREOF I have affixed this seal of said Superior Court at my office at Seattle on this date JUL 27 2012



BARBARA MINER Superior Court Clerk

By   
Deputy Clerk

R. PARKER

**CERTIFIED  
COPY**

**FILED**

12 JUL 27 PM 4: 15

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

In re the Marriage of:

DANIEL VALENTE,

Petitioner,

and.

FUKIKO VALENTE,

Respondent.

NO. 11-3-02827-9 SEA

DECREE OF DISSOLUTION  
(DCD)

Clerk's action required

I. JUDGMENT/ORDER SUMMARIES

1.1 RESTRAINING ORDER SUMMARY:

Does not apply.

1.2 REAL PROPERTY JUDGMENT SUMMARY:

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: 1981200162 and 00580-0000

1.3 MONEY JUDGMENT SUMMARY:

Does not apply.

*End of Summaries*

1 II. BASIS

2 Findings of Fact and Conclusions of Law have been entered in this case.

3 III. DECREE

4 *It Is Decreed that:*

5 3.1 STATUS OF THE MARRIAGE

6 The marriage of the parties is dissolved.

7 3.2 PROPERTY TO BE AWARDED TO THE HUSBAND

8 The husband is awarded as his separate property the property set forth in  
9 Exhibit A and Exhibit H. These exhibits are attached or filed and  
10 incorporated by reference as part of this decree.

11 3.3 PROPERTY TO BE AWARDED TO THE WIFE

12 The wife is awarded as her separate property the property set forth in Exhibit  
13 A and Exhibit W. These exhibits are attached or filed and incorporated by  
14 reference as part of this decree.

15 3.4 LIABILITIES TO BE PAID BY THE HUSBAND

16 Unless otherwise provided herein, the husband shall pay all liabilities  
17 incurred by him since the date of separation.

18 3.5 LIABILITIES TO BE PAID BY THE WIFE

19 Unless otherwise provided herein, the wife shall pay all liabilities incurred by  
20 her since the date of separation and the mortgage on the real property  
21 awarded to her.

22 3.6 HOLD HARMLESS PROVISION

23 Each party shall hold the other party harmless from any collection action  
24 relating to separate or community liabilities set forth above, including  
25  
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reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

3.7 MAINTENANCE

Beginning May 1, 2012, the husband shall pay the wife spousal maintenance in the amount of \$10,000.00 per month on the last day of each month for 7 years until the wife turns 62. <sup>In June</sup> At that time, spousal maintenance shall be reduced to \$1,000 per month until the wife dies or remarries or upon the death of the husband. Payment shall be made directly to the wife. The husband shall secure the maintenance obligation by naming the wife as beneficiary on a life insurance policy which covers the maintenance obligation until the wife is 62. As the maintenance is paid, the husband may reduce the amount of the life insurance coverage as long as the future maintenance payments are secured. <sup>Maintenance terminates upon wife's remarriage or death of either party.</sup>

~~The wife may petition to modify spousal maintenance to increase maintenance at any time if her medical condition deteriorates and her costs increase.~~

\* Maintenance shall then be reduced to \$100 per month until the wife ~~is 72~~ dies, the husband dies or wife remarries.

3.8 CONTINUING RESTRAINING ORDER <sup>Maintenance paid by direct deposit into Chase Bank of wife.</sup>

Does not apply.

3.9 PROTECTION ORDER

Does not apply.

3.10 JURISDICTION OVER THE CHILDREN

Does not apply because there are no dependent children.

3.11 PARENTING PLAN

Does not apply.

3.12 CHILD SUPPORT

Does not apply.

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3.13 ATTORNEY FEES, OTHER PROFESSIONAL FEES AND COSTS

Each party shall pay his or her own attorneys fees and costs.

3.14 NAME CHANGES

Does not apply.

3.15 OTHER

The wife shall pay off or refinance the mortgage on the property located at 7053 Beach Drive, Seattle, Washington within six (6) months of the entry of the Decree of Dissolution to remove the husband's name from the mortgage.

The airline miles of the parties will be divided 50% to the Husband and 50% to the wife. The husband shall transfer 393,187 United Airlines miles to the Wife's account.

The parties shall each file their tax return as married filing separate for 2011.

Each child shall receive the educational account in his or her name.

The husband shall pay the wife \$209,233 as her share of the December 2011 bonus totaling \$868,000 within five (5) days of entry of the Decree of Dissolution.

*31* The parties shall make a good faith effort to transfer all accounts in order to comply with the property award within thirty (30) days of entry of the Decree of Dissolution.

*Respondent will pay any tax due on Divided income*

Dated: July 27, 2012

*[Signature]*  
THE HONORABLE CHRIS WASHINGTON

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Petitioner or Petitioner's Attorney:  
A signature below is actual notice  
of this order

Respondent or Respondent's Attorney:  
A signature below is actual notice  
of this order

Presented by:

Approved for entry:  
Notice for presentation waived:



Kathleen L. Sanders      WSBA #14512  
Attorney for Respondent



Jeffrey L. Barth      WSBA #9017  
Attorney for Petitioner



Fukiko Valente  
Respondent



Daniel Valente  
Petitioner

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EXHIBIT H

Property Awarded to Husband

The husband should be awarded as his sole and separate property free and clear from any claims of the wife, and wife hereby conveys, quit claims, relinquishes, and releases unto husband all of her right, title and interest in and to the following:

1. All personal effects and wearing apparel of the husband;
2. All household goods and furnishings in the possession of the husband;
3. All bank accounts in the name of the husband;
4. Any and all life insurance policies insuring the life of the husband, not specifically referred to herein, all insurance policies insuring any assets awarded to the husband herein or belonging to the husband; any and all insurance in the name of the husband not specifically referred to herein relating to medical, hospitalization and dental care. The wife is hereby divested of any beneficiary expectation thereon. Any and all rights and benefits derived as a result of his past or present employment, union affiliation, United States or other citizenship and/or residency within a state, all of which include, but are not limited to:

Various forms of insurance, rights to Social Security payments, welfare payments, unemployment compensation payments, disability payments, Medicare and Medicaid payments, retirement benefits, profit sharing benefits, contributed savings benefits, stock option benefits, sick leave benefits, educational benefits and grants, and all other legislated, contractual and/or donated benefits, whether vested or nonvested and/or directly or indirectly derived through the activity of that specific party.

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EXHIBIT W  
Property Awarded to Wife

The Wife shall be awarded as her sole and separate property, free and clear of any claims of the husband, and the husband, hereby conveys, quit claims, and relinquishes and releases unto the wife all of his right, title and interest in and to the following:

1. All personal effects and wearing apparel of the wife in the possession of the wife including the wife's jewelry;
2. All household goods and furnishings in the possession of the wife.
3. All bank accounts in the name of the wife;
4. Any and all life insurance policies insuring the life of the wife, not specifically referred to herein, all insurance policies insuring any assets awarded to the wife herein or belonging to the wife; any and all insurance in the name of the wife not specifically referred to herein relating to medical, hospitalization and dental care. The husband is hereby divested of any beneficiary expectation thereon. Any and all rights and benefits derived as a result of her past or present employment, union affiliation, United States or other citizenship and/or residency within a state, all of which include, but are not limited to:

Various forms of insurance, rights to Social Security payments, welfare payments, unemployment compensation payments, disability payments, Medicare and Medicaid payments, retirement benefits, profit sharing benefits, contributed savings benefits, stock option benefits, sick leave benefits, educational benefits and grants, and all other legislated, contractual and/or donated benefits, whether vested or nonvested and/or directly or indirectly derived through the activity of that specific party.

**AWARD OF PROPERTY (45% to Husband/55% to Wife)**

| ASSET                        | VALUE               | DAN<br>COMMUNITY | NAO<br>COMMUNITY |
|------------------------------|---------------------|------------------|------------------|
| NaoDan, Inc.                 | \$1,593,000.00      | \$1,593,000.00   |                  |
| 2325 Harbor Avenue           | \$485,000.00        | \$485,000.00     |                  |
| 7053 Beach Drive SW          | \$750,000.00        |                  | \$750,000.00     |
| 2007 Lexus                   | \$26,000.00         |                  | \$26,000.00      |
| Fidelity - 9350              | \$1,051,110.00 est. | 18.3%            | 81.7%            |
| Fidelity - 2751              | \$857,339.00 est.   | 18.3%            | 81.7%            |
| Fidelity Dan Sep IRA- 4637   | \$1,123,876.00 est. | 18.3%            | 81.7%            |
| Fidelity Nao Sep IRA - 8297  | \$35,000.00         |                  | \$35,000.00      |
| Airline Miles (50/50 Split): |                     |                  |                  |
| Dan United (478,894)         |                     | 85,707           | 393,187          |
| Dan Delta (259,814)          |                     | 259,814          |                  |
| Dan American (87,046)        |                     | 87,046           |                  |
| Nao United (39,380)          |                     |                  | 39,380           |

**DIVISION OF EDUCATION ACCOUNTS  
(CHILDREN'S)**

| ASSET                    | VALUE              | AWARD TO KEIKO     | AWARD TO GINO     |
|--------------------------|--------------------|--------------------|-------------------|
| 529 College Keiko (2052) | \$40,097.00        | \$40,097.00        |                   |
| 529 College Gino (2109)  | \$3,062.00         |                    | \$3,062.00        |
|                          |                    |                    |                   |
| <b>TOTAL</b>             | <b>\$43,159.00</b> | <b>\$40,097.00</b> | <b>\$3,062.00</b> |

DAN & NAO SEPARATE PROPERTY

| ASSET   | VALUE        | DAN SEPARATE | NAO SEPARATE |
|---|--------------|--------------|--------------|
| DAN   |              |              |              |
| Fidelity - Dan's inherit #5411                                  | \$13,794.00  | \$13,794.00  |              |
| Fidelity - Dan's inherit #2419                                  | \$142,075.00 | \$142,075.00 |              |
| Chase - Dan*<br>665,657.00<br>- 209,233 (2011 bonus)<br>456,424 | \$456,424.00 | \$456,424.00 |              |
| NAO   |              |              |              |
| Chase - Nao   | \$115,000.00 |              | \$115,000.00 |
| Nao   | \$160,000.00 |              | \$160,000.00 |
| Bonus 2011  | \$209,233.00 |              | \$209,233.00 |
|   |              |              |              |
|   |              |              |              |
| *after bonus paid to Dan and Nao of \$418,466                   |              |              |              |

APPENDIX B

APPENDIX B

### Court's Distribution

| ASSET   | VALUE                 | DAN COMMUNITY         | NAO COMMUNITY         |
|---|-----------------------|-----------------------|-----------------------|
| <b>Community Property</b>   |                       |                       |                       |
| NaoDan, Inc.  | \$1,593,000.00        | \$1,593,000.00        |                       |
| 2325 Harbor Avenue  | \$485,000.00          | \$485,000.00          |                       |
| 7053 Beach Drive SW   | \$750,000.00          |                       | \$750,000.00          |
| 2007 Lexus  | \$26,000.00           |                       | \$26,000.00           |
| Fidelity - 9350   | \$1,051,110.00        | \$192,353.13          | \$858,756.87          |
| Fidelity - 2751   | \$857,339.00          | \$156,893.04          | \$700,445.96          |
| Fidelity Dan Sep IRA - 4637   | \$1,123,876.00        | \$205,669.31          | \$918,206.69          |
| Fidelity Nao Sep IRA - 8297   | \$35,000.00           |                       | \$35,000.00           |
| <b>TOTAL</b>  | <b>\$5,921,325.00</b> | <b>\$2,632,915.48</b> | <b>\$3,288,409.53</b> |
|   |                       | <b>44.46%</b>         | <b>55.54%</b>         |
| <b>Separate Property</b>  |                       |                       |                       |
|   |                       | <b>DAN SEPARATE</b>   | <b>NAO SEPARATE</b>   |
| Fidelity - Dan's inherit #5411  | \$13,794.00           | \$13,794.00           |                       |
| Fidelity - Dan's inherit #2419  | \$142,075.00          | \$142,075.00          |                       |
| Chase - Dan*<br>665,657.00<br>- 209,233.00 (2011 bonus)<br>456,424.00 | \$456,424.00          | \$456,424.00          |                       |
| Chase - Nao   | \$115,000.00          |                       | \$115,000.00          |
| Bank of America Family Gift - Nao                                     | \$160,000.00          |                       | \$160,000.00          |
| Bonus 2011  | \$209,233.00          |                       | \$209,233.00          |
|   | \$1,096,526.00        | \$612,293.00          | \$484,233.00          |
| <b>GRAND TOTAL ALL ASSETS</b>   | <b>\$7,017,851.00</b> | <b>\$3,245,208.48</b> | <b>\$3,772,642.53</b> |
|   |                       | 46%                   | 54%                   |

APPENDIX C

APPENDIX C

RCW 26.09.090:

(1) In a proceeding for dissolution of marriage...the court may grant a maintenance order for either spouse. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, after considering all relevant factors including but not limited to:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage;
- (d) The duration of the marriage;
- (e) The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and
- (f) The ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance.

RCW 26.09.140:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection there with, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.