

NO. 74427-5-1

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON – DIVISION I**

In re:

GINGER ANN GALANDO,

Respondent,

And

MATTHEW PAUL GALANDO,

Appellant,

APPEAL NO. 74427-5-1

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

BRIEF OF APPELLANT-INTERVENER

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Descendants' Trust FBO Matthew P. Galando,
U/T/A dated November 25, 1998

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COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

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I. INTRODUCTION

Edward D. Ahrens, as Successor Independent Trustee (“Independent Trustee”) of The Joseph A. Galando Descendants’ Trust FBO Matthew P. Galando under trust agreement dated November 25, 1998 (the “Trust”), by and through his legal counsel Ahrens DeAngeli Law Group, LLP, hereby submits the following appellate brief and respectfully requests an order reversing the Decree of Dissolution (the “Decree”), its Findings of Fact and Conclusions of Law (the “Findings”), and Order of Child Support (the “Child Support Order”) entered by the trial court on November 18, 2015 (i) to the extent the Decree and the Findings allocate Trust principal and/or Trust income to Ginger Ann Galando, (ii) to the extent the Decree and Findings award spousal maintenance based on the consideration of Trust principal and/or Trust income, and (iii) to the extent the Child Support Order determines child support based on Trust principal (rather than Trust income).

The Independent Trustee’s appeal in the above-captioned matter concerns the trial court’s disregard, in the course of a dissolution of the marriage between Matthew Paul Galando (“Matthew”) and Ginger, of the provision of the irrevocable Trust established by Matthew’s parents for the benefit of Matthew and other beneficiaries that, among other things, protects the Trust assets from creditors. In a drastic overreach of its

statutory authority and equitable powers, which only allows reaching the Trust's income (but not principal) solely for the purpose of child support obligations, the trial court has (1) ordered that Trust assets be sold and distributed to Ginger as part of the marital property division; (2) awarded legal fees and costs to Ginger based on the expectation that Matthew would be able to pay for them out of Trust assets; (3) imposed spousal maintenance obligations far in excess of what Matthew can afford without considering Trust income and principal; and (4) imposed child support obligations against Matthew in excess of what he can afford without considering Trust principal. In addition to its improper consideration of Trust assets, the trial court dramatically over-exaggerated the extent of Matthew's assets and the Trust's assets by double-counting the value of entity interests owned by the Trust, ignoring debts owed by such entities, and failing to account for their illiquidity. For these reasons, as explained below, reversal is warranted.

II. ASSIGNMENTS OF ERROR

A. The trial court erred by ordering payment of the personal judgment against Matthew out of Trust assets by imposing the Marital Lien to be paid from the sale proceeds of assets owned by the Trust.

B. The trial court erred by considering assets owned by the Trust in calculating its spousal maintenance award.

C. The trial court erred by awarding legal fees to Ginger to be paid by Matthew based on the expectation that such fees would be paid from the proceeds of the sale of Trust assets.

D. The trial court erred by considering Trust principal, as opposed to just Trust income, in calculating Matthew's child support obligation.

E. The trial court erred in its findings regarding the Trust's income, assets, and liquidity.

III. STATEMENT OF THE CASE

A. Statement of Facts.

On November 25, 1998, Joseph A. Galando ("Joseph") and Barbara J. Galando ("Barbara"), husband and wife executed a "Trust Agreement" creating two trusts ("The Joseph A. Galando Descendants Trust" and "The Barbara J. Galando Descendants' Trust") for the health, support, maintenance, and education of their descendants. (Ex. 501, pp. 1, 6-7.) The Trust Agreement provided for the appointment of an Independent Trustee to undertake all duties and powers delegated to the Independent Trustee under the Trust Agreement and/or by the Trustee of any trust created under the Trust Agreement. (Ex. 501, pp. 57-58.) The Trust Agreement further prohibited the appointment of anyone "related or subordinate" to any beneficiary or Grantor, as defined in § 672(c) of the Internal Revenue Code,

as Independent Trustee. (Ex. 501, pp. 57-58.) On April 16, 1999, pursuant to Section 6 of Article II of the Trust Agreement, the Independent Trustee of each trust divided a portion of those trusts into three separate shares, one for each of Joseph and Barbara's three children, including Matthew. (Ex. 506.) On March 3, 2009, the three shares and all remaining assets and liabilities of the two trusts were each similarly divided into three separate trusts for the benefit of each respective child. (Ex. 507.) On May 21, 2010, The Barbara J. Galando Descendants' Trust for Matthew's benefit was consolidated into The Joseph A. Galando Descendants Trust for Matthew's benefit, i.e., the Trust. (Ex. 508.)

On March 3, 2015, Edward D. Ahrens was appointed as successor Independent Trustee of the Trust and granted, in addition to the powers allotted to the Independent Trustee under the Trust Agreement, the power to deal with and manage all matters where assets of the Trust may be involved in the above-captioned dissolution, and the power to manage all real estate matters involving assets of the Trust, including but not limited to any real estate issues arising out of the above-captioned dissolution. (Ex. 314.) The Trust Agreement permits distributions of income and principal of the Trust to Matthew and/or his children and future grandchildren for support, maintenance, health and education. (Ex. 501, p. 13.) However, paragraph 2 of Article VII of the Trust Agreement contains a standard

spendthrift clause that absolves the Trust of any and all liability for the debts of any beneficiary and expressly prohibits any beneficiary or issue of a beneficiary from selling, assigning, transferring, or encumbering his or her interests in the Trust. (Ex. 501, pp. 72-73.)

At all times relevant hereto, the Trust's assets have consisted primarily of real property, a note receivable, and a limited partnership interest. (Ex. 509, p. 1.) The chief real property asset of the Trust is a residence situated at 6124 224th Ave NE, Redmond, WA 98053 (the "Residence") purchased in the name of the Trust on March 20, 2001. (Ex. 512.) The note receivable owned by the Trust is a promissory note in the face amount of \$2,900,000 (the "SDM Note") payable from the SDM Trust, U/T/A dated May 21, 2010 (the "SDM Trust") in annual installments of interest in the amount of \$129,630 and with no principal due and payable until a final balloon payment on May 24, 2030. (CP 588-94.) The Trust's limited partnership interest is in Galando Investments, LP, a Washington Limited Partnership ("GILP"), which was assigned to The Joseph A. Galando Descendants Trust and The Barbara J. Galando Descendants' Trust on November 25, 1998. (Exs. 502, 503, 504, 505.) After the division and consolidation of those trusts, as described above, the Trust retained a non-controlling interest in GILP. (CP 567.) As a result, no trustee of the Trust, including the Independent Trustee, could force a distribution from GILP.

(CP 567.) The Trust's primary consistent income source is the interest payments on the SDM Note. See (CP 195.) For 2014, the Trust's total annual interest and investment distribution income was summarized in expert testimony as \$157,817, not including taxes, insurance premiums, and other expenses. (CP 195.) Due to the highly illiquid nature of the Trust's principal assets, there are few, if any, assets outside of the Trust's income that are available for distribution to Matthew or the other Trust beneficiaries for support, maintenance, health and education.

B. Procedural History.

On August 12, 2014, Ginger filed a Petition for Dissolution (the "Dissolution") of her marriage to Matthew in the Superior Court for the State of Washington in and for the County of King. (CP 1-5.) On March 27, 2015, the Independent Trustee moved to intervene in the Dissolution in order to protect the interests of the Trust, which the trial court granted on April 10, 2015. (CP 16-23, 61-67.) Trial in the dissolution lasted ten days, after which the trial court entered the Decree, the Findings, a Parenting Plan, and the Child Support Order. (CP. 1110-48.) The Decree, *inter alia*, imposed a "Marital Lien" money judgment against Matthew in the principal amount of \$756,295.00 in Ginger's favor, as well as \$99,821.71 of Ginger's attorney fees. (CP 1141-42.) In its Findings, the trial court held, "[t]he Court has the authority to order the prompt sale of the [Residence] . . . to

protect the interests of the beneficiary children of this marriage” and ordered the Independent Trustee to list the Residence for sale. (CP 1132.) The Findings further stated that the Marital Lien amount “should be paid to [Ginger] from the sale proceeds of the [Residence] as more fully described below and in the Decree.” (CP 1132) (emphasis added). Curiously, and in contrast to the Findings, the Decree ordered that payment of the Marital Lien “shall be made from the sale proceeds of [the Residence].” (CP 1142) (emphasis added). The Decree further granted Ginger a \$4,000 monthly spousal maintenance award, justified in the Findings based on the trial court’s unsubstantiated assumption that Matthew “will continue to receive ample funds and enjoy his luxurious lifestyle after dissolution.” (CP 1144-45, 1133.) Also awarded against Matthew were Ginger’s attorney fees and costs in the amount of \$99,821.71, justified in the Findings in part due to his “trust income, investment income, and gifts from his family” and on the ground that “[w]ith the sale of the [Residence], there will be ample resources available to [Matthew] for payment of these [attorney fee] obligations.” (CP 1145-46, 1134.)

The trial court’s Findings also contained an appendix titled “Galando Asset Liability Spreadsheet” which, *inter alia*, designated the Trust as Matthew’s separate property valued at \$5,000,000. (CP 1138.) The “Galando Asset Liability Spreadsheet” further placed a combined value of

\$3,000,000, on Matthew's interest in the SDM Trust, the JAG Gift Trust U/T/A dated December 20, 2012 (the "JAG Gift Trust")¹, GILP², Galando Hawaii Properties, LLC³, and the Joseph A. Galando Residence Trust U/T/A dated March 25, 2004 and the Barbara J. Galando Residence Trust U/T/A dated March 25, 2004 (collectively, the "Galando House QPRT"), all of which were designated as his separate property. (CP 1138.)

The Independent Trustee moved for Reconsideration and Amendment of Judgment on November 30, 2015 requesting that the trial court (i) vacate all portions of the Decree and Findings that require the Independent Trustee to sell the Residence and allocate the sale proceeds towards a \$756,295.00 monetary judgment in Ginger's favor, (ii) adjust the Decree's spousal maintenance award and attorney fee award to be determined without regard to Matthew's interest in the Trust, (iii) to amend the Decree's Child Support Order to be determined without regard to the Trust's assets that constitute trust principal (even though Trust income

¹ The Galando Asset Liability Spreadsheet simply references a "Gift Trust." However, since there is no mention anywhere on the record of an entity solely titled the "Gift Trust," it can only be assumed, based on the exhibit number cited by the trial court, that it had intended to reference the JAG Gift Trust.

² The Galando Asset Liability Spreadsheet references "Galando Family LP." However, since there is no mention anywhere on the record of an entity named Galando Family LP, it can only be assumed, based on the exhibit number cited by the trial court, that it had intended to reference Galando Investments Limited Partnership.

³ The Galando Asset Liability Spreadsheet references "Galando Hawaii LP." However, since there is no mention anywhere on the record of an entity named Galando Hawaii LP, it can only be assumed that it had intended to reference Galando Hawaii Properties, LLC, which is owned 99% by the SDM Trust. (Ex. 515, p. 10, n. 1.)

distributable to Matthew may be taken into account), and (iv) to revise the “Galando Asset Liability Spreadsheet” to reflect correct valuations of Matthew’s interest, if any, in the SDM Trust, the JAG Gift Trust, Galando Investments Limited Partnership, Galando Hawaii Properties, LLC, and the Galando House QPRT. (CP 1149-58.) The trial court denied the Independent Trustee’s Motion for Reconsideration and Amendment of Judgment on December 14, 2015. (CP 1168-69.) The Independent Trustee filed a Notice of Appeal in the above captioned appeal on December 17, 2015. (CP 1170-1237.)

IV. ARGUMENT

A. Standard of Review.

A marital property division is reviewed for manifest abuse of discretion, which occurs when “[a Court’s] decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Muhammad*, 153 Wn. 2d 795, 803 (2005) (quoting *In re Marriage of Littlefield*, 133 Wn. 2d 39, 46-47 (1997)). However, issues of statutory interpretation are questions of law, subject to de novo review. *In re Marriage of McCausland*, 159 Wn. 2d 607, 615 (2007). Where a statute is clear and unambiguous on its fact, a Court will not apply “statutory construction principles, such as legislative history, ‘even if [the Court] believe[s] the legislature intended something else but did not adequately

express it.” *Id.* (quoting *Am. Continental Ins. Co. v. Steen*, 151 Wn. 2d 512, 518 (2004)). A trial court’s findings of fact, meanwhile, must be supported by “substantial evidence,” which exists “if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *In re Marriage of Rockwell*, 141 Wn. App. 235, 242 (2007) (quoting *In re Marriage of Griswold*, 112 Wn. App. 333, 339 (2002)).

B. Payment of the Marital Lien May Not Be Ordered from the Sale Proceeds of the Residence Because No Portion of the Trust’s Assets is Distributable as Part of a Marital Property Division.

RCW § 26.09.080 requires the Court to dispose of the community and separate property of the spouses in a manner that is “just and equitable” after considering such factors as “(1) The nature and extent of community property; (2) [t]he nature and extent of the separate property; (3) [t]he duration and extent of the marriage or domestic partnership; and (4) [t]he economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.”

Not before the Court, however, is property in which a spouse has a

mere expectancy. *In re Marriage of Harrington*, 85 Wn. App. 613, 624 (1997), explained this principle by holding that “[f]or purposes of Washington dissolution actions, property can be tangible or intangible, but it must be something to which there is a right. **A mere expectancy is not a right and as such is not property.**” (Emphasis added). A decision of a Colorado Court of Appeals applied this concept to a spouse’s beneficial interest in an irrevocable trust and held that “[w]hen a trust permits trustees to distribute to a beneficiary so much, if any, of income as they in their discretion see fit, a beneficiary **has no property interest or rights** in the undistributed funds. The rights held by the beneficiary **are merely an expectancy.**” *In re Marriage of Guinn*, 93 P.3d 568, 571 (Colo. App. 2004) (emphasis added).

Ginger’s previous reliance on *Landauer v. Landauer*, 95 Wn. App. 579 (1999), is misplaced. Although *Landauer* permitted consideration of the real property held by a certain trust for the purpose of analyzing the economic circumstances of the beneficiary spouse in the division of marital property, the trust at issue in that case was a so-called “Indian Trust” rather than a discretionary trust. An Indian Trust does not provide a trustee with discretion to make or withhold distributions of income and principal. Rather, an Indian Trust is merely a vehicle for ensuring continued occupancy of federal lands by designated Native American tribes. 25

U.S.C. § 348 merely states that “the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust ***for the sole use and benefit*** of the [Native American] to whom such allotment shall have been made.” (Emphasis added). The United States, as trustee, does not retain any enumerated discretion to withhold income from the trust land from the beneficiary. Rather, the beneficiary of an Indian Trust is merely subject to rigid restraints on alienation such as 25 U.S.C. § 348, which nullifies “any conveyance” of lands allotted in an Indian Trust.

Here, by contrast, the Trustee has discretion to distribute the Trust’s income and principal to Matthew and/or his children and grandchildren “***as the Trustee deems reasonable*** for such beneficiary’s support, maintenance, health and education.” *See* (Exhibit 306/501, p. 32.) As a discretionary irrevocable trust, the Trust only provides Matthew with a “mere expectancy” in the Trust’s income and principal, which is not property that is distributable in a marital property division. A beneficial interest in the Trust, by its express terms, cannot have any value assigned to it that could be capable of division between a beneficiary and a non-beneficiary spouse, or capable of being used to pay amounts to a non-beneficiary of the Trust. Any ruling to the contrary would be tantamount to rewriting the Trust Agreement to add Ginger as a beneficiary, which was never the intent of the Trust Grantors, and to erase the Trust’s spendthrift provisions. For that

reason, the Decree should be reversed for requiring payment of the Marital Lien from the sale proceeds of the Residence.

C. Spousal Maintenance Cannot Exceed an Amount that Matthew, Individually, Can Pay Without Relying on Trust Income and Principal, Neither of Which Is Payable For Spousal Maintenance Obligations.

Section 2 of Article VII of the Trust Agreement contains a spendthrift clause which provides that income and principal of the Trust, is unreachable by a beneficiary's creditors and cannot be sold, assigned, transferred, or encumbered by a beneficiary. (Exhibit 306/501, p. 72.) RCW § 6.32.250 further prohibits the collection of judgments against "any money, thing in action or other property *held in trust* for a judgment debtor where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor." (Emphasis added). Although RCW § 26.19.071(3) and RCW § 11.96A.190 allow the consideration of a beneficiary's income from a trust (but not principal) for the calculation and enforcement of child support obligations, respectively, no analogous statutes allow the consideration of trust assets in determining spousal maintenance obligations. The Legislature's failure to create statutory exceptions to RCW § 6.32.250 for the calculation and enforcement of spousal maintenance obligations, after having enacted two such statutes pertaining to child support obligations, reveals its intent not to allow trust

assets to be considered in making a spousal maintenance award.

Case law in other jurisdictions supports this concept. In *In re Marriage of Rhinehart*, 704 N.W. 677, 681 (Iowa 2005), the Iowa Supreme Court refused to treat undistributed income of a trust, the payment of which was “at the discretion of the co-trustees” and to which the beneficiary spouse had no mandatory right of distribution, “as a current source of financial support that would alleviate [the beneficiary spouse’s] need for alimony.” Likewise, a New Jersey Superior Court held that because a spouse’s beneficial interest in a discretionary trust “was not an ‘asset[] held by’ her. It was, therefore, improper to impute income from the [trust] to [the beneficiary spouse] in determining [the obligee spouse’s] alimony obligation.” *Tannen v. Tannen*, 3 A.3d 1229, 1244 (N.J. Super. 2010). For support, the *Tannen* court relied on § 155 of the Restatement (Second) of Trusts, cmt b., which states that “the transferee or creditor **cannot compel the trustee to pay anything to him** because the beneficiary [of a discretionary trust] could not compel payment to himself or application for his own benefit.”) (emphasis added).

In the dissolution at hand, Matthew cannot compel the Independent Trustee to distribute income or principal to him to pay his obligations, nor can Matthew as Trustee properly make such payments to himself for such improper purposes of paying for debts that do not relate to his own support,

maintenance, health and education. Furthermore, even if the trial court could properly regard Matthew's interest to be more than a "mere expectancy," his beneficial interest is totally discretionary and limited to *his own* support, maintenance, health and education needs, which has no value to *him* for estate tax or creditor protection purposes. Accordingly, the trial court erred by imputing income and/or assuming the possibility of any future principal distributions to Matthew that were not for his own health, education, maintenance and support from the Trust to Matthew in determining his spousal maintenance obligation.

D. The Trial Court Erred By Considering Trust Assets for Purposes, Such as Ginger's Attorney Fees, that Do Not Protect the Interests of the Beneficiary Children.

The trial court, in its Findings, cited its "authority to protect the interests of the beneficiary children" as its basis for ordering the sale of the Residence. (CP 1132.) Nonetheless, the trial court based its award of Attorney Fees to Ginger, in large part, on Matthew's "trust income" and the proceeds from the sale of the Residence. (CP. 1134.) In addition to violating the spendthrift provisions of the Trust, the trial court's expectation that the fees charged by Ginger's attorney (who did not represent the Galando children and whose interests are directly in conflict with those children's interests as discretionary Trust beneficiaries) be paid from Trust assets benefits Ginger at the expense of the Trust and its beneficiaries,

which include the children. Likewise, ordering payment of the Marital Lien from the Residence sale proceeds was similarly improper because it would inure solely to Ginger's benefit. In both instances, Trust assets will be substantially diminished to the *detriment* of the children as Trust beneficiaries. Accordingly, while the Independent Trustee reiterates that RCW §§ 26.19.071(3) and 11.96A.190 only allow Trust income to be considered in determining child support obligations, even assuming *arguendo* that other Trust assets could be considered "to protect the interests of the children," the trial court erred by directing the use of Trust assets for the benefit of Ginger alone.

E. The Trial Court Erred By Considering Trust Principal, As Opposed To Just Trust Income, In Calculating Matthew's Child Support Obligation.

As mentioned above, RCW § 26.19.071(3) and RCW § 11.96A.190 allow a beneficiary's income from a trust to be considered and even executed upon for the purpose of enforcing child support obligations, no statutes or other authority allows the principal assets of a spendthrift trust to be considered or reached for this purpose. By expressly designating trust income as a relevant and reachable for child support obligations in RCW §§ 26.19.071(3) and 11.96A.190, it is readily apparent that the Legislature intended to *exclude* trust principal from the purview of these statutes. *See Washington Natural Gas Co. v. Public Utility Dist. No. 1*, 77 Wn. 2d 94, 98

(1969) (“Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*—specific inclusions exclude implication.”). Nonetheless, in paragraph 3.7 of the Child Support Order, trial court justified deviating from the standard child support calculation, in part, due to Matthew having “assets valued in excess of \$8 million.” (CP 1115.) The Galando Asset Liability Spreadsheet portion of the trial court’s Findings, breaks down the \$8 million dollar figure by ascribing \$5 million to the Trust and \$3 million to other entities, which as explained in Section F. below, are largely either owned by the Trust or insolvent so there is no rational basis for adding an additional \$3 million of value to Matthew’s net worth. (CP 1138-39.) Thus, the trial court erred in calculating the Child Support Order, in part, based on Matthew’s discretionary interest in the Trust principal and reversal and remand is appropriate.

F. The Trial Court Grossly Misconstrued the Income, Assets, and Liquidity of the Trust and Matthew.

The Decree relies on manifestly incorrect valuations of Matthew’s interests in the Trust, the SDM Trust, the JAG Gift Trust, Galando Investments Limited Partnership, Galando Hawaii Properties, LLC, and the

Galando House QPRT. Uncontested information on record clearly shows that the SDM Trust owes payment of the SDM Note to the Trust in the amount of \$2,900,000 but with no principal due and payable until the final balloon payment on May 24, 2030. *See* (Ex. 515, p. 1; CP 588-94.) Matthew's interest in the SDM Trust, meanwhile, is offset, not only by the SDM Note to the Trust, but other notes payable, which collectively exceed the SDM Trust's assets by almost five million dollars. *See* (Ex. 515, p. 10.) Therefore, the trial court erred not only in its valuation of Matthew's interest in the SDM Trust (which failed to consider the SDM Trust's liabilities to the Trust and others), it also overvalued the Trust by failing to take into account the illiquidity of the SDM Note, which pays only interest until May 24, 2030, and the current uncollectability of roughly \$1 million of the principal balance of the SDM Note (i.e., approximately 20% of the almost \$5 million of debt owed by the SDM Trust in excess of its assets) owned by the Trust even if Matthew could try to enforce payment of the SDM Note principal prior to the May 24, 2030 maturity date.

Galando Hawaii Properties, LLC also should not have been counted as an asset of Matthew, who owns no interest in the company. The uncontested record reveals that the SDM Trust owns 99% of Galando Hawaii Properties, LLC, and is nonetheless burdened by liabilities (including the SDM Note payable to the Trust) far exceeding the value of

its interest in Galando Hawaii Properties, LLC. (Ex. 515, p. 10, n. 1.) For that reason, Galando Hawaii Properties, LLC cannot be reasonably counted as one of Matthew's assets that has any value in excess of the SDM Note payable to the Trust. In other words, this is a clear case of double counting by the Trial Court

Likewise, the Court erred in adding GILP as an asset of Matthew separate and distinct from the Trust. In fact, the record shows that GILP is an asset of the Trust, which owns a 32.106% interest in the partnership. *See* (Ex. 515, p. 1, n. 2.) Therefore, Galando Investments Limited Partnership should not have been double-counted as an additional asset of Matthew because it has already been taken into account as a portion of the Trust's net value. The Court also erred in its valuation of the Trust's interest in GILP by failing to consider the illiquidity of its non-controlling interest in GILP, from which the Trust could not force distributions.

Interests in two other trusts were improperly assigned some value to Matthew. Matthew's interest in the JAG Gift Trust, as a secondary beneficiary (along with his siblings), is not properly counted as a valuable asset of Matthew. Ginger did not contest, at trial or otherwise, testimony on the record that the JAG Gift Trust was a trust established for the benefit of Matthew's mother by his father for her lifetime and that Matthew has received no distributions from the JAG Gift Trust and is unlikely to ever

receive such distributions from that trust. *See* (CP 1067, ¶ 3.) Furthermore, Ginger has introduced no evidence showing the value of Matthew's future interest in the JAG Gift Trust (which actually has zero value to Matthew) to be remotely close to the \$3,000,000 valuation stated in the Court's "Galando Asset Liability Spreadsheet." Ginger has also failed to provide any evidence to contradict testimony at trial, nor is there any other evidence in the record, that the Galando House QPRT, and Matthew's interest therein, was terminated on March 24, 2014, after which time its assets were gifted back to Joseph and Barbara Galando, prior to Ginger's filing of the dissolution, solely for family estate planning reasons, by Matthew and his two siblings which had nothing at all to do with the dissolution of Matthew's marriage. (CP 1064, ¶ 3.)

Accordingly, the trial court's Decree grossly overvalued Matthew's direct or indirect interests, if any, in the SDM Trust, the JAG Gift Trust, GILP, Galando Hawaii Properties, LLC, and the Galando House QPRT and effectively double-counted the value of GILP and Galando Hawaii Properties, LLC as assets of Matthew, although they are actually assets of the Trust and the SDM Trust, respectively.

Lastly, the trial court, by imposing financial obligations upon Matthew that he cannot realistically fulfill without the distribution of Trust assets (including Trust principal), failed to take into account the illiquidity

of the Trust and its unreachability by Matthew's creditors due to its spendthrift clause and RCW § 6.32.250, as analyzed above. The trial court arbitrarily assumed, with no rational basis, that illiquid assets of the Trust could be liquidated and converted to cash or other liquid assets and that Matthew had the authority to distribute those assets for payment of his personal creditors rather than for his own health, support, maintenance and education. Again, the Court, by imposing excessive and onerous obligations in its Decree, has essentially rewritten the Trust to include Ginger as a beneficiary and/or removed the Trust's spendthrift cause.

V. CONCLUSION

Based on the foregoing, the Independent Trustee respectfully asks this Court to GRANT his appeal and reverse the trial court's rulings to the extent they (1) require payment of the Marital Lien from the proceeds of the sale of the Residence in satisfaction of a personal judgment against Matthew, (2) take into account those sale proceeds (or other Trust income and principal assets) in determining Ginger's spousal maintenance award and award of attorney fees, and (3) take into account Trust principal assets (and not just the actual income distributions) in determining Matthew's child support obligations. The Independent Trustee respectfully requests that this Court either rule or remand with instructions that the assets of the Trust may not be charged with the payment of the Marital Lien, any attorney

fee awards against Matthew, any spousal maintenance award, and/or any of the other financial obligations imposed on Matthew except for the obligation to pay a child support obligation based in part on the Trust income that is distributable to Matthew.

DATED this 8th day of July, 2016.

AHRENS DEANGELI LAW GROUP LLP

A handwritten signature in black ink, appearing to read "S.L. Pruss", written over a horizontal line.

Stephen L. Pruss, WSBA No. 32156

ATTORNEY FOR: Edward D. Ahrens, Successor
Independent Trustee of The Joseph A. Galando
Descendants' Trust FBO Matthew P. Galando
U/A/D 11/25/98, Appellant Intervenor