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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
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STATE OF WASHINGTON  
DIVISION III**

**In re the Marriage of:**

JANICE GAI GREEN, Petitioner-Appellee

**and**

HAROLD J. GREEN, Respondent-Appellant

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**NO. 288587-III**

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**APPELLANT'S BRIEF**

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LEE & ISSERLIS, P.S.  
JONATHAN LEE, WSBA 6478  
W. 1124 Riverside Ave.. #300  
Spokane, WA. 99201  
326-1800

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## ASSIGNMENTS OF ERROR

1. The trial court erred in failing to obtain jurisdiction over the Green Family Limited Partnership (GFLP) and Green Family Living Trust of 1995 (the Senior Trust) in attempting to value Bud Green's minority limited partnership interest.
2. The trial court erred in allowing the testimony and market analysis offered by Mr. Dewitt Sherwood when Mr. Sherwood acknowledged he was not a certified MAI appraiser and was not asked to value Mr. Green's minority limited partnership interest but only the entire real property owned by the GFLP and Senior Trust, and there was no indication the requirements of RCW 18.140.020(5) were considered.
3. The trial court erred in failing to set for the appropriate findings in how it determined the value of Mr. Green's minority undivided limited partnership interest.
4. The trial court erred in considering Mr. Green's interest in the Green Family Trust of 1995 (Senior Trust) when making a fair and equitable division of assets.

5. (a) The trial court erred in failing to properly characterize and value the family residence and provide the basis for its determination.

(b) The trial court erred in failing to include and divide the residence as part of the property division and instead retained the same in trust for the benefit of the Green's children.

(c) The trial court erred in awarding Mrs. Green the right to reside in the family residence, rent free, for her lifetime, obligating Mr. Green to pay annual property taxes for life, and then failing to include the value of the residence or life estate awarded to Mrs. Green in its final calculations for determining a fair and equitable division of property.

6. The trial court erred in awarding Mr. Green all of the bank balances as of mid April, 2008, and failing to consider the benefits to Mrs. Green and the community in the spending down of the bank account prior to Mr. Green leaving the home and before trial.

7. The trial court erred in finding the credit card debts which Mrs. Green testified were incurred for the benefit of Esprit Technology and incurred without Mr. Green's knowledge were for the benefit of the community and therefore a community obligation.

8. The trial court erred in calculating the extent of community and separate property in rendering its decision regarding the transfer payment and in reaching a fair and equitable division of property.
9. The trial court erred in obligating Mr. Green to pay property taxes on the family residence for life and awarding Mrs. Green maintenance.

### **STATEMENT OF THE CASE**

This is dissolution of a 46-year marriage. [CP #68, page 1] The parties were married May 5, 1962 in Coeur d' Alene, ID. Mrs. Janice Green filed the action on or about April 18, 2008 and alleged they separated April 15, 2008. At trial both parties acknowledged that that Mr. Green did not vacate the family home until June 18, 2008. [RP 257, lines 15-19; RP 364, lines 1-13]. During this period, Mr. Green continued to use the community bank account and funds in his management and possession to meet the community obligations and benefits toward Mrs. Green until they were virtually depleted. [RP 378-407]. At the time of trial, Mr. Harold J, (Bud) Green was 66 years of age and Mrs. Janice Gai Green, 65 years of age. The parties agreed the marriage is irretrievably broken. [RP 364, lines 19-20; CP #68]

During the marriage, Mr. Bud Green was employed in the marine boating field, working for a number of employers as a marine mechanic. [RP 32-33] He became employed with Boeing around 1984 and was employed with Boeing, taking a year and a half off, and leaving when he was 51 years of age. At age 55 years he retired (1994) when Boeing offered early retirement to certain employees. Thereafter, the parties returned to Spokane in order that Mr. Green could care for his elderly parents. [RP 39, lines 22-25]

During the marriage, Mrs. Green attended Eastern Washington University, graduating with a teaching degree in 1967. [RP 32, line 25, RP 33, lines 1-9 and RP 34, lines 1-5]. She was offered a position teaching with the Seattle School District and the parties moved to Seattle where she taught for 4 years.[RP 34, lines 8-18] Following the birth of their second child, she operated a day care out of their home for five years and then a Pre School as the Operations Manager 1976-81.[RP 36, lines 8-12]. In the early 1980s she began working as a Mary K consultant from the home. [RP 36, lines 13-16] and in 1993 she began working with Jenny Craig for a period of about a year before the parties moved back to Spokane County.

[RP 35, lines 9-21]. She has had sales and management training from each of these employers along with CompUSA.

In their first year back from Seattle, the parties cared for Mr. Green's elderly parents. They resided rent free on property owned by the Senior Greens. They continued to live rent-free until their residence was constructed in about 2005. [RP 446, lines 1-4]

Following their return to Spokane they continued to draw on their IRA distributions, Mr. Bud Green's Boeing retirement, annual gifts from the Senior Greens, and earnings from Mrs. Janice Green's employment, along with a small amount of rental income derived from rental of a home in Seattle and a mobile home. [RP 444, line 3-RP 446, line 3] Upon Mr. Bud Green qualifying for Social Security in 2005, they stopped drawing from their IRA. [RP 42, lines 5-8]

Since 1995, Janice Green has been employed with Phillips Junior College in Spokane as an Admissions Representative; Interface Computer School in Spokane as an Admissions Representative (1996-1998); a Market Account Executive for CompUSA Training Center in Spokane (1998-2002) managing the CompUSA Training Center; and Executive Director, Esprit Technologies and Alpine College in Spokane (2002-

2008). Her annual income since 2003 has been \$47,466 [EX-P6], \$51,610 [P-5] in 2004, \$50,476 [P-4] in 2005; \$54,269 for 2006 and \$66,181 for 2007 [EX-P3], and \$19,035 for 2008 following her termination [EX-P2].

Throughout the pendency of the action, Mr. Green's income has been his retirement from Boeing (\$518.00 per month) and his Social Security (\$1,324.00). [EX-R-138; RP 381, lines 17-25; RP 424, lines 1-13; RP 425, lines 19-25; RP 446, lines 7-25, RP 115, lines 17-19] He authorized his son to reside in the mobile home rent free with Mrs. Green's acknowledgment. Prior to the filing of the action, the parties also received annual gifts, \$10-12,000 for Mr. Bud Green and Mrs. Janice Green from the Senior Greens. Once this action for dissolution of marriage was filed, with Mrs. Green alleging the marriage to be irretrievably broken, the annual gifts from the Senior Green's trust to each of the parties stop on Mr. Green's discretion and consultation with his mother, Bonnie Green. [RP 429, lines 16-25; 430, lines 1-3]

Since separation, he has resided in a rental in Spokane, WA. near Felts Field while Mrs. Green has resided in the family home rent-free.

During the pendency of this action, Mrs. Green's income has been her unemployment (\$515.00 per week) having been terminated shortly before filing this action from Esprit Technology, \$1500.00 per month temporary maintenance, and her Social Security of \$ 986.00 per month. [RP 112, EX-P19, RP 132] Although she testified she would exhaust her unemployment in October, 2009 [RP 113] she continued to receive unemployment at the time the Decree was entered. In addition, she resided rent-free in the family residence subject to her paying the homeowners insurance and property taxes, per the Temporary Order dated September 2, 2008 [CP #28]. At trial, she had failed to pay the 2009 property taxes [RP 300, lines 10-22] and Mr. Green was ordered to pay the same. [CP #68, Findings of Fact, #7, pg 3]. No explanation was provided.

During her employ with Esprit Technology as Executive Director, JANICE GREEN charged significant amount of credit card debt for Esprit Technology on her personal credit cards, unbeknownst to Mr. Bud Green. Mrs. Janice Green directed all of her credit card statements to a post office box, which only she used or to the house. Mr. Bud Green did not open her mail [RP 420, lines 1-25] and was unaware of these debts until after Mrs. Green filed for dissolution and presented her financial declaration. [RP

105, lines 19-23; RP 419, lines 14-25] At the time of this dissolution action was filed, her accumulated credit card debt exceeded \$97,000.

[EX-P14] She claimed \$64,577.00 was incurred on behalf of Esprit. [RP 108-108]

Mr. Bud Green also had his own credit cards, which he managed and was responsible for. [RP 131-132; RP 421, lines 20-25; RP 422-423, lines 1-20]

While Mrs. Green was Executive Director, Esprit had cash flow problems. Mr. Bud Green loaned the company \$9000.00 with an assurance he would be repaid within a short time. This was not repaid. [EX-R110, RP 421, lines 1-17] He had never sent the Promissory Note prepared by Mrs. Green prior to trial. [RP 408, lines 10-24]

Of note, in 1991, Harold Elbert Green and Bonnie M. Green (Mr. Bud Green's parents) hereafter referred to as the Senior Greens, won the Washington lottery and elected to take their winnings over a period of 20 years, the last of the payments payable in 2010. [RP 432, lines 1-17]

On December 28<sup>th</sup>, 1994, the Senior Greens formed a limited partnership (the Green Family Limited Partnership), hereafter referred to as GFLP, to run for a term of 25 years (to 2019), in which they were the

general and limited partners. [EX-R136]. They placed all of their real property interest into the limited partnership. The initial shares were 48,000 limited non-voting shares and 2000 general voting shares. Over time they gifted shares to each of their sons as shareholders/owners. By 1998, they had gifted to each of their sons the entire initial limited and 800 general shares equally. [EX-R136]

In 1999, an additional 3000 limited shares was issued by GFLP as a result of the Senior Greens acquiring property across Paradise Road. Shortly thereafter, they transferred 1500 limited shares to each of their sons. [EX-R136; RP 411, lines 17-414, lines 1-3].

Mr. Bud Green was gifted 23,158 limited shares and 400 general voting shares. Stephen Green was gifted 25,500 limited shares and 400 general voting shares. [EX-R136, EX-R141]. The Green Living Trust of 1995 (Senior Trust) retained 1200 general voting shares and held control of all the farm land and limited when the land could be sold. The limited partnership terms had a limitation provision of sale, limiting the sale back to the partnership, and providing for financing terms. [RP 198-200; EX-R-136, page 3, para. 2.2, page 13]

Of note, in January 23, 1995, the Senior Greens consulted with attorney, Mr. Rail Moulton, and established an estate plan for themselves. As part of their estate plan, they established and created a revocable trust referred to as the Green Living Trust, dated January 23, 1995 for their benefit. They were the Trustors, Trustees and Beneficiaries. Over time, they amended their trust on a number of occasions. All their farmland holdings, including what is in the Green Family Limited Partnership (GFLP) which they retained 1200 general voting shares, were placed in their trust. [EX-R140 and EX-R141]

In June, 1998, Harold J. Bud Green and Janice G. Green, the parties herein, also established and created a revocable trust of their own, referred to as the Green Living Trust dated June 25, 1998, naming themselves as Trustees and beneficiaries. They too, have amended their trust provisions over time. All of their property at that time is listed in [EX-R105, Schedules A and B.] Mr. Bud Green's shares in the GFLP at the time were assigned to the trust as his separate property. [EX-R105, Schedule B]. He has not assigned his general shares or the 1500 shares received after creation of the 1998 trust. [RP 433, lines 7-15] During the

trial, Mrs. Janice Green argued that the shares were community shares over the objection of Mr. Bud Green.

In June 2000, the Senior Greens, as general partners of the GFLP, quit claimed ten (10) acres to H. J. (Bud) Green and Janice G. Green, Trustees under the Green Living Trust of June 25, 1998, as grantees. As noted on the Excise Tax statement, [EX-R101] no excise tax was paid since this transfer reflected a distribution of a partnership interest to a partner. Mr. Harold E. Green, General Partner and H.J. Bud Green as grantee signed the affidavit. Both Mr. Bud Green and Janice Green agreed to keep the tax classification the same. The sole partner-grantee on the Quit Claim Deed at the time was H.J. Bud Green. [EX-R101; RP 358].

By October, 2000, the general partners had transferred limited shares to each of their sons, with 25,500 limited shares being gifted to Stephan M. Green and 23,158 limited shares being gifted to Harold J. (Bud) Green, the difference being the 2342 shares, which had been surrendered in exchange for the 10 acres. [EX-R136] Prior to receipt of the last 1500 limited shares, Mr. Bud Green had assigned his shares in the limited partnership to a Revocable Trust created by him and Janice Green on June 25, 1998, but still retaining the same as his separate property

which was signed by both parties. [EX-R105, Schedule B]. There were no documents executed by Mr. Bud Green to convert the shares of the limited partnership to community property. [EX-R105, Schedule A and B, pages 1-3, and page 6] The Senior Greens retained 1200 general voting shares of the partnership. [EX-R136]. Accordingly, 1500 shares are not included in the assigned shares to the Green Living Trust of June 25, 1998. [EX-R105, Assignment of Limited Partnership] These assets represented the property of the parties.

Mr. Harold Elbert Green died December 17, 2005. Prior to that date and on August 10, 2005, they restated their Trust Agreement. On March 11, 2008, Bonnie M. Green, Trustor, amended the Green Living Trust of 1995 by naming her son, Harold J. "Bud" Green as Trustee, if she no longer was willing or able to serve as Trustee. [EX-R141, page 2 of 4<sup>th</sup> Amendment]. Under this revocable trust, a Common Pot Trust was formed which placed all of the family farmland in trust, to terminate January, 2020. On the termination of the Common Pot Trust, the trust estate would be divided equally between her two sons, Stephen and Bud Green. [EX-R141 at page 3 of 4<sup>th</sup> Amendment] There is no award to either of their spouses, unless the sons predecease Mrs. Bonnie Green and

they are married at the time of his death. [EX-R141, page 5 paragraph 5]. Moreover, the trust provided that “no income or principal of Harold Joseph Green’s trust share shall be voluntarily or involuntarily anticipated, assigned, encumbered, or subjected to creditor’s claim or legal process before its actual receipt by him.” [EX-R141, page 4, paragraphs (a) (1).

Mrs. Bonnie Green continues to survive this action. [RP 426, 12-24] Neither she nor the Green Family Living Trust of 1995, or the Green Family Limited Partnership was made a party to this action.

Since winning the lottery, the Senior Greens engaged in a practice of making discretionary annual gifts to each of their sons, daughters in law, and two grandchildren. This practice continued even after Mr. Harold E. Green passed away.

Following the 2005 amendment, Mr. Bud Green began taking more responsibility of managing the Senior Green trust as trustee. Following Janice Green’s filing of this dissolution action where she alleged this marriage to be irretrievably broken, any discretionary gifting as authorized by the Senior Trust, to either party to this marriage, stopped. [RP 429, lines 19-25; RP 435, lines 1-9]. Annual gifting continued to Mr. Bud Green’s brother and sister in law and Mr. Bud Green and Janice

Green's two children. In about 2009, Mr. Stephen Green (not having any children and having health issues) began taking loans against his share of inheritance under the trust, as authorized by Mrs. Bonnie Green and Mr. Rial Moulton. [RP 435, line 16-438, line 22]

Of note, throughout this action and trial, Mrs. Green maintained that Mr. "Bud" Green had converted the 10 acres to community property and the shares in the limited partnership to community property. She offered no evidence regarding the 10 acres other than the Quit Claim Deed conveying partnership property to the Green Living Trust of June 25, 1998. [EX-R101] In regards to the limited partnership shares, she submitted into evidence a "Schedule A" which she claimed was prepared by the Moulton law firm, which allegedly reflected Mr. Green's intent to list his shares in the Green Family Limited Partnership as community property. [EX-P9, pages 5-6] However, the document she offered [EX-P9, second Schedule A, page 2 with the Limited Partnership listed on the top of the page and which allegedly was signed by the parties was not notarized. Moreover, Mr. Green, Mr. Moulton and Ms. Sharon Crocket from Mr. Moulton's office, all testified this document was not prepared by

their office and not in the copy of the trust documents they prepared and maintained. [EX-R105, RP 389, lines 1-24].

Following the conveyance of the 10 acres to the parties as trustees of the Harold J. Bud Green and Janice G. Green Living Trust of 1998, [EX R-101], Mr. Bud Green began excavating and preparing the ground to build a residence. [RP 368, lines 6-25]. The parties used the proceeds from their Seattle home and community income to construct their present residence. [RP 369, lines 1-13] There is no mortgage on the residence.

Mr. Bud Green holds no interest in the Green Family Trust of 1995. He merely serves as trustee. [RP 415, lines 4-6]

Prior to trial, the parties were able to mediate much of their personal property issues with Wm. Fred Aronow. Their mediation included the value, character and distribution of all of the parties' household goods, furnishings and appliances except a piano; personal property and jewelry; professional tools and equipment; recreation and hobby equipment; and numerous vehicles, all of which the court adopted at the close of the action. [EX-R103 and EX-R104]

## ARGUMENT

### General Rules:

In a dissolution action, all property, both community and separate, is before the court for distribution. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305, 494 P.2d 208 (1972); *In re Marriage of Olivares*, 69 Wn. App. 324, 328-29, 848 P.2d 1281, review denied, 122 Wn.2d 1009 (1993). *In re Marriage of Griswold*, 112 Wn. App. 333, 48 P.3d 1018, reconsideration denied, review denied 148 Wn.2d 1023, 66 P.3d 637 (2002). The court must dispose of all of the parties' property, which is brought before it. RCW 26.09.080<sup>1</sup>: *Olivares*, id. at 328. (Emphasis Ours) A party

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<sup>1</sup> **RCW 26.09.080**

#### **Disposition of property and liabilities -- Factors.**

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and

challenging a property distribution must demonstrate that the trial court manifestly abused its discretion. *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984); *In re Marriage of Terry*, 79 Wn. App. 866, 869, 905 P.2d 935 (1995). We find a manifest abuse of discretion when the trial court exercises its discretion on untenable grounds. *Olivares*, id.

In a dissolution action, the trial court must make a "just and equitable" distribution of the property and liabilities of the parties after considering all relevant factors, including the nature and extent of the separate and community properties and the duration of the marriage. RCW 26.09.080. The trial court's paramount concern when distributing property in a dissolution action is the economic condition in which the decree leaves the parties. *In re Marriage of Williams*, 84 Wn. App. 263, 270, 927 P.2d 679 (1996), review denied, 131 Wn.2d 1025 (1997);

In considering the factors set forth in RCW 26.09.080, the trial court has a duty to characterize the property as either community or

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(4) The 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.

separate, as of the date of its acquisition. Olivares, id. (citing In re Marriage of Hadley, 88 Wn.2d 649, 656, 565 P.2d 790 (1977)); Baker v. Baker, 80 Wn.2d 736, 745, 498 P.2d 315 (1972). To accomplish this, the court may consider the source of the property and the date of acquisition. Olivares, id. Although failure to properly characterize property may be reversible error, mischaracterization of property is not a ground for setting aside a trial court's property distribution if it is fair and equitable. In re Marriage of Shannon, 55 Wn. App. 137, 140, 777 P.2d 8 (1989).

In a dissolution action, the trial court must make a "just and equitable" distribution of the property and liabilities of the parties after considering all relevant factors, including the nature and extent of the separate and community properties and the duration of the marriage. RCW 26.09.080. The trial court's paramount concern when distributing property in a dissolution action is the economic condition in which the decree leaves the parties. In re Marriage of Williams, 84 Wn. App. 263, 270, 927 P.2d 679 (1996), review denied, 131 Wn.2d 1025 (1997);

The trial court must consider the required factors and make appropriate findings of fact before it can divide property and award maintenance. Marriage of Rink, 18 Wn. App. 549, 571 P.2d 210 (1977).

Without findings of fact and conclusions of law allowing the Court of Appeals to review the basis of its property division or quantify the value of property to discern the trial court's intent with regard to property division or award of maintenance the trial court may have resulted in a patent disparity in the parties' economic circumstances and the trial court's decree must be vacated because it committed a manifest abuse of discretion. Marriage of Rockwell, 141 Wn. App. 235, 243, 170 P.3d . 572 (2007)

While the trial court "is not required to divide community property equally," if its dissolution "decree results in a patent disparity in the parties' economic circumstances," the Court of Appeals will reverse its decision because the trial court will have committed a manifest abuse of discretion. In re Marriage of Rockwell, id. On review, the Court of Appeals asks whether the trial court's findings pertaining to these properties are supported by substantial evidence. In re Marriage of Skarbek, 100 Wn. App.444, 447, 997 P.2d 447 (2000).

Assignment of Error #1:

1. *Did the trial court err in failing to obtaining jurisdiction over the GFLP and Green Living Trust of 1995 in attempting to value Mr. Bud Green's minority undivided limited partnership interest?*

Neither the Green Family Limited Partnership nor the Green Living Trust of 1995 nor Mrs. Bonnie M. Green was made parties to this dissolution action. However the trial court continued to refer to these parties in her findings and decision and continued to reference Mr. Bud Green's interest in his mother's trust. [CP # 68, Findings No. 5,6,7,23]

In Marriage of McKeen, 110 Wn. App.191at 195, 38 P.3d 1053 (2002) the court in citing Arneson v. Arneson, 38 Wn.2d 99, 100, 227 P. 2d 1016 (1951) noted that RCW 26.09.080 requires the trial court to divide the parties' assets, making such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors. But the trial court does not have authority to adjudicate the rights of parties not before the court, even if they have an interest in the property at issue, as trustees. Arneson, id. at 101.

Where as here, the GFLP and Green Living Trust of 1995 (Senior Trust) own the title and majority interest to such real property, and

controls the disposition of the same, inclusion of the GFLP and Green Living Trust of 1995 is required. Valuing such property owned by the GFLP and Senior Trust, certainly impacts their ownership rights.

Moreover, Mr. Green was not a party to the dissolution action in his position as trustee. *In re the Marriage of Morrison*, 26 Wn.App. 571, 613 P.2d 557 (1980); *Marriage of Pitrie*, 105 Wn. App. 268, 19 P.3d 443 (2001). The court lacked in personam jurisdiction over the GFLP and Trust and its assets.

Assignment of Error #2:

*1. Did the trial court err in allowing the testimony and market analysis offered by Mr. Dewitt Sherwood when Mr. Sherwood acknowledged he was not certified as an MAI appraiser, and not asked to value Mr. Green's minority limited partnership interest but only the entire real property owned by the GFLP and Senior Trust, and there was no indication the requirements of RCW 18.140.020(5) were considered?*

In attempting to value Mr. Bud Green's share in the GFLP, the court admitted a *Market Analysis* on the entire nine (9) parcels of property owned by the Green Family Limited Partnership and Green Family Living Trust of 1995 (Senior Trust), conducted by Mr. Dewitt Sherwood, over the

objection of Mr. Green. [EX-P12; RP 53, line 24; RP 54, Lines 6-8; RP 44, lines 14-RP 47, lines 15; RP 54, line 23-RP 77, line 3]

Mr. Sherwood noted this was intended as a market analysis of the 9 acres owned by the GFLP. [RP 53, lines 24-25; RP 54, lines 6-8; RP 69, lines 10-12]. He testified he was unaware of the parties' interest in the GFLP. [RP 69, lines 1-4] Mrs. Janice Green failed to follow the terms of the GFLP and 1995 trust. She did not provide Mr. Sherwood the proper information for him to value Mr. Bud Green's limited partnership shares. [RP 54, lines 6-RP 57, lines 1-15]

On voir dire, Mr. Sherwood acknowledged he was not an MAI Appraiser [RP 55, lines 1-5] certified by the Appraisal Institute MAI, and had not taken the appropriate tests for certification. [RP 55, 1-22.] He also testified that the document submitted by him was not intended to be an appraisal. [RP 56, lines 9-11]. Mr. Sherwood specifically acknowledged that a formal appraisal required more steps and supporting data. [RP 51, lines 9-11]. Similarly, he indicated that he had experience in valuing minority interests in limited partnerships and discounting of minority interest and discounting marketability of limited minority interests in partnerships, but was not asked to perform these tasks by Mrs. Green. [RP

56, lines 15-25, page 57, lines 1-7] . He also testified that “if there is a minority interest, there often is discounting for the minority interest and discounting for a minority marketability.” [RP 75, lines 4-14]. That if there were limitations in the limited partnership agreement as to when the property can be marketed or sold, he noted that the discount rate could be affected. [RP, 75, lines 15-19]. He was not asked nor provided such information to properly provide such information.

In regards to discounting, Mr. Rial Moulton testified that when the partnership was formed, in 1994, and a 40% discount was used to the value the property due to the undivided minority interest. [RP 201 to 206, line 1-17]

Discounting of the value of undivided fractional interests in real property is reasonable in light of the difficulty in finding a “willing buyer” for an undivided interest in real property. *Estate of Ehlers*, 80 Wn. App. 751, at 760, 911 P.2d 1017 (1996); *Propstra v. United States*, 680 F.2d 1248, 1251 (9<sup>th</sup> Circuit, 1982).

Although a market analysis may be admissible under limited circumstance, (see RCW 18.140.020(5), the court did not address those

statutory requirements. Here, Mr. Sherwood specifically noted he was not asked to value Mr. Bud Green's limited partnership interest. He was not asked nor did he consider the discounting of a minority interest or marketability of a minority interest. He was asked and provided information involving the GFLP and Green Living Trust of 1995. The court's acceptance of the market analysis of the entire 9 parcels and refusal to allow inquiry as to the discounted value of the minority undivided limited interest was error.

Assignment of Error #3:

*3. Did the trial court err in failing to set forth appropriate findings in how it determined the value of Mr. Green's minority undivided limited partnership interest?*

Having admitted the market analysis [EX-P12], the court valued Mr. Bud Green's share interest in the GFLP at \$481,275.00. The court failed to set forth findings on how it valued Mr. Green's limited partnership shares. This Mr. Green submits is error.

The trial court must include in the record its method of valuation and the weight it gave to factors it considered. *Marriage of Berg*, 47 Wn.

App. 754, 737 P.2d. 680 (1987); *Marriage of Gillespie*, 89 Wn. App. 390, 948 P.2d 1338 (1997). The valuation of property in a divorce case is a material question of fact. *Wold v. Wold*, 7 Wn.App. 872, 878 (1972). The trial court is required to set forth the values of property in a dissolution action in order to “provide the appellate court with an opportunity to discover whether there has been an abuse of discretion.” *In re Marriage of Hadley*, id. Without values to review, the appellate court may determine asset values from the record. *Hadley*, id. at 657. However, if the values are in dispute, the appellate court cannot determine if the property division is just and equitable. *Marriage of Greene*, 97 Wn.App. 708, 712, 986 P.2d 144 (1999). Failure to provide the same is abuse of discretion.

Assignment of Error #4:

4. *Did the trial court err in considering Mr. Green’s interest in the Green Family Trust of 1995 when making a fair and equitable division of assets?*

The trial court specifically found “*it is appropriate for Mr. Green to retain his interest in the 1995 Green Family Trust.*” The court also noted Mr. Green’s unique management position as the trustee of the Senior Trust in paying himself or not paying himself, taking money as a

loan versus a gift. [CP #68, Findings of Fact NO. #5] Similarly, in dealing with the residential home, the court considered the management authority of Mr. Bud Green in decisions for the partnership and the parents' trusts as well as the remainder of Bud and Janice Greens' trust. [CP #68, Findings of Fact NO. 6 and 7]

Mr. Green testified and evidence supported he did not receive any money from the partnership. [RP 430, lines 4-25] He acknowledged being a beneficiary of the Senior Trust, on his mother's death. [RP 415, lines 1-8] Until then, he acted as Trustee and took no compensation. He testified he has not drawn any money indiscriminately from his mother's trust. [RP 434 lines 9-11] He testified that as the Trustee, the terms of that trust [EX-R141, at page 7-8] provided him discretion to making distributions including compelling reasons, which include a pending marital separation or dissolution of marriage or divorce of the beneficiary. Accordingly, when Janice Green filed this dissolution of marriage action alleging the marriage was irretrievably broken, he did not feel obligated to provide any further gifting to her from his mother's trust. He also did not make any gifts to himself. [RP 434 lines 24-RP 435, lines 7]. He acknowledged per advice of counsel, Mr. Moulton, he and his brother

were able to take loans. He also testified he has taken \$15,000 as a loan in order to pay the maintenance obligation ordered by the court since he was unable to pay his bills. [RP 439, lines 1-12] There was no evidence or finding that he abused his discretion as Trustee to the Senior Trust.

The court abused its discretion in considering Mr. Bud Green's remaining future interest in the GFLP and Green Family Living Trust of 1995 and his ability to serve as Trustee. [CP 68, Findings of Fact NO. 4, No. 5, and NO. 6, pgs. 2,3]. So long as Bonnie M. Green is alive his entitlement under the revocable trust is a mere expectation. [EX-R141 at page 3] A mere expectation does not rise to the level of property right divisible in a dissolution proceeding. *Marriage of Leland*, 69 Wn.App. 57, 847 P.2d 518, review denied 121 Wn.2d 1033, 856 P.2d 383 (1993). *Marriage of Harrington*, 929 P.2d 1159, amended and superseded 85 Wn. App. 613, 935 P.2d 1357 (1997).

The court's consideration and inclusion of the GFLP and Senior Trust is clearly error. *Arneson v Arneson*, id.

Assignment of Error #5:

A. *Did the trial court err in failing to properly characterize, and value of the residence and provide the basis for its determination?*

B. *Did the trial court err in failing to include and divide the residence as part of the property division ?*

C. *Did the court err in awarding Mrs. Green the right to reside in the home, rent free, for her lifetime, obligating Mr. Green to pay annual properties taxes for life, and not including the value of the residence or life estate awarded to Mrs. Green in its final calculations for determining a fair and equitable division of property?*

In regards to *the family residence*, the court was provided evidence that the 10 acres was gifted to Mr. Bud Green as part of his shares in the limited partnership. [EX-R101] His interest in the limited shares in the partnership was reduced by 2342 shares. [EX-R136]

The court also heard testimony that the family residence that was constructed with labor by Mr. Green and community funds. [RP 368, lines 6-25, RP 369 lines 1-18, RP 403, lines 23-RP 404, lines 1-16] Mr. Green noted it cost \$175,000 to build the home.

The parties stipulated to use of Mr. Randy Berg of Berg and Associates to provide a residential appraisal of the family home and sharing of the cost. Mr. Berg appraised the home initially at \$355,000. He charged \$475.00 for his initial appraisal, [EX-R102] which was paid by Mr. Green from the community joint account. [EX-R108]. The parties sought a supplemental appraisal and were charged \$200.00, which also was paid by Mr. Bud Green. [EX-R108] The supplemental appraisal set the value of the residence at \$330,000. [EX-R102] The court valued the residence at \$310,000. It provided no finding for its determination. Nor did it attempt to determine the extent of the community or separate property interest.

Recognizing the separate property interest of the real property, the court noted the difficulty in separating adequately the financial values of an improvement on real property that is owned by one party versus the underlying real property owned by another. It also noted the significant community interest in the home. [CP 68, Findings of Fact NO. 6, pg. 2]

In applying the statutory factors to the distribution of property in a marital dissolution proceeding, the court must first characterize the marital property as either separate or community. Failure to properly characterize

the property in a marriage dissolution proceeding, for property distribution purposes, may be reversible error. *In re Marriage of Griswold*, id. When community funds are expended in improvements on separate property, the general rule is the title to improvements follows title to the land. *Bank of Spokane v Schidleman*, 193 Wash. 435, 75 P.2d 1010 (1938). However, as where a marital community invests substantial sums of money in construction of a dwelling house on vacant land owned separately by one spouse, which improvement greatly enhances the value of the property, the community acquires an interest in the property and is entitled an equitable lien against the property. *Conley v Moe*, 7 Wn. 2d. 355, 110 P.2d 172 (1941).

Next, rather than distributing the residence between the parties, trial court determined the land and improvements (family residence) should go into the parties' 1998 revocable trust for the children of Janice and Bud Green. The court reasoned that this would honor the management authority that Bud Green had in decisions of the partnership and his parent's trust as well as the remainder of the Bud and Janice Green Trust. [CP 68, Findings of Fact No. #6, pgs. 2,3]. Mr. Green maintains the

court abused its discretion. The Court's statutory obligation was to characterize, value and distribute the property of the parties in a fair and equitable manner. Both trusts were revocable trusts. The parties' children had at best an expectation and no immediate right to any property. Upon Janice Green's filing of the Petition for Dissolution of Marriage, she petitioned the court to divide the property of the parties. Her request clearly reflects a request to partition the property in the 1998 Trust and thus revoke and terminate the Green Living Trust of 1998.

The trial court's obligation pursuant to RCW 26.09.080 was to ascertain the assets and liabilities of the parties and make a distribution thereof, as between these parties. *Arneson v Arneson*, id. The extension of the trust and award of the residence to the children was clear error.

The trial court next awarded Janice Green a beneficial interest in the home by granting her the right to reside in the home for her lifetime, rent free, without properly assessing an appropriate value to the life estate granted to Mrs. Green and without providing any basis or reasoning for its action. As the court noted it intended to award Mrs. Green something not unlike a life estate. [CP 68, Findings of Fact No. 7, pg. 3] The home was not to be sold without her consent during her occupancy. The court

directed she would have to provide homeowners insurance. Most confusing is the court's finding that the Wife would not have an ownership interest. On her death the property was to be transferred to the parties' children. [CP 68, Findings of Fact NO. 7, pg.3; CP 69, Decree, paragraph 3.3, page 3]. The court noted that if Mrs. Green voluntarily elected to walk away from the rent-free use of the home, then Mr. Bud Green could have use, provided he survived her. Otherwise, on her death, the property transferred to their children. The court's decision clearly modified the Trust provisions, and terminated any rights Mr. Green held in the trust. The court's decision also denies him his right to the home, yet obligates him to pay the taxes.

Finally, as to the residence, the court elected not to include the value of the home or beneficial use awarded to Mrs. Green in ascertaining a fair and equitable division of assets. Clearly the lifetime use awarded Mrs. Green had value. Clearly the loss of his interest in the residence and improvements had value to Mr. Green. The trial court failed to determine each. Its failure to determine the values and failure to include the same in calculating of the property distribution simply creates an inequitable and unfair determination.

A trial court's failure to give a valuation of property over which there is a dispute about value is reversible error because it would make appellate review impossible. Marriage of Greene, id.; Marriage of Hadley, id.

Additionally, the courts failure to include the value of the residence or beneficial life interest as part of the assets and debt in determining the equalization amount [CP69,Decree, Paragraph 3.3, page 3] creates a clear disparate division of property. Marriage of Rockwell, id. Assignment of Error #6.

*Did the Trial Court err in awarding Mr. Bud Green all of the bank balances as of mid April, 2008 and failing to consider the benefits to Mrs. Green and the community in the spending down of the bank account prior to Mr. Green's actual move from the home and before trial?*

Here, the parties each had their own bank accounts and joint trust bank accounts during the marriage. Mr. Green managed the joint trust bank account and his account, Mrs. Green managed her account. Mrs. Green retained her account with a balance of \$1545, where she deposited her paychecks.[EX-R109]. Mr. Green provided testimony that he held a Wells Fargo Savings account with a balance of \$29,128.00, a PMA

checking account with a balance of \$15,242.09, and a joint checking account with a balance of \$1,560.00 as of mid April, 2008.[EX-R107]. Mr. Green testified that during the marriage, Mrs. Janice Green did not give him money to put into any of his accounts. [RP 377, lines 13-25]. At trial, he went through his check register [EX-R108] and testified that \$2500 was used to pay household goods and community taxes. [RP 379, lines 17-23], and he paid \$ 7161.95 to Mrs. Green [RP 379, lines 24-25]. He next testified that \$500.00 was given to their son, Brad, with acquiescence of Mrs. Green, and \$1200 was used to pay household bills, and \$1560 to get their son out of jail. [RP 380, lines 1-17]. He noted \$500 was used to pay the utilities at the home, and \$8500, to Mrs. Green, Mr. Maxey and \$400 for taxes to the IRS. [RP 380, lines 18-25, RP 381, lines 1-5]. Next he testified he paid \$400 to Mrs. Green and paid their homeowner's insurance. [RP 381, lines 6-8]. He noted he paid \$1500 to Mrs. Green as temporary maintenance. This all while still residing in the home. He testified that his sources of income were his Social Security of \$1274 (now \$1304) and his Boeing retirement of \$518.56. He noted the latter was what he had to live on without going into his Mother's funds. [RP 381, lines 10-25]. Next he noted that he paid \$800 to Mr. Aronow for

the joint cost of their mediation, \$1000 for joint income tax preparation, and the initial Berg Appraisal. [RP 382, lines 1-9]. He noted he paid \$1000 for mediation costs of the parties and \$2400 for the joint income tax obligation. [RP 382, lines 10-25]. Mr. Green testified how these expenses were used for community expenses, including dental bills, utilities, Dish network, car insurance payments, insurance for a trailer which only Mrs. Green had access, property taxes, Mrs. Green and her attorney, license plates, loans to their son, etc. [RP 394-406]. He closed the account in mid June, after the register and Green Family Trust of 1998 book had been removed from his car. [RP 393, lines 2-15]. Mr. Green noted he resided in the home until mid June, 2008. [RP 393, lines 18-21]

In short, all funds were expended by approximately the time he moved from the residence, for the benefit of the community and Mrs. Green. These funds were gone by the time of trial. No evidence was provided by Mrs. Green to dispute these accounting and allegations.

It making its findings, the trial court awarded Mrs. Green her account of \$1545.00 and the \$7161.95 paid to Mrs. Green. The court then awarded the entire remaining amount of \$ 38,769.00 to Mr. Green and failed to give credit for the community obligations and funds paid which

benefitted Mrs. Green. [CP 68, Findings of Fact NO. 9, pg. 3] Mr. Green believes this is was error, in equitable and unfair.

When exercising its broad discretion in distributing assets in a dissolution proceeding, a trial court focuses on the assets, then before it, at the time of trial. However, if one or both parties to a dissolution have disposed of an asset before trial, the court has no ability to distribute that asset at trial. *White v White*, 105 Wn. App. 545, 20 P.3d 481 (2001). Here, equity requires consideration be given as to what benefits the community received and what Mrs. Green received until Mr. Green left the home. Alternatively, these items should have been treated as not before the court since they had been expended and each received a clear benefit.

*Assignment of Error # 7: Esprit Credit Card Debts.*

*Did the trial court err in finding the credit card debts which Mrs. Green testified were incurred for the benefit of Esprit Technology, and incurred without Mr. Green's knowledge, were for the benefit of the community and therefore a community liability?*

The court found [CP 68, Findings of Fact NO. 16, 17, pg. 4] that “while the marriage was still in tact, the parties tried to somehow infuse resources in the Esprit Technology business to keep it afloat; that the

community benefitted in trying to save Esprit so Ms. Green could continue to have an ongoing income stream and a profession to follow.” It recognized that the \$9000.00 loaned to Esprit Technology was a community asset and divided the same. The trial court found that as Executive Director, Mrs. Green incurred \$64,564.00 on her personal credit cards. It reasoned these debts were incurred for a community benefit and betterment even though Mr. Green did not know about a lot of those efforts and those bills. The court determined these to be community debts and that Mr. Green should be obligated for one half of the credit card debt including the Esprit debts.

Bud Green believes the court’s findings to be in error and he should not be obligated for these debts as they represent Esprit Technology obligations.

The evidence was uncontroverted and acknowledged by Mrs. Janice Green. Mr. Green testified he was unaware of the debts until after Mrs. Green filed her financial declaration. [RP 419, lines 14-25] He also testified that although he was aware of Esprit Technology’s cash flow problem, which was the basis of his loaning Esprit \$9000.00, Mrs. Green at no time disclosed to him of an “investment opportunity” or that Mr.

Williams signed the lease suggesting she would be granted a share of the business upon his death. [EX-P25] [RP 418, lines 1-25, RP 419, lines 1-13]. Further, he testified that she never discussed with him her using a Post Office box nor was he aware that credit card charges were being sent to the Post Office box. Similarly, he did not open her mail when it came to the home. [RP 420, lines 1-25]. He was unaware as to any benefit received by the community for charges for the benefit of Esprit Technology. [RP 421, lines 1-6] Additionally, he never saw the Promissory Note prepared and signed by Mrs. Green on behalf of Esprit before trial. [EX-R110; RP 421, lines 1-20]. That debt had not been repaid.

Janice Green acknowledged that she was unsure if Mr. Green had any knowledge of the credit card indebtedness incurred for the benefit of Esprit. [RP 105, lines 19-23] She acknowledged that Mr. Green loaned Esprit \$9000 in the fall of 2007 [EX-R110] that he did not sign the promissory note, and the company owes him \$9000.00. [RP 106, lines 1-17] When asked what was purchased, she began listing items incurred with her credit cards for the benefit or on behalf of solely Esprit Technology.[RP 106, lines 19-25, RP 107 and 108]. She also

acknowledged charges were for Esprit Technology and not the community. [RP 110, 1-7; and RP 111]. A careful analysis of the purchases clearly was for the benefit of Esprit Technology and not the community. [EX-R135]. The court seemed to recognize Mr. Green was unaware of these debts. [CP 68, Findings of Fact NO. 16 at line 8-9]

Mrs. Green was an employee of Esprit Technology and its Executive Director. [EX-R110, EX-P2, EX-P3, EX-P4, RP 263, lines 20-24] She was hired in initially to develop a vocational school and moved up to Executive Director. At termination (April 2008) she testified her salary was \$70,000 per year but that she accepted a 10% salary cut in the fall of 2007 since the company had cash flow problems. She also admitted that the salary cut was voluntary on her part. [RP 97, line 17-RP 98, inclusive].

Mrs. Green testified that she was *promised verbally* a 1% ownership in Esprit Technology by Mr. Kevin Williams, the owner. She offered no documentation to support this *promise* as this expectancy was not reduced to writing. [RP 104, lines 3] Mrs. Green reasoned that that by incurring these debts, she was helping out the company, and thus benefitting the community. [RP 102-103]. She noted that it was common

practice for employees to use their credit cards and submit for reimbursement. [RP 266, lines 1-17]. She noted she never held back payment of her salary due to cash flow. [RP 266, lines 18-25]. She stated as Executive Director, she made the decision to pay their employees before seeking her reimbursement. [RP 103]. At no time did she claim that the company failed to pay her salary. At no time did she allege that her job was in jeopardy if she did use her personal credit card or incur these expenses. She offered no evidence she “invested” in the company. She fully expected to be repaid the credit card charges.

In short, there was no evidence her job security was conditioned upon her extending her personal credit for that of Esprit Technology. The beneficiary of these charges was clearly Esprit Technology and not the community. Again, she expected to get reimbursed, but failed to procure the reimbursement prior to termination.

Debts incurred by either spouse during marriage are presumed to be community obligations unless overcome by clear, cogent and convincing evidence. *In re Marusic, Bkrtcy.* W. D. Wash, 139 B.R. 727 (1992). Here, there is overwhelming evidence that these debts were incurred on behalf of and for the sole benefit of Esprit Technology and

solely intended to benefit Esprit Technology. There was no evidence these were incurred in order assure that Mrs. Green would have a job or was investing in acquiring an interest in Esprit Technology. Mr. Green maintains these debts are Mrs. Green's separate debts. She alone retains all records and has sole recollection as to what these expenses were for. She alone can proceed against Esprit for reimbursement and should do so.

*Assignment of Error #8: Division of Assets and Debts and calculation of equalization payment.*

*Did the trial court err in calculating the extent of community and separate property and in rendering its decision regarding the transfer payment and in reaching a fair and equitable division of property?*

The court in [CP 68, Findings of Fact NO. 20, pg.3] found the marital community comprised of \$130,581.00 in total assets and \$111,952 in liabilities. It awarded Mrs. Green \$27,162 and Mr. Green \$103, 419 in community assets and divided the community debts (including the Esprit credit card obligations) equally. These amounts failed to include the value of the residence or life estate granted Mrs. Green. The court then directed an equalization payment from Mr. Green of \$278,766.00 payable at

\$1500.00 per month at 12 % per annum. There was no explanation as to how the court reached the equalization payment.

The court abused its discretion as it failed to properly determine and value all property and liabilities as previously noted. Moreover, simple calculations reflect the court's finding as erroneous. Without sufficient findings assisting the Court of Appeals, its determination of a fair and equitable division is also in error. *Marriage of Greene*, id., *Marriage of Hadley*, id., *Marriage of Gillespie*, id.

In determining that there should be a transfer payment of \$278,776.00 payable at \$1500.00 per month, the court failed to provide how it reached this amount. Nor did the court indicate what resources Mr. Green was to use in meeting this obligation. Here again, without proper findings, the Court of Appeals can not determine if the transfer payment is appropriate or if Mr. Green is able to meet the obligation assessed to him. *Assignment of Error #9: Obligation of Property Taxes and Maintenance*

*Did the Trial Court err in obligating Mr. Green to pay the property taxes on the family residence for life and awarding Mrs. Green maintenance?.*

In [CP 68, Findings of Fact NO. 6 and 7 pg. 3], in addition to the court directing the family residence would go into the Green Family Living Trust of 1998 for the benefit of the children of Janice and Bud Green and awarding Mrs. Green the beneficial use and right to live in the residence rent free, for life, the court also required Mr. Green to pay the property taxes which Mrs. Green was obligated to pay under the temporary order, and to pay future property taxes. The Court failed to provide any rationale for its decision for Mr. Green to pay the property taxes and it failed to provide the basis in which it believed Mr. Green had the ability to pay the property taxes, current and future. The court did not provide findings supporting this decision nor any evidentiary facts to support this decision. Mr. Green maintains this to be court error.

Similarly, at [CP 68, Findings of Fact NO. 21 and 23, pg. 4] the court directed that Mr. Green was to pay maintenance for a period of twelve months beginning February 2010, of \$1500.00 per month. It reasoned the husband has adequate resources to pay maintenance and property distribution installments (referring to the \$1500.00 per month equalization payment) *without resorting to his trust funds*. (Emphasis Ours) In short, the court was of the opinion from the evidence that Mr.

Green had the ability to make monthly payments of \$3000.00 for at least one year, and there after \$1500.00 per month until a transfer payment of \$277,766.00 plus interest, was paid in full. Mr. Green submits the court erred. He maintains this decision is not supported by the evidence, that there are no findings which provides how the court determined this was appropriate, fair and equitable. Mr. Green submits the court abused its discretion.

Mr. Green notes that his sole sources of income has been his Boeing retirement (\$518.00) and Social Security (\$1324.00), totaling \$1824.00 per month. He acknowledges that prior to the filing, he received annual discretionary gifts from the Senior Trust of \$13,000.

He notes he has no income from the partnership. [RP 415, lines 1-3] He has no interest in his mother's trust except as to serve as trustee. [RP 415, lines 7-14] What liquid asset that remains is his half share of the Edward Jones account and the Met Life cash surrender value. He testified that by the time he left the home and certainly by the time of trial, he had exhausted the entirety of the community bank accounts in his control, which he itemized for the court. He noted his interest in the GFLP shares did not provide income. Moreover, his credit card debts since separation

have doubled as a result of his having to use the same, while continuing to pay temporary maintenance of \$1500.00 per month imposed under the temporary order. [RP 423, lines 1-20]. As a result, he has had to borrow money to make up the short fall. [RP 424, lines 1-13] His only other asset is his mobile home, which is being used by his son, Brad. [RP 424, lines 14-25]. He noted he also has no other investments and had no other sources of income. [RP 425]. He noted he stopped receiving gifts from his mother's trust since filing and has no liquid assets to generate income. [RP 429-430]. He claims he has not taken money indiscriminately from his mother's trust. [RP 434, lines 9-11]. He notes he is short each month and as a result of the financial burden he has been held by the court, he has had to take a loan of \$15,000. [RP 449, lines 1-11,RP 439, lines 1-5] against his mother's estate. Mr. Green lacked an ability to pay.

Meanwhile, Mrs. Green received her half of the Edward Jones account, her bank account balances, her retirement accounts, and her social security (\$986.00 per month), is capable of employment, along with the right to live in a \$310,000 home, rent free for life. She also has a trailer at Fish trap Lake she can rent, and she has been sharing use of the home with a friend. She failed to show a need.

RCW 26.09.090<sup>2</sup> governs the issue of maintenance in a dissolution proceeding. An award of spousal maintenance is within the discretion of the trial court, and will not be disturbed unless there is a showing of an abuse of discretion, by the trial court making an award that does not fairly evidence the factors set forth in RCW 26.09.090. *In re the Marriage of Estes*, 84 Wn. App. 586, 929 P.2d 500 (1997).

An award of maintenance must be just in light of relevant factors including financial resources of each party, duration of the marriage, standard of living during the marriage, and resources and obligations of

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<sup>2</sup> **RCW 26.09.090** provides that 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 factors including but not limited to :

- (a) The financial resources of the party seeking maintenance;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his/her skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage;
- (d) The duration of the marriage;
- (e) The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and
- (f) The ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance."

the spouse seeking maintenance, including that spouse's ability for self-support. *Marriage of Estes*, *id.* In determining spousal maintenance, the court is governed strongly by the need of one party and the ability of the other party to pay the award. *Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997). An award of spousal maintenance that does not evidence a fair consideration of the statutory factors used in determining such an award results from an abuse of discretion. *Spreen v Spreen*, 107 Wn.App. 341, 28 P.3d. 769 (2001).

Here, there simply is no basis for an award of maintenance or the payment of future property taxes. Nor is there an ability to pay the \$1500 per month transfer payment imposed by the court.

**Attorney's Fees:**

Mr. Green requests his attorney fees on appeal pursuant to RAP 18.1 RCW 26.09.140 states in pertinent part that: "Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." The court must balance the needs of one party against the other's ability to pay. *In re Marriage of Terry*, 79 Wn.App.866, 905 P.2d 935 (1995); *In re Marriage of Lilly*, 75 Wash.App. 715, 720, 880 P.2d 40

(1994). The court may also consider the extent to which one spouse's intransigence caused the spouse seeking a fee award to require additional legal services. *In re Marriage of Morrow*, 53 Wn.App. 579, 590, 770 P.2d 197 (1989). If intransigence is established, the financial resources of the spouse seeking the fees are irrelevant. *Morrow*, id.

Here, Mrs. Green continually sought to implicate the GFLP and Senior Green Living Trust of 1995. She continued to argue that because he is the trustee with discretion in the Senior Trust of 1995, he has the ability to meet what ever obligation the court might impose. She failed to serve or include the partnership and senior trust as parties to this dissolution. Her specific purpose was to provide a false picture of the financial facts, recognizing the existing of the trusts, and have the court render an award based on his position as the Trustee or his having access to the Senior trust, ignoring the fact Mrs. Bonnie Green was still alive and could revoke her trust. She presented evidence through Mr. Sherwood to provide a value of the GFLP farmland and Senior Green Trust, knowing Mr. Green's interest was limited. She failed to provide Mr. Sherwood information as to the parties' limited partnership interest so it could be properly valued. Likewise, she continued to take the position that the

partnership shares were community in character by presenting a “doctored” Schedule A, implying that she and Mr. Green signed a document converting the partnership interests to community property. This necessitated the need to bring testimony of Mr. Moulton and Ms. Crockett denying her allegations she received the document from Mr. Moulton’s office. The court properly found the property his separate property and did not award her attorney’s fees.

### **CONCLUSION**

The trial court abused its discretion on multiple levels in addressing the property and liability of the marital community, and failing to provide the Court of Appeals and parties sufficient facts in reaching its decision. Accordingly, there was no fair and equitable division of assets and liabilities.

If the trial court fails to make findings of facts to support the basis for the property division, and if it results in a patent disparity of division, the result is a manifest abuse of discretion. *Marriage of Urbana*, 147 Wn. App. 1, 195 P.3d, 959 (2008).

The court failed on multiple occasions to provide appropriate findings. It failed to properly value property solely of the parties and

failed to properly include the same in a proper calculation to demonstrate a fair and equitable division of property and assets. The court continued to refer to the assets available through Mr. Bud Green's position as trustee and future right to assets in the Green Family Trust of 1995 (Senior Trust). Such property is not properly before the trial court. The GFLP and Senior Trust are not parties to this action and those assets of those entities are not property of the parties to this marital community. The inclusion of the market analysis and reference to the Senior Trust and GFLP was error.

Dated this 23 day of September, 2010.

Respectfully Submitted



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