

No. 32594-6-III

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

SHEILA CLAIRE JEWETT,  
Petitioner/Appellant,

vs.

ROBERT HENRY JEWETT,  
Respondent/Respondent.

APPEAL FROM THE WHITMAN COUNTY SUPERIOR COURT  
Honorable David Frazier, Judge

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BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. Substantial evidence does not support Finding of Fact 2.8.
2. Substantial evidence does not support Finding of Fact 2.9.
3. Substantial evidence does not support Finding of Fact 2.10.
4. Substantial evidence does not support Finding of Fact 2.12.
5. Substantial evidence does not support the Court's oral finding that "it wouldn't be appropriate to award [Ms. Wilson] property worth \$40,000 to \$60,000." RP at 512.
6. The trial court erred by dividing the parties' property as set forth in Paragraph 3.2 of the Decree.
7. The trial court erred by dividing the parties' property as set forth in Paragraph 3.3 of the Decree.
8. The trial court erred by denying Ms. Wilson's request for spousal maintenance.

*Issues Pertaining to Assignments of Error*

1. Whether substantial evidence supports Finding of Fact 2.8 that the property set forth in Exhibit A to the Findings of Fact and Conclusions of Law is all the community property of the parties?

2. Whether the trial court erroneously found and concluded at Finding of Fact 2.9 that Respondent has a separate property interest in Jewett Crushing, LLC?

3. Does substantial evidence support Finding of Fact 2.10 that the parties have community liabilities as stated in Exhibit A when no evidence shows a deficiency judgment was entered against the parties and the evidence shows the tax warrants had been paid?

4. Does substantial evidence support Finding of Fact 2.12 that Respondent was awarded all of the community liabilities and the Petitioner has the ability to support herself?

5. Whether the Court's division of the parties' assets was disproportionately unfair?

6. Whether the Court erroneously denied Petitioner's request for maintenance by failing to properly consider the statutory maintenance factors?

**B. STATEMENT OF THE CASE**

Robert Jewett and Sheila Jewett (n/k/a Sheila Wilson) began a 17-year relationship in 1996 and married in 2000. (Report of Proceedings (RP) 17, 128) From 1996 to 2013, they commingled all their assets, income, and inheritance. (RP 426)

Mr. Jewett and his father started a rock crushing partnership called Jewett Crushing in 1996 or 1997. (RP 238, 299-300) Mr. Jewett's father primarily funded the partnership while Mr. Jewett provided labor. (RP 248-49) Ms. Wilson was also involved in Jewett Crushing's day-to-day operations but was never paid for her work. (RP 26, 250) She greased the crusher and other machinery. (RP 26) She managed the books and payroll. (RP 26, 27) She taught mandatory mining health and safety classes to employees. (RP 26, 27; Exhibit 31) And she infused tens of thousands of her separate dollars into the partnership – a \$40,000 disability settlement she received for a work-related injury at Costco and over a \$25,000 advance on her inheritance. (RP 19-20, 26, 31-32, 149, 162-63, 251)

In addition to working for Jewett Crushing, Ms. Wilson worked several part-time jobs during the marriage: she worked sparingly as a licensed realtor, as a grocery store cashier, and as legal office assistant, and

she ran an unprofitable espresso stand purchased by Mr. Jewett that she eventually sold on a contract for \$25,000. (RP 34)

The couple lived beyond their means during their marriage. (RP 245) Mr. Jewett charged \$25,000 on one of Ms. Wilson's credit cards and never repaid it, ruining Ms. Wilson's credit. (RP 39) The parties regularly borrowed money from friends and family or took out title loans to make ends meet. (RP 35, 37) The parties' debts included medical bills, old credit card bills, several personal loans from individuals, and automobile loans of approximately \$10,000 to \$15,000 each against a Ford F-350, Saturn Sky, Dodge truck, and Customweld jet boat. (RP 123, 125, 159-60, 168)

Jewett Crushing was not profitable and closed in March 2008. (RP 242, 310) Mr. Jewett's father paid all business debts and let Mr. Jewett and Ms. Wilson keep all business assets. (RP 254-55; Exhibit 105)

In 2010, the parties lost their home on 13 acres through judicial foreclosure. (RP 21-23) No deficiency judgment was entered against the parties after the Trustee's sale even though the property sold for less than the judgment amount. (RP 104, 200-01, 384) And Respondent's Exhibit 127 was excluded as hearsay. (RP 383)

In 2011, Mr. Jewett was fired from his employment as a millwright at Clearwater Paper Corporation. (RP 40, 43-44, 240) He then

worked as a long-haul trucker for a short time before he began working construction for North Dakota Housing Solutions in September 2012. (RP 44-45, 240-42) North Dakota Housing Solutions at least initially paid Mr. Jewett \$17,000 per month in wages and rent for use of Jewett Crushing equipment, including a lowboy hauler, a 1992 Kenworth, a 1994 Kenworth Dump Truck, a CAT Skid-Steer, a dry van, and a 1998 Kenworth. (RP 44-45, 270)

In May 2013, Mr. Jewett began taking the parties' personal property to North Dakota. (RP 175) He took the parties' Ford F-350, 1993 Jeep Wrangler, 21-foot Customweld jet boat, Northland camper, and three 48-foot vans full of the parties' personal property, including an excavator, semi-van trailer, spare semi tires on wheels, a service truck, camping and fishing gear, a dirt bike, and all his millwright tools, firearms, and swords. (RP 58-60, 63-66, 72, 362, 364-66) He hid other personal property at various locations in the Northwest or gave property away so it would not have to be divided in the divorce. (RP 85-86, 94, 271, 409-411) He stored a Saturn Sky in a storage unit to which Ms. Wilson did not have access. (RP 157) He left a yellow Kenworth and tilt deck trailer in Yakima at his father's property. (RP 271) And he gave away an enclosed trailer and two four-wheelers. (RP 277, 279)

Mr. Jewett left primarily household furnishings at the family home in Washington. (RP 65; Exhibit 129) He opened a separate bank account in North Dakota, cutting off Ms. Wilson financially. (RP 100) He then threatened to divorce her if she did not let her real estate license lapse and move with him to North Dakota. (RP 64) She allowed her Washington license to lapse in July 2013. (RP 64, 152)

Ms. Wilson initiated dissolution proceedings in August 2013 and had to sell community property to pay living expenses, attorney fees, and other debts. ((Clerk's Papers (CP) 1-4; RP 153) She asked the Court to award her 12 to 18 months of spousal maintenance, the Dodge, the Saturn, a medical bed, the firearms, the dirt bike, and an equalization payment. (RP 73, 174)

Ms. Wilson was unemployed at the time of trial. (RP 56) Her income was limited to contract payments of \$400 per month for the sale of the espresso stand. (RP 35) She planned to move to Spokane after the divorce and needed approximately \$4,000 (for deposits and first and last months' rent) to rent an apartment. (RP 56) She estimated her monthly rent and utilities would be \$1,200 to \$1,500 per month. (RP 57)

Ms. Wilson has breast cancer and permanent nerve damage in her leg and is disabled from working on any concrete floors. (RP 46, 57) Monthly medical expenses accompany her health issues. (RP 47) She

does not have a formal college education and needs typing and office procedure classes to be able to secure full-time employment as a receptionist or legal assistant. (RP 50) Such classes are available at Spokane Community College at a cost of \$18,000 per year. (RP 52) Ms. Wilson has no retirement. (RP 141)

Mr. Jewett was still capable of working as a millwright or operating heavy equipment. (RP 46, 414) He had no injuries or disabilities that would prevent him from continuing to earn the income he made during the parties' marriage. (RP 46) He claimed he had not worked the six months prior to trial because he was upset about his divorce and his father's death. (RP 237) However, work in North Dakota usually stopped at Thanksgiving due to cold weather and resumed at Easter. (RP 237) Nevertheless, at the time of trial, he continued to have an income of more than \$4,000 per month. (Exhibits 5-7) Between March and September 2013, Mr. Jewett's income had averaged approximately \$8,000 per month. (RP 406-07)

Mr. Jewett lived in the parties' camper in North Dakota. (RP 363) And, when his father passed away in October 2013, Mr. Jewett became the beneficiary of all but one dollar of his father's estate. (RP 339, 390, 431) Mr. Jewett would inherit his father's trailer park and 40 trailers in White Swan from his father's estate. (RP 74; *see* RP 302-303) The trailer park

netted approximately \$80,000 of income in 2012. (RP 317) Mr. Jewett would also inherit a motorhome, houseboat, his father's doublewide trailer, and vehicles, including a Prius. (RP 75) Mr. Jewett also had an Operating Engineers pension. (RP 41-43)

Mr. Jewett claimed all of Jewett Crushing's property, worth \$250,000, belonged to his father's estate. (RP 277, 376-77; Exhibit 128) Jewett Crushing was a 50-50 partnership but the tax returns showed Mr. Jewett's father had a 90 percent interest, likely so he could take all the losses from Jewett Crushing and offset them against his trailer park income because he hated paying taxes. (RP 297, 305)

Except for a few pieces of equipment, the Court found "it wouldn't be appropriate to award [Ms. Wilson] property worth \$40,000 to \$60,000." (RP at 512) It awarded Mr. Jewett the parties' 10 percent interest in Jewett Crushing and Ms. Wilson's right to reimbursement for the more than \$65,000 she contributed to the partnership, because the partnership was formed before the parties married and Jewett Crushing was worth \$120,000, the liquidation value of its remaining assets – more than 30 pieces of heavy equipment, trailers, and trucks. (RP 478-80; Exhibit 36) The Court also awarded Mr. Jewett all property in his possession, including most of the parties' tools, all their trucks, boats and boat trailers, recreational vehicles (including dirt bikes, trailers, and a camper), and all

outdoors/guns/accessories property (including firearms even though a protection order prohibits Mr. Jewett from possessing firearms). (RP 364-66, 480-81; 484 *see* Exhibit 36)

The Court awarded Ms. Wilson a generator that belonged to someone else, a welder, two chip trailers titled in another's name, and a 1,000 gallon water tank. (RP 257, 262, 380, 505) It awarded Ms. Wilson the remaining \$400 monthly payments on the Pony Espresso contract and all personal property then in her possession, including appliances and kitchen cookware, furniture and clothing, business related items, and most of the parties' electronics. (RP 481, 486; *see* Exhibit 36)

The Court also awarded Ms. Wilson an encumbered Saturn Sky and a Jeep Wrangler. (RP 483-84) It did not award Ms. Wilson a truck because she "can't afford . . . to operate it." (RP 483)

The parties were ordered to pay the taxes on their own incomes for 2011 and forward. (RP 507) Mr. Jewett was ordered to pay tax warrants that had already been paid in full. (RP 361, 505) He was also ordered to pay all other debts<sup>1</sup>, including the loan on the Saturn awarded to Ms. Wilson, while bidding Ms. Wilson "good luck . . . with that being paid for." (RP 484)

The Court then denied Ms. Wilson's request for maintenance:

Maintenance and attorney fees, I feel realistically here there isn't need[ o]n the wife's behalf, [or] ability to pay[ ] on the husband's behalf, he's going to have some debts that he's supposed to pay. I'm not saying he is going to pay. I'm concerned about that based on history here but somebody could go after him and there's a lot of debts that have outlined here if you'll need to outline in the final order. But, you know, neither one of you are presently working and haven't worked for some time. Six months on Mr. Jewett's part, I think you said October? And despite the things that you both testified to here, I'm convinced that you both could've been working and that you should've been working and that you're voluntarily underemployed here. And you can make whatever excuses that you want but you both have the ability to support yourself. You both haven't been supporting yourself and I don't think that Mrs. Jewett's injury, which really keeps her from working at Costco or standing, affects her ability to get a decent job and Mr. Jewett hasn't sold me that the impact of this divorce and the death of his father has affected his ability to work. He just hasn't worked and he's been letting, apparently, other people pay his expenses and relied on them. No maintenance. You both need to get a job, pay your bills and support yourself. I make very clearly here, you have the ability to do that and their divorce is going to be final as soon as possible here and I hope that resolves the problems that you've had and hope you both can move on here. So, no award either way for maintenance.

(RP 489)

Ms. Wilson appeals. (CP 111-131)

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<sup>1</sup> These debts included a "deficiency judgment" of \$184,139.75. (CP 110) However, the only judgment entered was an in rem judgment entered against the parties' Critchfield property. (Exhibit 126) No admissible evidence of a deficiency judgment was produced.

C. ARGUMENT

1. **Substantial evidence does not support Finding of Fact 2.8 that the property set forth in Exhibit A to the Findings of Fact and Conclusions of Law is all the community property of the parties.**

Sufficient evidence does not support the finding that all the parties' community property is listed in Exhibit A to the Findings of Fact, Conclusions of Law, and Decree of Dissolution. This Court reviews findings of fact for substantial evidence. *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). Substantial evidence exists only if the record contains a sufficient quantity of evidence to support the truth of the declared premise. *In re Marriage of Fahey*, 164 Wn. App. 42, 57, 262 P.3d 128 (2011).

Ms. Wilson testified that the parties had significantly more assets than what was produced in the exhibits and that Mr. Jewett had taken much of the parties' assets to North Dakota, so she had been unable to account for them:

A: Gosh, there was so much that he took. We had a - - another trailer, van trailer sitting on the property. He took out of there three times. I mean, I don't - - we had two and three of things that - we always had an excess of - - of material things and he just loaded up and took them. I me . . . - - I - - I can't even begin to imagine - - I don't - - I can't even know everything.

(RP 65)

[MS. WILSON]: Yes, but I would like to let you know it isn't - - it is incomplete. We had so many receipts - - I didn't have time to put down every. . . - - I mean I tried to do the best I could but I didn't have time to put every single thing down. We ha. . . - - there's more, I just couldn't - - that should've been added but I didn't have time.

(RP 112) Ms. Wilson's testimony was undisputed by Mr. Jewett. Based on the record, the finding that Exhibit A provides an exhaustive list of the parties' community property should be reversed.

**2. The trial court erred by finding and concluding at Finding of Fact 2.9 that Respondent has a separate property interest in Jewett Crushing, LLC.**

The finding that Mr. Jewett has a separate property interest in Jewett Crushing, LLC, is not supported by substantial evidence. Again, substantial evidence is a sufficient quantity of evidence showing that a declared premise is true. *Fahey*, 164 Wn. App. at 57.

It is undisputed that Jewett Crushing, LLC, was never a viable entity. (RP 253-54, 317) Jewett Crushing was an informal partnership. Even if the trial court meant to conclude that Mr. Jewett had a separate property interest in Jewett Crushing *the partnership*, the trial court's conclusion that Mr. Jewett had a separate property interest in Jewett Crushing is not supported by the court's findings that the partnership was

formed before the parties married and that the partnership's remaining assets are worth \$120,000.

“The classification of property as separate or community presents a mixed question of law and fact. The time of acquisition, the method of acquisition, and the intent of the donor, for example, are questions for the trier of fact. Whether the facts, as found, support the classification of property as separate or community is for the court to determine as a matter of law.” *In re Marriage of Martin*, 32 Wn. App. 92, 94, 645 P.2d 1148 (1982). This court reviews questions of law de novo. *In re Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129, 131 (2003).

In Washington, assets acquired during marriage are presumed to be community property. *Id.* To rebut the presumption, Mr. Jewett had to present clear and convincing evidence that he either acquired the property before marriage or acquired it after marriage by gift, bequest, devise, or descent. *Id.* He failed to meet his burden.

Here, the court's findings about the partnership's date of formation and the remaining value of its property do not address when or how the partnership's assets were acquired or support its conclusion that the property is separate property. The trial court made no findings about when or how the parties' acquired Jewett Crushing's assets. In fact, the parties used Jewett Crushing's bank account as their own personal account. (RP

250) And several pieces of equipment were acquired during the parties' marriage: a Ford F-250, a Refer Trailer, a 1994 Kenworth Truck, a 1993 Kenworth Dump Truck, a 1982 Norms Utility Trailer, a 1978 Skyl Trailer, 1996 Great Reefer Truck, and a 1981 Utility Trailer, and a rock crusher. (Exhibit 106; RP 180) Title, if any, was taken in various names, but the record shows the equipment was purchased during their marriage for the parties' use while the partnership existed and for their continued use after the partnership ceased to exist in 2008.

Based on the evidence, much of Jewett Crushing's remaining equipment was community property. The trial court, therefore, erred by concluding that all of Jewett Crushing's remaining equipment was Mr. Jewett's separate property.

**3. Substantial evidence does not support Finding of Fact 2.10 that the parties have community liabilities as stated in Exhibit A when no evidence shows a deficiency judgment was entered against the parties and the evidence shows the tax warrants had been paid.**

No evidence supports the finding that the parties' liabilities included a deficiency judgment or tax warrants. Substantial evidence is a sufficient quantity of evidence showing that a declared premise is true. *Fahey*, 164 Wn. App. at 57.

Exhibit 126, the Amended Judgment & Decree of Foreclosure, shows only an in rem judgment was entered against the foreclosed

property. No judgment was entered against the parties personally by virtue of this Amended Judgment. While the Amended Judgment gave the judgment creditors the right to obtain a deficiency judgment against the parties personally after the trustee's sale, no deficiency judgment was ever entered. Moreover, the trial court excluded as hearsay Exhibit 127, a credit bureau printout showing only that the property sold for less than the judgment amount. Based on the record, no evidence of a deficiency judgment of \$184,139.75 exists.

Regarding tax warrants, Mr. Jewett's undisputed testimony was that the tax warrants had been paid. No evidence shows when the warrants were paid. However, it is undisputed that the warrants no longer existed at the time of trial.

The trial court erred by assigning the non-existent deficiency judgment and tax warrants to Mr. Jewett. The finding to the contrary should be reversed.

**4. Substantial evidence does not support Finding of Fact 2.12 that Respondent was awarded all of the community liabilities and the Petitioner has the ability to support herself.**

A sufficient quantity of evidence does not show that "[m]aintenance . . . should not be ordered because the Respondent was awarded all of the community liabilities and the Petitioner has the ability

to support herself.” (RP 489) Substantial evidence is a sufficient quantity of evidence showing that a declared premise is true. *See Fahey*, 164 Wn. App. at 57 (reciting standard for reviewing findings of fact).

First, Mr. Jewett was not assigned all the community’s liabilities. As shown above, no deficiency judgment or tax warrants existed. The community liabilities assigned to Mr. Jewett in Exhibit A to the Decree less the deficiency judgment total \$57,066 (less automobile loans). Moreover, Exhibit A fails to show the 2011 and 2012 delinquent taxes owed by and assigned to Ms. Wilson.

Second, the evidence shows Ms. Wilson did not have the ability to support herself. She was unemployed. Her real estate license had lapsed as demanded by Mr. Jewett, and she had not been able to afford to renew it. Mr. Jewett had opened a separate account, cutting her off financially. She had to sell the community’s property during the pendency of the action for the necessities of life. And her credit was poor, so she could not be expected to obtain a loan. Her only income was \$400 monthly contract payments on the sale of the espresso stand. Her estimated monthly rent expenses alone would exceed \$400 per month. Clearly, she could not support herself.

According to the record, the findings that Respondent was awarded all of the community liabilities and the Petitioner has the ability to support herself should be set aside for lack of sufficient evidence to support them.

**5. The Court's division of the parties' assets was disproportionately unfair and not based on the necessary statutory factors for disposition.**

The trial court divided the parties' property inequitably and without considering all the statutory factors that must be considered when distributing property. The trial court's division of marital property will not be reversed on appeal absent a showing of manifest abuse of discretion. *In re Marriage of Wright*, 78 Wn. App. 230, 234, 896 P.2d 735 (1995).

Under RCW 26.09.080, the court must "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[;] and (4) The economic circumstances of each spouse . . . at the time the division of property is to become effective[.]" While community property does not have to be divided equally, unjustifiably disproportionate awards are subject to reversal. *White v. White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001); *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989).

The trial court paid little to no consideration of the length of the parties' marriage, the parties' post-dissolution economic circumstances, or the extent of their community property. Instead, the trial court's primary concern and consideration in dividing the parties' assets was to keep them off one another's property: "But my main concern was keeping peace and leaving people to - - parties with the stuff they had in their possession keeping them off one another's property." (RP 504)

Keeping the peace and leaving the parties to the property already in their possession not only failed to address the statutory disposition factors but also failed to pay heed to the fact that Mr. Jewett absconded with the majority of the parties' property with any value. The trial court's division protected Mr. Jewett's earning capacity as a millwright and construction worker because he was awarded all equipment and tools he needed to maintain his livelihood. The award of these assets alone conferred upon Mr. Jewett a higher earning potential than Ms. Wilson. Much of his earning potential was realized through Ms. Wilson's efforts and monetary contributions to Jewett Crushing over the course of the parties' marriage.

A spouse's equitable right of reimbursement is one factor to be considered in dividing assets and debts. *White*, 105 Wn. App. at 551-52. Although the trial court acknowledged Ms. Wilson's equitable right of reimbursement in Jewett Crushing, it found, without basis, that it would

not be appropriate to award Ms. Wilson \$40,000 to \$60,000 of equipment. However, Mr. Jewett should not walk away with this valuable advantage without compensating the person who helped him obtain it. Especially when the parties' remaining property had little value and the court denied Ms. Wilson's request for short term maintenance.

In light of the post-dissolution economic circumstances of each party, the award to the parties is grossly unequal. Mr. Jewett's earning capacity far exceeds Ms. Wilson's earning capacity. Even considering the debts assigned to Mr. Jewett, the long-term value of the property awarded to him and his ability to earn money by using that property is substantial. Ms. Wilson's earning ability, by contrast, is limited. Mr. Jewett's earnings were ten times Ms. Wilson's income at the time of dissolution. While the parties lived beyond their means during their marriage, the trial court's division of assets furnished Ms. Wilson a below-poverty level of existence. Facts like these warranted reversal in *In re Marriage of Pea*, 17 Wn. App. 728, 566 P.2d 212 (1977).

Based on the foregoing, the trial court's division created too great a disparity in the award and in the condition in which the parties were left for the award to be equitable under RCW 26.09.080. The property division should be set aside or an offset ordered.

**6. The trial court erroneously denied Petitioner's request for maintenance by failing to properly consider the statutory maintenance factors.**

The trial court erred by denying Ms. Wilson's request for spousal maintenance after failing to consider all statutory maintenance factors. Spousal maintenance is meant to support a spouse, typically the wife, until she is able to earn her own living or otherwise becomes self-supporting. *In re Marriage of Irwin*, 64 Wn. App. 38, 55, 822 P.2d 797, review denied, 119 Wn.2d 1009, 833 P.2d 387 (1992). Maintenance is within the discretion of the trial court. *Bulicek v. Bulicek*, 59 Wn. App. 630, 633, 800 P.2d 394 (1990). But a trial court abuses its discretion when its maintenance decision is not based upon a fair consideration of the statutory factors under RCW 26.09.090. *In re Marriage of Mathews*, 70 Wn. App. 116, 123, 853 P.2d 462 (1993).

Factors listed in RCW 26.09.090 include the financial resources of each party; the duration of the marriage and standard of living during marriage; the age, physical and emotional condition, and financial obligations of the spouse seeking maintenance, as well as the time needed by the spouse seeking maintenance to acquire education for appropriate employment:

(1) In a proceeding for dissolution of marriage . . . , the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in

such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

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

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

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

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

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

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

RCW 26.09.090. Of primary concern are the parties' respective economic positions following dissolution. *In re Marriage of Washburn*, 101 Wn.2d 168, 181, 677 P.2d 152 (1984).

Ms. Wilson asked for only 12 to 18 months of spousal maintenance. The trial court summarily found Ms. Wilson did not need

maintenance and Mr. Jewett did not have the ability to pay because, although unemployed, both parties were employable and Mr. Jewett would be paying debts. The trial court failed to consider (1) Ms. Wilson's financial resources and her ability to meet her needs independently; (2) the time necessary for Ms. Wilson to find employment; (3) the standard of living established during the marriage; (4) the duration of the marriage; (5) Ms. Wilson's age and financial obligations; and (6) Mr. Jewett's post-dissolution financial resources. Moreover, the court improperly considered over \$180,000 of debt that did not exist but was assigned to Mr. Jewett.

Had the trial court properly considered the statutory factors, the record showed the parties had been together for 17 years and married for 14 years. Ms. Wilson, nearly 48-years-old, had a present income of \$400 per month, had a lapsed real estate license at Mr. Jewett's demand, applied for work but had no current job opportunities, needed additional training and education to secure full-time, long-term employment in the legal field, and had financial obligations that far exceeded \$400 per month and consisted of her living expenses, attorney fees, and income tax return late fees and penalties. She had been awarded the encumbered Saturn (possession of which was dependent upon Mr. Jewett paying the debt

against it), household furnishings and electronics, and a few pieces of equipment that were titled or belonged to another entity.

Although unemployed, Mr. Jewett maintained a monthly income of at least \$4,000 per month, intended to continue working construction in North Dakota, and was awarded all but two of the parties' many vehicles, all of the equipment and tools he needed to maintain his livelihood and earning capacity. In addition, he was inheriting his father's entire estate, which included a trailer park, trailers, multiple vehicles and utility trailers, and the remaining 90 percent of Jewett Crushing. While the court assigned "all community debts" to Mr. Jewett, more than \$184,139.75 of that debt did not exist, significantly reducing his financial obligations. In sum, the evidence showed a patent disparity in the economic circumstances in which the parties were left by the decree. An short-term maintenance award would have been more than just under these circumstances.

Because the trial court failed to consider all statutory factors, awarded Mr. Jewett the most valuable assets without offset, and necessarily considered more than \$180,000 of non-existent debts in finding that Mr. Jewett did not have the ability to pay maintenance, the maintenance decision should be remanded for reconsideration. *See In re Marriage of Marzetta*, 129 Wn. App. 607, 626, 120 P.3d 75 (2005)

(remanding maintenance decision where erroneous property division was necessarily considered when determining maintenance), *abrogated on other grounds by McCausland v. McCausland*, 159 Wn.2d 607, 619, 152 P.3d 1013 (2007), *as amended (Mar. 2, 2007)*.

**D. CONCLUSION**

For the reasons stated above, Ms. Wilson respectfully requests that the trial court's division of property and denial of maintenance be reversed and remanded for determination of an offset and short-term maintenance.

Also, Ms. Wilson respectfully requests that the court award attorney fees and costs for maintaining this appeal. RCW 26.09.140 provides:

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

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 attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

Based on the analysis of the parties' financial resources in Issues 5 and 6 above, Ms. Wilson's lack of financial resources and Mr. Jewett's abundance of resources, an award of fees and costs is appropriate here. Respectfully submitted on December 30, 2014.

STAMPER RUBENS, P.S.



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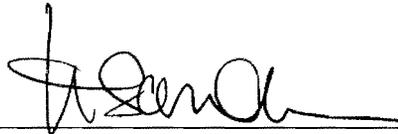
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PROOF OF SERVICE (RAP 18.5(b))

I, Hailey L. Landrus, do hereby certify under penalty of perjury that on December 30, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Brief of Appellant:

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